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UNDER LOCK AND KEY: THE EVOLVING ROLE OF THE ELECTED PRESIDENT AS A FISCAL GUARDIAN

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The Elected Presidency was first conceived as an institutional check on the "untrammelled powers" of the Prime Minister and Cabinet as the parliamentary executive, in two main areas—the safeguarding of Singapore's "past reserves" and the integrity of its public service. As one of the most heavily amended institutions, it is still being "re-made". Given the substantial amendments made to the President's safeguarding roles, this article focuses on one particular aspect, his fiscal powers. It provides an overview of the original fiscal structure, by re-visiting the early rationale for the Elected Presidency, and the original fiscal actors and fiscal powers. It then details and analyses the ensuing constitutional amendments which have altered the fiscal mechanism, thereby substantively reducing the President's fiscal powers. Finally, it makes several concluding observations on the further re-making of the Elected Presidency.

I. INTRODUCTION

The Elected Presidency, arguably Singapore's most innovative constitutional experiment,[1] has been operating for sixteen years since its transformation from a ceremonial[2] to an elected[3] office in 1991.[4] It was first conceived as an institutional check on the "untrammelled powers" of the Prime Minister and Cabinet as the parliamentary executive,[5] in two main areas—the safeguarding of Singapore's "past

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1 See generally, Kevin Y. L. Tan & Lam Peng Er, eds., *Managing Political Change: The Elected Presidency of Singapore*, 1st ed. (New York: Routledge, 1997).

2 This change modified Singapore's inherited Westminster model of parliamentary government. See Kevin Y. L. Tan, "Parliament and the Making of Law", in Kevin Y. L. Tan, ed., *Singapore Legal System*, 2nd ed. (Singapore: Singapore University Press, 1999) at 127-129; and Thio Li-ann, "The Constitutional Framework of Powers", in Kevin Y. L. Tan, ed., *Singapore Legal System*, 2nd ed. (Singapore: Singapore University Press, 1999) at 83.

3 Only the first presidential election out of three elections since the office's creation in 1991, was contested. This has undermined the democratic element of the office. See Thio Li-ann, "Singapore: (S)electing the president—diluting democracy?" (2007) 5 International Journal of Constitutional Law 526.

4 *Constitution of the Republic of Singapore (Amendment) Act*, No. 5 of 1991.

5 *Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services* (Cmd. 10 of 1988) ("First White Paper (1988)") at para. 12. Previously, fiscal powers were centralised in the hands of the Prime Minister and the Cabinet as the executive, forming part of Parliament which is a variant of the Westminster model. The then prevailing and paramount concern was that the President, as

reserves" and the integrity of its public service.[6] The President's other safeguarding roles relate to the *Internal Security Act*,[7] the *Maintenance of Religious Harmony Act*,[8] and the Corrupt Practices Investigation Bureau.[9]

The President's office is one of the most heavily amended institutions, and is still being "re-made". The amendments altering his office constitute almost one-third of all constitutional amendment Acts since Singapore's independence in 1965.[10] Roughly half of such amendments implemented changes to the President's fiscal powers. This frequency of constitutional amendments underscores the flexibility of the *Singapore Constitution*,[11] which provisions—save for Part III (Protection of the Sovereignty of the Republic of Singapore)—can be easily altered by an easily[12] obtained two-thirds majority vote in Parliament under Article 5(2).[13]

However, the series of amendments made to the Elected Presidency was not envisaged by the Government at the outset. Article 5(2A) was first introduced in 1990,[14] as an entrenching provision which stipulates that a bill seeking to amend, *inter alia*, the Elected Presidency or a constitutional provision authorising the President to act in his discretion, must be supported by at least two-thirds of the electorate at a referendum and passed by a two-thirds parliamentary resolution.[15] It was not brought into force then because a "grace period" of "at least four years" was needed for "adjustments, modifications and refinements" to resolve "unforeseen problems" arising out of the "actual implementation".[16] It is still not in force. Its continued abeyance for sixteen years has allowed the series of amendments to be passed in accordance with the general amendment procedure under Article 5(2). Despite repeated calls[17] to bring Article 5(2A) into force, the Government continues to maintain that

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a 'watchdog' or 'custodian', should guard against the exercise of "untrammelled powers" of the Prime Minister and the Cabinet.

6 See *Safeguarding Financial Assets and the Integrity of the Public Services—The Constitution of The Republic of Singapore (Amendment No. 3) Bill* (Cmd. 11 of 1990) ("Second White Paper (1990)") at para. 8.

7 Cap. 143, 1985 Rev. Ed. Sing.

8 Cap. 167A, 2001 Rev. Ed. Sing.

9 Second White Paper (1990), *supra* note 6 at para. 9.

10 See Legislation History, *The Constitution of The Republic of Singapore* (1999 Rev. Ed.). There have been thirty-eight amendment acts since Singapore's independence in 1965. See the Appendix to this article for key constitutional amendments to the Elected Presidency since 1991.

11 *Constitution of the Republic of Singapore* (1999 Rev. Ed.) ("*Singapore Constitution*").

12 The People's Action Party has most of the seats in Parliament since 1968. The proportion of PAP seats to total number of seats in Parliament for the relevant election/year: 2006: 82/84; 2001: 82/84; 1997: 81/83; 1991: 77/81; 1988: 80/81; 1984: 77/79; 1980: 75/75; 1976: 69/69: 1972: 65/65; 1968: 58/58.

13 *Singapore Constitution*, art. 5(2): "A bill seeking to amend any provision in this Constitution shall not be passed by parliament unless it has been supported on Second and Third Readings by the votes of not less than two-thirds of the total number of the elected Members of Parliament …".

14 Parliament passed the *1990 Constitution (Amendment No. 3) Bill* on 3 January 1991. It was subsequently assented to by the President as the *Constitution (Amendment) Act*, No. 5 of 1991, on 18 January 1991. Except for art. 5(2A), the *Constitution (Amendment) Act* came into operation on 30 November 1991.

15 *Singapore Constitution*, art. 5(2A).

16 See the speech of then Prime Minister and Minister for Defence, present Senior Minister, Mr Goh Chok Tong, in Sing., *Parliamentary Debates*, vol. 56 at cols. 722-723 (3 January 1991).

17 (1) 1994: See the speech of then Deputy Prime Minister and present Prime Minister, BG Lee Hsien Loong, in Sing., *Parliamentary Debates*, vol. 63 at cols. 421-422 (25 August 1994). BG Lee stated that the "mechanism is even more complex" than it "originally anticipated", and confirmed the "extreme difficulty in balancing the "Government's need for operational flexibility" and the "President's duty to exercise effective oversight". It also acknowledged that it was "still discovering

it is "still refining the Presidential safeguards, especially in regard to the country's reserves".[18]

Indeed, several difficulties have been experienced during the last sixteen years. For example, a significant controversy surrounded the President's power to withhold his assent to bills "to which [the old] Article 5(2A) applies" under the former Article 22H.[19] This led to the enactment of a new Article 100 which created a special tribunal to consider and render opinions on constitutional questions.[20] Article 22H controversy was the first case considered by the special tribunal under the new Article 100.[21] Flowing out of this saga, various amendments were made to Articles 5(2A) and 22H, and a new dispute resolution mechanism was enacted, embodied in Article 5A.[22] A second example is the Government's concern with the increased mobility of reserves and operational expediency, in light of broader economic interests of the society. This has resulted in a distinct series of amendments made to the provisions governing transfers of reserves amongst the Government, the key statutory boards and government companies. Another example relates to then President Ong Teng Cheong's public airing of his grievances on the operational difficulties encountered by him in an interview with Asiaweek.[23] This resulted in the Government's clarification of its position during parliamentary debates, and the issuance of the third

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implications of the provisions we had not realized". A further prediction was given that that there would be "a second and probably even a third round of amendments to fine-tune the provisions" and "several more years" would pass before the entrenchment of the provisions.

(2) 1995: See BG Lee's speech, in Sing., *Parliamentary Debates*, vol. 64 at cols. 1321-132 (7 July 1995): He reaffirmed the necessity to fine-tune the provisions "as we go along" and restated the Government's position not to bring art. 5(2A) in force for "several more years".

(3) 1996: After implementing the amendments to art. 22H, Parliament introduced a new art. 5A relating to non-core provisions not covered by the 'master entrenchment' art. 5(2A). See BG Lee's speech in Sing., *Parliamentary Debates*, vol. 66 at cols. 763-764 (28 October 1996). He reiterated the need for "one or more rounds of amendments" before bringing art. 5A and art. 5(2A) into force.

(4) 2001: See BG Lee's speech, in Sing., *Parliamentary Debates*, vol. 73 at cols. 742-743 (12 March 2001): BG Lee noted that ten years had passed but the precise provisions of the Elected Presidency were still being refined. In particular, he referred to the amendments to the definition of net investment income, suggesting that if "in five or 10 years' time, we have not made any further major changes to the structure", these provisions might then be entrenched.

(5) See generally, Sing., *Parliamentary Debates*, vol. 82 (15, 27 & 28 February 2007, and 1 March 2007).

[18] See Professor S Jayakumar's reply to Nominated Member of Parliament, Professor Thio Li-ann's question, in Sing., *Parliamentary Debates*, vol. 82 at col. 10 (12 February 2007). Given that Government intends to propose the amendment of the constitutional definition of how much Net Investment Income from past reserves can be spent by the current Government, as confirmed by Professor Jayakumar, it will take "some years of experience" operating under the revised constitutional amendment before art. 5(2A) will be brought into operation.

[19] *Infra* note 166.

[20] See the speech of then Deputy Prime Minister, BG Lee Hsien Loong, in Sing., *Parliamentary Debates*, vol. 63 at cols. 428-432 (25 August 1994); and *Constitution of the Republic of Singapore (Amendment No. 2) Act*, No. 17 of 1994.

[21] See "Constitutional Reference No. 1 of 1995" [1995] 2 Sing. L.R. 201 (Singapore Constitution of the Republic of Singapore Tribunal).

[22] In relation to new art. 5A, see *Constitution of the Republic of Singapore (Amendment) Act*, No. 41 of 1996, and the speech of then Prime Minister Mr Goh Chok Tong in Sing., *Parliamentary Debates*, vol. 66 at cols. 763-764 (28 October 1996). See also *infra* note 166.

[23] See the interview with then President Ong Teng Cheong in "Extended Interview: 'I had a job to do'—Whether the government liked it or not, says ex-president Ong" *Asiaweek* 26:9 (10 March 2000),

White Paper on *The Principles for Determining and Safeguarding the Accumulated Reserves of the Government and the Fifth Schedule Statutory Boards and Government Companies* ("Third White Paper (1999)")[24] embodying a set of principles mutually agreed upon by the President and the Government and an understanding to maintain a harmonious working relationship, on a non-binding basis.

The complexion of the Elected Presidency scheme remains in flux. The Government has recently declared its intention to increase the amount that it can draw from the protected "past reserves" which are not accumulated during the current term of the Government's office by effecting a constitutional re-definition of net investment income.[25] Given the substantial amendments made to the President's fiscal role, this article focuses on one particular aspect, his fiscal powers.[26] First, it provides an overview of the original fiscal structure, by re-visiting the early rationale, fiscal actors and fiscal powers of the President. It then details and analyses the ensuing constitutional amendments and developments which have altered the fiscal mechanism, and thereby substantively reduced the President's fiscal powers. Finally, it makes several concluding observations on the further re-making of the Elected Presidency.

II. The Original Fiscal Structure

A. *The Early Rationale*

The early rationale for the Elected Presidency was to curb the "untrammelled powers" of the Prime Minister and Cabinet as the parliamentary executive.[27] At the outset, the Elected Presidency was grafted[28] onto Singapore's parliamentary system of government. The objective was to prevent a rogue government from raiding the nation's

online: <http://www.asiaweek.com/asiaweek/magazine/2000/0310/nat.singapore.ongiv.html>, where then President Ong spoke of the difficulties in obtaining essential information.

24 Cmd. 5 of 1999.

25 See generally, Sing., *Parliamentary Debates*, vol. 82 (22 January 2007).

26 The fiscal powers are constituted by several key constitutional provisions: art. 22A (Appointment of members of statutory boards), 22B (Budgets of statutory boards), 22C (Appointment of directors of government companies), 22D (Budgets of government companies), 22E (Moneys of the Central Provident Fund), 22F (President's access to information), 22H (President may withhold assent to certain Bills), and Part XI (Financial Provisions) of the *Singapore Constitution*. These Articles set out the President's fiscal role in relation to the Government, and the Key Statutory Boards and Government Companies set out in the Fifth Schedule of the *Singapore Constitution*.

27 First White Paper (1988), *supra* note 5 at para. 12. Previously, fiscal powers were centralised in the hands of the Prime Minister and the Cabinet as the executive, forming part of Parliament which is a variant of the Westminster model. The then prevailing and paramount concern was that the President, as a "watchdog" or "custodian", would guard against the exercise of "untrammelled power" of the Prime Minister and the Cabinet.

28 *Supra* note 5 at para. 18. The then existing Presidency was re-modelled and transformed into an Elected Presidency, and deemed by the Government to be the "most effective safeguard", compared to other alternatives such as "creating an upper legislative body, reposing the power of veto in the Presidential Council for Minority Rights or some other body analogous to the Federal Reserve Board, or requiring decisions on financial assets to be subject to the approval of the electorate in a referendum". The Elected Presidency was however deemed most suitable because of various considerations such as maintaining the status quo of a parliamentary system of government, ensuring a swift mechanism without hindering operational efficiency, promoting representative democracy and requiring appropriate qualifications of the President. See Kevin Y. L. Tan, "The Elected Presidency in Singapore: Constitution of the Republic of Singapore (Amendment) Act 1991" [1991] S.J.L.S. 179 at 193, where the author wondered at the Government's quick decision on the other alternatives and observed its "backwards" strategy of first

"past reserves" and making nepotistic public service appointments.[29] Constituted as the "second key" in a "two-key safeguard mechanism",[30] the President was then empowered to "clip" the "wings"[31] of the Government by granting or withholding his concurrence in relation to the initiative and decisions of the Prime Minister and Cabinet in two key areas—the spending of reserves and assets, and the appointments to key posts in public service.[32]

In the fiscal area, the President's powers are essentially a protective and reactive shield against a "wrongful" drawing on "past reserves" by the Government. Generally, the feasibility and wisdom of fiscal budgets, policies and transactions is determined by Parliament and the respective boards of the key statutory boards and government companies on the Fifth Schedule of the *Singapore Constitution* ("SBGCs"). The President merely has an oversight of such fiscal matters and his powers are "activated" only if the "past reserves" are likely to be drawn upon.

B. *The 'Original' Fiscal Actors*

The President exercises his fiscal powers in tandem with other constitutional bodies such as the Parliament, Auditor-General, Accountant-General and Council of Presidential Advisers. Collectively, they constitute the system of fiscal checks and balances. The "inter-checking" of powers by each fiscal actor on the other fiscal actor(s) upholds the rule of law, by ensuring that absolute power is not reposed in and arbitrarily exercised by just one fiscal actor. This section merely introduces each fiscal actor in relation to the President's fiscal role.[33]

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proposing a form for the new scheme and subsequently justifying it by 'pegging' on two additional specific duties in the Second White Paper (1990), *supra* note 6.

29 See "Prime Minister's Eve of National Day Broadcast" (22 August 1988), online: STARS <http://stars.nhb.gov.sg/stars/public/>; First White Paper (1988), *supra* note 5; Second White Paper (1990), *supra* note 6; Kevin Y. L. Tan, "The Presidency in Singapore: Constitutional Developments" in Kevin Y. L. Tan & Lam Peng Er, eds., *Managing Political Change: The Elected Presidency of Singapore*, 1st ed. (New York: Routledge, 1997) at 55-56; Kevin Y. L. Tan, "The Elected Presidency in Singapore: Constitution of the Republic of Singapore (Amendment) Act 1991" [1991] S.J.L.S. 179 at 179-181.

30 *Supra* note 5.

31 See the speech of then Deputy Prime Minister and Minister for Defence, and present Senior Minister, Mr Goh Chok Tong, in Sing., *Parliamentary Debates*, vol. 56 at cols. 462-463 (4 October 1990):

> My Cabinet colleagues and I believe that a good system of government must have checks and balances. There are inadequate checks in our present parliamentary system of government…Bear in mind that in introducing this Bill, the present Government is in fact clipping its own wings. Once the Constitutional amendment is effected, this Government will have some of its powers checked. The new Prime Minister will need to seek the concurrence of the President in certain key areas of government. I will be the first Prime Minister to be subject to these new checks and safeguards.

The metaphor of clipping of wings was however deemed to be inappropriate by present Minister Mentor, Mr Lee Kuan Yew:

> I would not have used those words because "clipping one's wings" would evoke in my mind the swans we have at Botanic Gardens. They are there because they cannot fly away. And I would not have used that metaphor because I would not want a Prime Minister who cannot get up on his feet and do what he wants. (As reported in Sing., *Parliamentary Debates*, vol. 70 at col. 2067 (17 August 1999)).

32 First White Paper (1988), *supra* note 5, and Second White Paper (1990), *supra* note 6.

33 A detailed analysis of the composition and mechanism of each fiscal actor will be made in a separate article.

1. *Parliament*

The President's fiscal decisions concerning the Government's budgets are subject to Parliament's overriding two-thirds majority vote.[34] Under Article 148D,[35] if the President withholds his assent to any Supply Bill or Supplementary Supply Bill or Final Supply Bill, contrary to the Council of Presidential Advisers' recommendation, the Government can override the President's decision by passing the Bill in Parliament again with a two-thirds majority vote. While the Elected Presidency as an "effective legal safeguard" was not intended to be an absolute check without itself being accountable to another body, the overriding power of Parliament is easily exercised given the dominance of one party in Parliament.[36]

2. *Council of Presidential Advisers*[37]

The President is required to consult the Council of Presidential Advisers on certain fiscal matters. The Council of Presidential Advisers, which comprises 6 non-elected members,[38] is an independent constitutional body tasked with the responsibility of advising and making recommendations to the President on any matter referred to the Council by the President under the *Singapore Constitution*. The consultation is either discretionary or mandatory. Under Article 21(4), the President may consult the Council of Presidential Advisers before performing his fiscal functions, unless otherwise required to consult under Article 21(3). The other provision of Article 21(3) requires the President to consult the Council of Presidential Advisers before acting in his discretion.

Given the mandatory direction to consult, the basis for the advice given by the Council of Presidential Advisers and acted upon by the President should be made known. This will complement the President's publication of his decision and/or opinion in the Gazette by providing the relevant factors and reasons taken into account

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34 The *Constitution of the Republic of Singapore (Amendment) Act 1996*, No. 41 of 1996, inserted art. 22A and 22C, which extended the parliamentary overriding power to key appointments. The President acting in his discretion may refuse to make an appointment or revoke the appointments of key public service officers and members and directors of boards of SBGCs. However, if his decision is contrary to the recommendation of the Council of Presidential Advisers, his decision may be overruled by a resolution passed by at least two-thirds of Parliament.

35 The First White Paper (1988), *supra* note 5, provided no overriding mechanism in relation to the President's decisions. This was revisited in the Second White Paper (1990), *supra* note 6, and an overriding mechanism in the form of existing art. 148D for Supply Bills was introduced: "(1) Where the President withholds his assent under Article 148A to any Supply Bill … contrary to the recommendation of the Council of Presidential Advisers, Parliament may by resolution passed by not less than two-thirds of the total number of the elected Members of Parliament … overrule the decision of the President".

36 See *supra* note 12. Presently, Parliament comprises 84 elected Members of whom 2 are Opposition Members; 1 Non-Constituency Member, and 9 Nominated Members. See art. 39(1)-(2) of the *Singapore Constitution*: only elected Members may vote in Parliament on a motion relating to certain matters such as a Bill to amend the Constitution, the Supply Bill, Supplementary Supply Bill or Final Supply Bill or Money Bill.

37 *Singapore Constitution*, Part VA.

38 *Singapore Constitution*, art. 37B. The Council of Presidential Advisors comprises 2 members appointed by the President acting in his discretion, 2 members appointed by the President on the advice of the Prime Minister, one member appointed by the President on the advice of the Chief Justice, and one member appointed by the President on the advice of the Chairman of the Public Service Commission.

in the decision making process. If issues of high sensitivity are involved, and making these issues known to the public undermines national security or interest, the proceedings may be conducted in the presence of a special select committee subject to specific gag orders or a detailed record thereof may be subject to scrutiny by Parliament in a closed door session.

3. *The Auditor-General & Accountant-General*

The President relies on the fiscal reports submitted by the Auditor-General to perform his fiscal "checking" powers. The Auditor-General and the Accountant-General are constitutionally obligated to inform the President of any "proposed transaction" by the Government which is "likely to draw" on its "past reserves" under Article 148G, as will be elaborated in the section below.

The Auditor-General's office is constitutionally obligated to audit and report on the accounts of the Government, the Public Service Commission, the Legal Service Commission, the Supreme Court, all subordinate courts and Parliament. Its primary role is to report to the President and Parliament on the "proper accounting of public moneys and the economic, efficient and effective use of public resources to enhance public accountability".[39] It is constitutionally constituted and is therefore subject to a removal procedure under Article 148F. Unlike the Auditor-General's office, the Accountant-General is not an organ of the state. It works closely with the Ministry of Finance,[40] and supervises and administers the Government accounting system.[41] It is constituted under the *Financial Procedure Act*[42] (which may be amended by a simple majority resolution of Parliament), and is not subject to a similar removal procedure.

C. *The 'Original' Fiscal Powers*

This section sets out the 'original' fiscal powers granted to the President in 1991. The structure of the fiscal powers remains substantially intact. A detailed analysis of the key amendments which substantially reduced the President's fiscal powers will be made in the subsequent sections.

Some preliminary points should be noted. These powers are reactionary, in that the President does not initiate his own fiscal policies and proposals, and exercises these powers only when the government needs his concurrence to proceed. Furthermore, his fiscal jurisdiction is limited since only certain financial decisions and transactions of the Government and its SBGCs are subject to his purview. His sole consideration is whether such transactions are "likely to draw" on the relevant entity's reserves "not accumulated during the current term of the Government's office" ("past reserves"). The President must consult with the Council of Presidential Advisers[43]

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[39] See the *Audit Act* (Cap. 17, 1999 Rev. Ed. Sing.) which stipulates several audit responsibilities. As an ordinary Act, it may be amended with a simple majority vote in Parliament. See also online: The Auditor-General's Office <http://www.ago.gov.sg>.

[40] The Accountant-General's office operates as a department under the Ministry of Finance. See online: <http://www.agd.gov.sg/abtus.htm>.

[41] See online: Accountant-General's Department <http://www.agd.gov.sg>.

[42] Cap. 109, 1992 Rev. Ed. Sing.

[43] *Singapore Constitution*, Part VA.

before performing his fiscal functions save for the publication of his opinion regarding certain liabilities under Article 148H.[44] Not all of the President's decisions will result in a substantive blocking of a proposed act or decision. There are different consequences for different fiscal powers, such as the publication of only his opinion in the Gazette, his substantive 'blocking' decision and the publication of such decision and his opinion in the Gazette, and the withholding of his assent to a relevant Supply Bill. Finally, certain fiscal decisions of the President may be overridden by a two-thirds majority vote in Parliament.

1. *As a check on the Government*

(a) *Audited annual accounts and statements*: Before the end of a financial year, which means a period of 12 months ending on 31st March in any year[45] ("Financial Year"), the Minister for Finance must present to Parliament annual estimates of revenue and expenditure for the succeeding Financial Year, together with a statement whether such estimates are "likely to draw" on the Government's "past reserves".[46] After the relevant Financial Year, the Minister for Finance must present to the President audited accounts and statements, together with a statement whether any "drawing on or likelihood of drawing on" the Government's "past reserves" has occurred.[47]

The President's fiscal powers are limited. The duty to inform the President takes place after the expenditure. Moreover, the *Singapore Constitution* is silent on the recourses available to the President in the event that the Minister for Finance presents a statement that the audited accounts and statements contain figures which show that there has been a "drawing on or likelihood of a drawing on" the Government's "past reserves". Presumably, such a statement alerts the President, who will review the Supply Bills and other fiscal transactions during the remaining Financial Year more carefully, bearing in mind the effect of such drawing on "past reserves".

(b) *Proposed transactions*: During a Financial Year, the Auditor-General and Accountant-General must inform the President of any "proposed transaction" by the Government which to their knowledge is "likely to draw" on the Government's "past reserves". After being so informed, and upon mandatory consultation with the Council of Presidential Advisers,[48] the President may act in his discretion and disapprove the proposed transaction. If he does not disapprove such proposed transaction notwithstanding his view that such proposed transaction is "likely to so draw upon" such reserves, he must "cause his decision and opinion to be published" in the Gazette.[49]

This is a substantive 'blocking' fiscal power as the proposed transaction cannot be implemented if the President disapproves of it.

(c) *Certain liabilities*: If the President considers that certain liabilities of the Government are "likely to draw" on its "past reserves", he shall state his opinion in writing to the Prime Minister and cause it to be published in the Gazette.[50]

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44 *Singapore Constitution*, art. 21(3).
45 *Supra* note 42, s. 2.
46 *Singapore Constitution*, art. 147(1)-(4).
47 *Singapore Constitution*, art. 147(5).
48 *Singapore Constitution*, art. 21(3).
49 *Singapore Constitution*, art. 22(3) and 148G.
50 *Singapore Constitution*, art. 148H.

This publication of his opinion does not prevent the incurring of such liabilities. It merely acts as a political check on the Government in that it draws the public's attention to such liabilities and the President's opinion that such liabilities are "likely to draw" on the Government's "past reserves". Its efficacy depends on the sufficient reporting of the publication by the media in Singapore. The type and quantum of liabilities falling within the scope of 'certain liabilities' should be clarified. For example, does it include investments (initially an approved expenditure before the current Financial Year) which have become paper losses?[51]

2. *As a check on Parliament*

(a) *Loans & Guarantees*: Upon mandatory consultation with the Council of Presidential Advisers,[52] the President may act in his discretion and withhold his assent to any Bill passed by Parliament providing for the "borrowing of money, giving of guarantee or the raising of any loan by the Government", if he is of the opinion that the Bill is "likely to draw" on the Government's "past reserves".[53]

The withholding of assent constitutes a substantive 'blocking' power in that the Bill cannot become law. However, the types of transactions falling within the phrase "the borrowing of money, giving of guarantee or the raising of any loan by the Government" are subject to varying interpretations.[54]

(b) *Budget Bills*: Before the Financial Year starts, the Minister for Finance will present the annual budget that has been approved by Cabinet to Parliament. This normally takes place in February. The budget debate and Committee of Supply sessions then follow, where Members of Parliament can query the Government on the expenditure of funds in the previous Financial Year, as well as the proposed budget for the next Financial Year, for the various ministries and organs of state. After Parliament passes the Supply Bill, thus giving its approval of the budget, the President then needs to give his assent to the bill before it can come into effect. Upon mandatory consultation with the Council of Presidential Advisers,[55] the President may act in his discretion and withhold his assent to any Supply Bill, Supplementary Supply Bill or Final Supply Bill for any Financial Year if, in his opinion, the estimates of revenue and expenditure for that year, the supplementary estimates or the statement of excess, as the case may be, are "likely to draw" on the Government's "past reserves".

If the President withholds his assent to any such Bill, and no resolution to overrule him is passed by Parliament[56] within 30 days thereof, Parliament may by resolution authorize expenditure or supplementary expenditure (as the case may be) from the Consolidated Fund and Development Fund during that Financial Year subject to specified limits: (a) for a Supply Bill, the expenditure shall not exceed the total amount authorized in the preceding year, for the relevant service or purpose; (b) for a

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51 See the discussion below concerning Temasek Holdings' investment in Thailand's Shin Corp.

52 *Singapore Constitution*, art. 21(3).

53 *Singapore Constitution*, art. 144, read together with art. 21(3).

54 *Infra* notes 127-129.

55 *Singapore Constitution*, art. 21(3).

56 *Singapore Constitution*, art. 148D stipulates that Parliament may overrule the President's withholding of assent by a resolution supported by the votes of a two-thirds majority, if such withholding of assent is contrary to the recommendation of the Council of Presidential Advisers.

Supplementary Supply Bill or Final Bill, the expenditure shall not exceed the amount necessary to replace the amount advanced from any Contingencies Fund[57] for the relevant service or purpose.[58]

If the President gives his assent to the Supply Bill, Supplementary Bill or Final Supply Bill notwithstanding his opinion that it is "likely to draw" on the Government's "past reserves", he must cause his opinion to be published in the Gazette.[59] Once the President assents to the Supply Bill, it is enacted as the Supply Act which controls the amount of money the Government may spend in the coming Financial Year, and for the purposes for which this money may be spent.

If he assents to any such Bill notwithstanding his opinion that such estimates are "likely to draw" on those reserves, he must state his opinion in writing addressed to the Speaker and cause his opinion to be published in the Gazette.[60]

In 1994,[61] Article 148A(2)(a)-(b) and Article 148A(3) were amended to allow the Government to spend up to the total amount authorized by the President in the preceding Financial Year, and not just the amount provided in the main Budget. This serves to prevent sudden withdrawals of essential services which may have been provided for in supplementary budgets in the previous year. The phrase "likely to draw on the reserves" in Article 148A(1) was replaced by "likely to lead to a drawing on the reserves". No specific reason was given for this amendment, apart from the general reasons given above. The additional words, "lead to", suggest that a higher likelihood must be established to prove a drawing on the "past reserves". It should be noted that the original phrase, "likely to draw on" "past reserves" still applies to the SBGCs' budgets under Articles 22B(6) and 22D(5).

3. *As a check on SBGCs*

(a) *Statements of revenue received and expenditure incurred*: Six months after the close of the Financial Year, each key statutory board is required to present to the President its audited statement showing the revenue received and expenditure incurred during that year, and an audited statement showing the assets and liabilities, as at the end of that year, together with a declaration whether these statements show any drawing on its "past reserves".

Similarly, six months after the Financial Year's close, each key government company shall present a profit and loss account showing the revenue received and expenditure incurred during that year, and a balance sheet showing the assets and liabilities at the end of that year, together with a declaration whether these statements show any drawing on its "past reserves".[62]

However, these provisions are silent as to the President's powers if the statement is in the affirmative. It is apparent that the determination of a drawing on "past reserves" depends on a host of accounting and auditing classifications and standards.

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57 *Singapore Constitution*, art. 148C: The Minister for Finance may make advances from the appropriate Contingencies fund (as may be created by Legislature by law) if he is satisfied that there is an urgent and unforeseen need for expenditure not or insufficiently provided for in a Supply Bill, and the President acting in his discretion concurs with the making of such advances.

58 *Singapore Constitution*, art. 148A(2).

59 *Singapore Constitution*, art. 148A.

60 *Singapore Constitution*, art. 148A(1).

61 *Constitution of the Republic of Singapore (Amendment No. 2) Act 1994*, No. 17 of 1994.

62 *Singapore Constitution*, art. 22B(1)(c) and 22D(1)(c).

It is unclear whether investment losses[63] or poor performance of investments are included.

Whilst there is no express constitutional consequence for a breach of duty to inform the President, there may be criminal liabilities imposed pursuant to the *Prevention of Corruption Act*[64] and the *Companies Act*,[65] for corruption and breach of fiduciary duties respectively. Nonetheless, the effectiveness of the above provisions depends on the forthrightness, diligence and thoroughness of the Accountant-General, the Auditor-General, the Public Service Commission officers, the Ministry of Finance (being the ultimate shareholder of the key government companies), and the respective boards, chief executive officers and senior management staff of the SBGCs. This is because the Elected Presidency does not have a separate and substantial staff of advisers and accountants, and is therefore completely reliant on the information and assistance given by these institutional actors and individuals.[66]

(b) *SBGCs' Budgets*: The President is not involved in the daily monitoring and supervision of the SBGCs' respective activities.[67] His 'second key' is exercised in his discretion, upon mandatory consultation with the Council of Advisers, in relation to the budgets and transactions of SBGCs which are "likely to draw" upon their respective "past reserves".

Before the Financial Year: Each SBGC must before the commencement of its Financial Year present to the President for his approval its budget and supplementary budget for its Financial Year, together with a declaration whether the budget when implemented is "likely to draw" on its "past reserves".[68] If the President approves the budget notwithstanding his opinion that the budget is "likely to draw" on the relevant SBGC's "past reserves", he shall cause his opinion to be published in the Gazette.[69]

Upon mandatory consultation with the Council of Presidential Advisers,[70] if the President withholds his approval, the SBGC shall within three months of the first day of that Financial Year, present to the President a revised budget together with a similar declaration, and pending his decision, incur expenditure not exceeding one-quarter of the amount stipulated in the approved budget for the preceding Financial Year. If the President does not approve the revised budget, the budget for the preceding Financial Year shall have effect as the approved budget for that Financial Year. Hence, the SBGC may during that Financial Year incur total expenditure not exceeding the amount stipulated in such approved budget.[71]

(c) *Proposed transactions*: Each SBGC must inform the President of any proposed transaction which is "likely to draw" on its "past reserves", at any time during the Financial Year.[72] Upon mandatory consultation with the Council of Presidential

63 See discussion below concerning Temasek Holdings' investment in Thailand's Shin Corp.
64 Cap. 241, 1993 Rev. Ed. Sing.
65 Cap. 50, 2006 Rev. Ed. Sing.
66 *Supra* note 171.
67 Second White Paper (1990), *supra* note 6 at paras. 15-20.
68 *Singapore Constitution*, art. 22B(1)(a)-(b) and 22D(1)(a)-(b).
69 *Singapore Constitution*, art. 22B(2) and 22D(2).
70 *Singapore Constitution*, art. 21(3).
71 *Singapore Constitution*, art. 22B(3) and 22D(3).
72 *Singapore Constitution*, art. 22B(6) and 22D(5).

Advisers,[73] the President acting in his discretion may disapprove the proposed transaction. However, if he does not disapprove of the proposed transaction even though he is of the opinion that it is "likely to draw" on the SBGC's "past reserves", he shall cause his decision and opinion to be published in the Gazette.[74]

III. The Evolving Fiscal Powers of The President

Given the numerous constitutional amendments made to the fiscal provisions, are Singapore's "past reserves" effectively placed under 'lock and key'[75]? This section traces the key constitutional amendments and developments that retained the structure of the President's fiscal role, but substantially altered the fiscal mechanism by redefining the scope of "past reserves", removing certain types of transactions from the President's fiscal jurisdiction, and creating a new 'category of immunity'[76] for certain flows of reserves amongst the Government and the SBGCs, such that these flows do not constitute a drawing upon their respective "past reserves". The cumulative effect of such amendments is the significant reduction of the President's fiscal powers.

A. *Redefining the Scope of "Past Reserves"*

Under the *Singapore Constitution*, the President has fiscal powers only in respect of "past reserves", being reserves of the Government and the SBGCs which were not accumulated during the current term of office of the Government.[77] The critical pre-requisite to an effective use of fiscal powers was aptly expressed by then President Ong: "If you ask me to protect the reserves, then you've got to tell me what I'm supposed to protect".[78]

The exact composition of official reserves is uncertain, *e.g.*, cash and asset reserves. There is scarce public information on the analysis of the flow of funds into the official reserves, in particular, the composition of the sources of funds and accumulation of funds. Information on the financial investments and reserves of the public sector is seldom publicized and if known, it usually comprises *ad hoc* and piecemeal snapshots raised during parliamentary sessions, contained in the annual reports of the Auditor-General (which audits only certain Ministries, statutory boards and government companies), and voluntary selective disclosures made by the Government[79]

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73 *Singapore Constitution*, art. 21(3).

74 *Singapore Constitution*, art. 22B(7) and 22D(6).

75 See the speech of Opposition Member, Mr Low Thia Khiang, in Sing., *Parliamentary Debates*, vol. 70 at col. 2226 (18 August 1999), in respect of the amendments which resulted in the changing of the "lock" to the past reserves, and leaving the President holding the "second key".

76 I would like to attribute this term to Professor Thio Li-ann who mentioned it during one of our discussions.

77 *Singapore Constitution*, art. 2(1) states that "reserves", in relation to the Government, a statutory board or Government company, means the excess of assets over liabilities of the Government, statutory board or Government company as the case may be. According to *Singapore Constitution*, art. 142(4), "past reserves of the Government" means the reserves not accumulated by the Government during its current term of office, including accretions thereto deemed under this Article to be part of such reserves.

78 *Supra* note 23.

79 General information is available at the relevant Government websites. For example, see the FAQ sections at Ministry of Finance website, online: <http://app.mof.gov.sg/faq/faq.asp?category=Budget+And+Government+Expenditure&subheading=Budget+And+Government+Expenditure>.

and the SBGCs[80] from time to time.[81] Given these varying accounting and financial bases of treatment, the determination of what falls within "past reserves", and is thus subject to the President's fiscal scrutiny, is an arduous, if not impossible, task.

Definitions of "past reserves" and the related accounting and financial standards and procedures are subject to various interpretations. An attempt was made by the Government and then President Ong to clarify the relevant accounting principles applied by the Government and the SBGCs, by the Government's issuance of the Third White Paper (1999).[82] Although the Third White Paper (1999) stipulates the accounting principles determining and safeguarding the "past reserves" of the Government and the SBGCs by setting out, *inter alia*, the definitions of current reserves and "past reserves", and what constitutes a drawing down of "past reserves", certain crucial data such as the total costs and benefits of the investments of the Government and its SBGCs, investment losses and the rates of return are generally unavailable to outside observers.[83] Moreover, the accounts of the Government and the SBGCs are treated differently. The Government accounts are based on a cash basis, whereas SBGCs practise accrual accounting.[84] Additionally, several special provisions are required to address the unique circumstances of certain SBGCs.[85]

1. *Limited inclusion: the list of SBGCs*[86]

Not all statutory boards and government companies are subject to the President's fiscal powers. Given the large number of such entities,[87] only the key statutory boards would be subject to Presidential control. Further, only the four 'top level

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[80] Selective disclosures may be made by a few statutory boards and government companies. See the Temasek Review released by Temasek Holdings Pte. Ltd., online: <http://www.temasek.com.sg>. Temasek's other Fifth Schedule counterparts such as the Government of Singapore Investment Corporation Pte. Ltd. (http://www.gic.com.sg) and the Monetary Authority of Singapore (http://www.mas.gov.sg) have however not disclosed their respective financial details on the basis of national security reasons.

[81] See Linda Low & Toh Mun Heng, *The Elected Presidency as a Safeguard for Official Reserves: What is at Stake?* (Singapore: Institute of Policy Studies, 1989).

[82] See generally, Sing., *Parliamentary Debates*, vol. 70 at cols. 2025-2028 (17 August 1999).

[83] See Tilak Doshi, "Chaining the Leviathan—A public choice interpretation of Singapore's elected presidency" in Kevin Y. L. Tan & Lam Peng Er, eds., *Managing Political Change: The Elected Presidency of Singapore*, 1st ed. (New York: Routledge, 1997) 144 at 158-160.

[84] The different accounting principles have been explained by the Government. See the speech of Mr Raymond Lim, Acting 2nd Minister for Finance at the Committee of Supply Debates in Parliament (2 March 2005) at paras. 25-29, online: <http://app.mof.gov.sg/news_speeches/speechdetails.asp?speechid=125>.

> The main reason why companies prepare their accounts on accrual basis is to allow a better match of their costs and revenues for profit reporting… [M]inistries apply elements of accrual accounting to enhance their financial and resource management. … [I]t is simple objective and prudent. … It will not allow the government, for example, to make a $300m expenditure on a facility look like a $10m commitment, which is the annual value of the depreciation of the facility over 30 years.

[85] Third White Paper (1999), *supra* note 24.

[86] See the current Fifth Schedule of the *Singapore Constitution*: Key Statutory Boards comprise the Central Provident Fund Board, Housing and Development Board, Jurong Town Corporation and Monetary Authority of Singapore, and Government Companies comprise Government of Singapore Investment Corporation Pte. Ltd., MND Holdings Pte. Ltd. and Temasek Holdings Pte. Ltd.

[87] The official list comprises approximately 64 statutory boards. See online: SINGOV Government Information <http://www.gov.sg/govtlist_Statu.htm>.

holding companies' at the time[88] were included in 1991, because "nearly all other Government companies are the subsidiaries of these four" and the protection of these four "indirectly covered" their subsidiaries.[89]

The President must act in accordance with the Cabinet's advice in respect of the addition of statutory boards and government companies to the Fifth Schedule of the *Singapore Constitution*.[90] The removal of any SBGC may be effected only pursuant to a resolution passed by a two-thirds majority of Parliament in accordance with Article 5. Since 1991, three entities have been removed from the Fifth Schedule for various reasons.

(a) *Removal of Board of Commissioners of Currency, Singapore*: The Board of Commissioners of Currency, Singapore was dissolved and removed from the Fifth Schedule in 2002.[91] Its assets, liabilities, functions and past reserves were transferred to another statutory board, the Monetary Authority of Singapore, to "rationalise common functions and realise efficiency gains, without compromising the overriding objective of managing the currency and maintaining confidence in the Singapore dollar".[92] As discussed in the section below, the transfer of the Board of Commissioners of Currency, Singapore's past reserves precipitated an amendment to Article 22B.

(b) *Removal of POSBank*: Pursuant to the merger of Post Office Savings Bank ("POSBank") with The Development Bank of Singapore ("DBS"), POSBank was removed from the Fifth Schedule in 1998.[93] This constitutional amendment was part of an elaborate series of steps in relation to the bank merger. During the parliamentary debates, the Government confirmed that the transfer from POSBank to DBS did not draw on "past reserves" and that the President was kept informed although his approval was not required. It also gave the assurance that the sale proceeds would be treated as the Government's "past reserves".[94] Notwithstanding such representations, then President Ong revealed that he "came to know of it from the newspaper".[95]

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88 The Government of Singapore Investment Corporation Pte. Ltd., MND Holdings Pte. Ltd., Singapore Technologies Holdings Pte. Ltd. and Temasek Holdings Pte. Ltd.

89 Second White Paper (1990), *supra* note 6 at paras. 15-20.

90 *Singapore Constitution*, art. 22A(4) and 22A(5): The statutory body's total value of reserves must be at least S$100 million. *Singapore Constitution*, art. 22C(5) and 22C(6): The government company's shareholders' funds attributable to the Government's interest therein must be at least $100 million, and such a government company must not be a subsidiary of an existing government company in the Fifth Schedule.

91 *Currency (Amendment) Act*, No. 25 of 2002.

92 See the speech of then Second Minister for Finance, Mr Lim Hng Kiang, in Sing., *Parliamentary Debates*, vol. 75 at col. 702 (23 July 2002).

93 *Constitution of the Republic of Singapore (Amendment No. 2) Act 1998*, No. 36 of 1998.

94 See the speech of then Minister for Finance, Dr Richard Hu Tsu Tau in Sing., *Parliamentary Debates*, vol. 69 at col. 1057 (12 October 1998).

95 Then President Ong Teng Cheong, *supra* note 23:

> Even in my last year as president, I was still not being informed about some ministerial procedures. For example, in April last year, the government said it would allow the sale of the Post Office Savings Bank POSB to DBS Bank. In the past, when there was no elected president, they could just proceed with this kind of thing. But when there is an elected president you cannot, because the POSB is a statutory board whose reserves are to be protected by the president. You cannot just announce this without informing him. But I came to know of it from the newspaper. That is not quite right. Not only that, but they were even going to submit a bill to parliament for this sale and to dissolve the POSB without first informing me.

This incident underscored two key points. First, a substantial increase of the Government's coffers, *i.e.*, current reserves, was a likely result of the transfer. This transfer was effected prior to the amendment to Article 142, which would allow for the transfer of up to 50% of the "net investment income" derived from the "past reserves" to the Government's current reserves, as explained in the section below. This meant that the sale proceeds significantly enlarged the Government's "past reserves", and 100% of "net investment income" however defined accrued to the Government's current reserves.

Second, this incident reflected the institutional reliance and trust on the fiscal actors such as the Government, the Auditor-General and Accountant-General, and Public Service Officers, to diligently and robustly keep the President informed of all relevant matters required under the fiscal provisions. It is probable that the transfer from POSBank to DBS amounted to a "proposed transaction" which was "likely to draw" on POSBank's "past reserves", thereby triggering the mandatory obligation to inform the President and obtain his approval.[96] Insufficient information or justification was provided to explain why the transaction was not "likely to draw" on POSBank's "past reserves".

(c) *Removal of Singapore Technologies Holdings Pte. Ltd.*: Singapore Technologies Holdings Pte. Ltd. was removed from the Fifth Schedule in 1994.[97] It was explained that this company was a "smaller company both in terms of assets or turnover than many other subsidiaries". Together with other government-linked subsidiary companies, it was centralized under Temasek Holdings Pte. Ltd., which is an existing SBGC. Therefore, the President "can exercise indirect control" over such companies by "vetting" appointments to Temasek's board of directors and Temasek's budget.[98]

This explanation should be further clarified. For example, a question may be raised whether the existing accounting principles applied by the Accountant-General and the Auditor-General in relation to the accounts of SBGCs yield similar results when applied to an SBGC and its group companies, as opposed to separate application to each SBGC, and each of its 'main' group companies.

Given the rationale of the Elected Presidency, the Cabinet should provide specific details supporting the inclusion and exclusion of statutory boards and government companies from the Fifth Schedule, beyond the general explanations provided for in the First White Paper (1988) and the Second White Paper (1990) prior to the implementation of the Elected Presidency. Whilst the actual accounting and financial workings of the rules are outside the scope of this article, several specific issues may be identified. A statutory board or a government company may be added to the Fifth Schedule provided its total reserves (statutory board) or shareholders' funds (for a government company which is not a subsidiary of an existing Key Government Company) is worth \$100 million or more.[99] What is the rationale for the benchmark of \$100 million in determining which statutory board or government company should be added? Is this under-inclusive, given the large number of statutory boards and government companies in Singapore? What is the requisite threshold which must be reached before an SBGC is removed from the Fifth Schedule? What specific accounting and financial standards are applied in relation to such removal or addition?

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96 *Singapore Constitution*, art. 22(6) and 22(7).

97 *Supra* note 61.

98 *Supra* note 20 at col. 425.

99 *Singapore Constitution*, art. 22A(4)-(5) and 22C(4)-(5).

2. *Net Investment Income ("NII")*

(a) *Exclusion of NII Prior to 2001*: A pertinent question whether NII constituted part of "past reserves" or current reserves was raised by then President Ong during a press conference on 16 July 1999.[100] The Government confirmed that all NII, whether derived from "past reserves" or current reserves, belonged to current reserves which could be used by the current Government.[101] This episode underscores the fact that the scope of matters falling within the President's purview largely depends on the prevailing interpretation and applied accounting standards according to the Government, as discussed in the earlier sections.

(b) *Partial Inclusion of NII in 2001*: The definition of "past reserves" in relation to NII was constitutionally clarified in 2001.[102] The critical concern related to the need to "project the state of the economy and the Government's budget position over the long term, and strike a proper balance between restraining a profligate government on the one hand, and allowing a responsible government enough flexibility to operate on the other".

Under the revised Article 142, all NII[103] derived from current reserves returns to current reserves. At least 50% of NII derived from "past reserves" returns to "past reserves".[104] Effectively, this means that there is a limit to the amount of NII derived from "past reserves" that can be used as operating revenues by the current

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[100] *Supra* note 23.

[101] See Sing., *Parliamentary Debates*, vol. 70 at cols. 2025-2028 (17 August 1999) where then Minister for Finance, Dr Richard Hu, explained that net investment income is the "interest and dividend income earned from investment Government's reserves net of expenses on investment and debt servicing, and excludes any capital gains or losses that may be made from the disposal of investments which are classified as Investment Adjustments". The objective of these rules was to "protect the past reserves from being drawn down by the Government of the day, without allowing the requirement to seek the President's consent to fetter the normal operations of the Government or the SBGCs". Dr Hu explained that a more stringent definition of net investment income was not included in the Third White Paper (1999) because long term budget projections were difficult then during the uncertain economic situation, and such a stringent definition would override the *Singapore Constitution*. However, he gave the assurance that the Government was aware of the problem highlighted by the President and had been working with him and the Council of Presidential Advisers to find a solution. See also Sing., *Parliamentary Debates,* vol. 70 at col. 2269 (6 September 1999) where Dr Hu emphasized that "… all NII is current reserves under the Constitution, the government of the day can use NII to fund deficits and can run budget deficits up to the magnitude of the NII without drawing on past reserves. However, this Government has not had to fall back on NII at all for any".

[102] *Singapore Constitution*, art. 142, as amended by the *Constitution of Republic of Singapore (Amendment) Act 2001*, No. 2 of 2001.

[103] *Singapore Constitution*, art. 142(4): "net investment income" in relation to a Financial Year, means

> the balance of—(a) the dividends, interest and other income received by the Government during the Financial Year from investing the reserves of the Government; and (b) the interest received by the Government during the Financial Year from loan (whenever given) by the Government, after deducting all expenses arising from or incidental to investment and managing those reserves (other than costs of purchasing or disposing of or converting investments) and any interest, sinking fund charges and borrowing charges, but excludes any such income or interest on loans received before the beginning of FY 2000.

[104] *Ibid.* See also *Singapore Constitution*, art. 142(4): "past reserves of the Government" means the reserves not accumulated by the Government during its current term of office, including accretions thereto deemed under this Article to be part of such reserves. According to art. 142(2), such amount certified by the Minister for Finance to the President shall not be less than 50% of the net investment income derived from past reserves.

Government. These protective measures however do not apply to the NII earned by SBGCs because as normal commercial companies they should have full access to the investment earnings from all their accumulated funds, particularly their NII as part and parcel of the normal income.[105] This 'exemption' for SBGCs may well negate the original rationale for the Elected Presidency which is to protect Singapore's "past reserves" from being used pursuant to the "untrammelled powers" of the Prime Minister and Cabinet as the parliamentary executive.

Parliament has recently debated and approved a package of measures allowing the Government to increase its spending to "start to tilt the playing field and start to say, across the board, give people who are in the lower-income group an extra boost and in many years, not just once in a while", by drawing upon various revenue sources such as increased Goods and Services Tax and a revised definition of NII.[106] It will further debate the specific amendment of the current definition of NII such that it includes, in addition to dividends and interests, realized capital gains as part of the total returns earned from the investment of reserves, the former which constitute a significant part of the returns on the reserves.[107]

The reasons given for the revised NII definition appear to contradict the rationale for the Elected Presidency. As articulated in the First White Paper (1988) and Second White Paper (1990), the concern was that "a government which gives liberal subsidies and hand-outs to buy votes will soon run into difficulties financing its programmes and paying off its debts". But one must be mindful of the laudable social objectives underlying the current Budget, which should be distinguished from the giving of liberal subsidies purely in an arbitrary manner and solely to entrench the ruling party's position in Government. However, given that the inclusion of realized capital gains as NII is likely to amount to a substantial drawing on the "past reserves", and application of different accounting and financial principles produces different figures, a detailed clarification (*e.g.*, specification of the different results, and justification

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105 See the speech of then Minister for Finance, Dr Richard Hu Tsu Tau, in Sing., *Parliamentary Debates*, vol. 72 at cols. 1301-1307 (12 January 2001).

106 See the speech of Prime Minister and Minister for Finance, Mr Lee Hsien Loong, in Sing., *Parliamentary Debates*, vol. 82 at cols. 745-748 (13 November 2006):

> We invest the reserves prudently. Out of the returns from the investment, out of this kitty, we draw an income stream which will fund Government spending and enable the present generation to have its fair share. But we keep the nest-egg intact, so that it will grow from year to year and be something which we can pass on to our children. Under the Constitution, the Government can spend up to 50% of Net Investment Income (NII) on past reserves, and 50% of Net Investment Income has to be kept for the future. I believe this is the right formula. It is a fair balance between the claims of the present and the future generations, and will protect our reserves, our seed corn, from being depleted. But we can refine the implementation of this 50% rule because, currently, the definition of Net Investment Income only includes dividends and interest. This is not quite right, because a significant part of the returns on our reserves are capital gains. We should look at total returns on the reserves as the basis for deciding how much it has grown. Therefore, we intend to change the definition of Net Investment Income to include realised capital gains. This will increase the amount which we can draw on average. Some years, if the markets are bad, we may end up with less but, on average, we should end up with more. To do this, we need to amend the Constitution. We will amend the Constitution and work out the details with the President.

See also Sing., *Parliamentary Debates,* vol. 82 (15, 27 & 28 February, 1 March 2007).

107 See generally, Sing., *Parliamentary Debates*, vol. 82 (22 January 2007): In response to Ms Sylvia Lim's query on the estimated additional funds available from the amendment, the Second Minister for Finance Mr Tharman Shanmugaratnam said that no estimates could be given as the matter was "inherently volatile and hard to predict".

for the selected standard or principle) should be furnished by the Government for parliamentary scrutiny and debate. This will ensure proper fiscal governance by requiring governmental accountability and transparency, thereby reinforcing the rule of law.

(c) *Implications of NII as a component of Government's budget*: The NII component is highly significant within a current Government's Budget. An overall Budget is the aggregate amount comprising the Primary Budget (surplus or deficit) amount, less special transfers, and add NII contribution ("NIIC"). Chronic Overall Budget deficits can be avoided by the addition of NIIC which constitutes up to 50% of NII derived from "past reserves" under Article 142.[108]

Based on the following figures derived from the Budget Highlights 2007, several points should be noted. First, the NIIC has resulted in an Overall Budget surplus or a smaller Overall Budget Deficit notwithstanding a Primary Budget deficit:

Overall Fiscal Position for FY2000 to FY2007 ($million)
(Adapted from Table 8.1 of Budget Highlights 2007)

	FY2000	**FY2001**	**FY2002**	**FY2003**	**FY2004**	**FY2005**	**FY2006 (Revised)**	**FY2007 (Budgeted)**
Operating Revenue[109]	31,439	28,496	25,469	25,315	27,469	28,171	29,999	32,359
Less: Total Expenditure[110]	27,908	27,305	27,152	28,499	28,957	28,634	30,547	32,998
Primary Surplus/ (Deficit)	**3,531**	**1,190**	**(1,683)**	**(3,184)**	**(1,487)**	**(463)**	**(549)**	**(639)**
Less: Special Transfers[111]	1,835	5,264	1,802	603	1,661	829	3,580	2,071
Add: NIIC[112]	**2,287**	**1,375**	**3675**	**1,900**	**3,043**	**2,777**	**2,845**	**2,019**
Overall Budget Surplus/(Deficit)	**3,983**	**(2,698)**	**191**	**(1,887)**	**(105)**	**1,486**	**(1,284)**	**(691)**

[108] See paragraph 3.2 of "Overall Fiscal Position for FY1997 to FY2006" in *Budget Highlights Financial Year 2006/2007: Building on Our Strengths, Creating our Best Homes* (Cmd. 4 of 2006):

> While the Primary Budget has been positive from the late 1980s to the early 2000s, it has been in deficit for the past four years … Despite the Primary Budget deficit, the Government has been able to avoid persistent deficits in the Overall Budget position, by supplementing operating revenue with Net Investment Income Contribution (NIIC) from reserves accumulated in the past.

See also *Budget Highlights 2007: Ready for the Future, Ready for the World* (Misc. 2 of 2007) at 7, online: <http://www.mof.gov.sg/budget_2007/budget_speech/downloads/ FY2007_Budget_Highlights.pdf>. "Despite the emergence of structural deficits in the Primary Budget position, the Government has been able to avoid chronic Overall Budget deficits, by augmenting its Operating Revenue with Net Investment Income Contribution (NIIC) from the reserves accumulated in the past".

[109] Tax revenue, fees and charges, others (prior to the Constitutional amendments to protect 50% of NII in FY 2000, interest on development loans was classified as 'others').

[110] Operating expenditure (running costs and transfers) and development expenditure (direct development, capital grant and capital injections).

[111] For example, Economic Restructuring Shares, New Singapore Shares, top-ups to endowment funds, top-ups to CPF accounts, and 40th Anniversary NS bonuses.

[112] 50% or less of NII derived from past reserves.

Second, the amount comprising the excluded income or interest on loans received before the beginning of FY2000 (which would otherwise be included but for the definition of NII under Article 142) is not generally known. Also, Article 142(3), which deems the Minister for Finance's certificate as conclusive evidence, prevents any legitimate scrutiny of the basis on which such a certificate was issued. Lastly, prior to the 2001 amendments, all NII whether derived from "past reserves" or current reserves constituted current reserves, which are not within the President's fiscal purview. The Government should provide specific explanation for such prior treatment of NII, perhaps drawing from comparable and similar examples elsewhere, and also support its selection of 50% of NII derived from "past reserves" as the benchmark.

B. *Removing Certain Types of Transactions*

Defence and security measures were initially subject to the President's fiscal powers, pursuant to the financial provisions relating to proposed transactions of SBGCs[113] and the Government,[114] and certain liabilities of the Government.[115] These measures were however excluded from the President's purview, in 1994.[116]

The Government explained during the parliamentary debates that the spending for defence and security purposes was outside the scope of the "dangers that the President was designed to protect against", *e.g.*, "giving handouts to the population or subsidizing social services". Public disclosure of such defence and security measures even if they were "likely to draw" on the Government's "past reserves", would compromise security. The President would still be informed about such transactions, but without any veto power. The Government further acknowledged that this amendment was "a significant deviation" from the early principle of having two keys in relation to the unlocking and use of "past reserves".[117] In lieu of the exclusion of President's power in this area, a replacement safeguard was introduced. Under the new Article 151A(2), defence and security measures must be recommended by the Chief of Defence Force and the Permanent Secretary of the Ministry of Defence, and then certified by the Prime Minister and the Defence Minister as being necessary for the defence of Singapore.[118]

Instead of exempting this area from the President's fiscal purview, the Government should consider an alternative scrutiny mechanism which allows the President to cause his differing opinion to be published in the Gazette without specific figures

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113 *Singapore Constitution*, art. 22B(7) and 22D(6).

114 *Singapore Constitution*, art. 148G(2) and 148G(3).

115 *Singapore Constitution*, art. 148H.

116 *Singapore Constitution*, new art. 151A, *supra* note 61.

117 See the speech of then Deputy Prime Minister and present Prime Minister, Mr Lee Hsien Loong, *supra* note 20 at cols. 423-424.

118 *Ibid.* Then Deputy Prime Minister and present Prime Minister, Mr Lee Hsien Loong, highlighted the non-political nature of the appointments of the Chief of Defence Force and the Permanent Secretary (Defence): the Chief of Defence Force's appointment is subject to the concurrence of the President, given in his discretion, and the Permanent Secretary (Defence) is appointed by the President on the advice of the Prime Minister from a list of names submitted by the Public Service Commission.

that will undermine national security.[119] Whilst the non-disclosure of financial information pertaining to national security or defence matters is justifiable, the absence of scrutiny by an external institution is not ideal. First, the removal of defence and security measures constitutes a substantial reduction of the matters falling within the President's purview. The total estimated outlay (comprising running costs, transfers and other outlays) under Security & External Relations item of Table 8.5 in the Budget Highlights 2007 is substantial. The total expenditure of the sector relating to security and external relations for Financial Years 1999 to 2007 has steadily increased, and for each Financial Year, the security and external relations expenditure constitutes at least 34% of the total expenditure for all sectors.[120]

Total Expenditure by Sector for FY1999 to FY2007 ($million)
(Adapted from Table 8.5 of Budget Highlights 2007)

Sector/FY	1999	2000	2001	2002	2003	2004	2005	2006 Revised	2007 Budgeted
Social Development[121]	10,551	11,171	11,940	11,917	13,001	12,358	11,721	12,716	13,930
Security and External Relations[122]	**9,303 (37%)**	**9,626 (34%)**	**10,228 (37%)**	**10,536 (39%)**	**10,654 (37%)**	**11,127 (38%)**	**11,850 (41%)**	**12,780 (42%)**	**13,584 (41%)**
Economic Development[123]	3,747	6,055	4,020	3,389	3,610	3,900	3,665	3,829	4,192
Government Administration[124]	1,478	1,056	1,118	1,310	1,233	1,571	1,398	1,222	1,293
Total:	**25,079**	**27,908**	**27,305**	**27,152**	**28,499**	**28,957**	**28,634**	**30,547**	**32,998**

Furthermore, the non-legally binding practice of informing the President as opposed to obtaining his concurrence is significantly different. The danger and prejudice to national interest and security, arising out of a public disclosure of defence and security measures, is real. However, these may be averted by providing details only to the President, who certainly does not constitute the 'public'. Moreover, the

[119] *Supra* note 20 at col. 437: As observed by then Nominated Member of Parliament, Professor Walter Woon:

> If it is desired to preserve secrecy of these transactions, then, by all means, provide that the President does not have to give reasons. If it is desired to have a government override, then perhaps some sort of override mechanism, like the override mechanism for budgets, can be introduced where Parliament can debate the matter, if necessary, in camera without the press, without the media. But to take away the power altogether from the President, I think, opens the door to abuse. There is no point having two keys to a door if you leave the door unlocked. And this is what I am afraid that Article 151A might do.

[120] Singapore Ministry of Finance, *Budget Statement 2007*, "Expenditure Estimates", online: <http://www.mof.gov.sg/budget_2007/revenue_expenditure/attachment/Expenditure_Estimates.pdf>. S$13,583,669,750, out of a total expenditure of S$32,997,820,240.

[121] Education, national development, health, environment and water resources, community development, youth and sports, information communications and the arts excluding info-commns technology.

[122] Defence, home affairs and foreign affairs.

[123] Transport, trade and industry, manpower and info-commns technology.

[124] Finance, law, organs of state and the Prime Minister's Office.

President's appointment power over the Chief of Defence and Permanent Secretary (Defence) as the new alternative 'safeguards' is qualified: if the President, contrary to the Council of Presidential Advisers' recommendation, refuses to make an appointment or refuses to revoke an appointment of the Chief of Defence Force, Parliament may override his decision by a two-thirds majority vote.[125] Under Article 34(2)(a), the President appoints the Permanent Secretary (Defence) in accordance with the Prime Minister's advice, without any discretionary power.

C. *Creating New 'Categories of Immunity'*

A series of recent constitutional amendments created new 'categories of immunity'[126] which exempt certain transactions and flows of monies from constituting a drawing upon "past reserves". The cumulative effect is the substantial reduction of the President's fiscal powers, without altering the fiscal structure.

1. *Giving of a loan by the Government*

The President may withhold his assent to any Bill providing for the "borrowing of money, the giving of any guarantee or the raising of any loan by the Government" if he is of the opinion that the Bill is "likely to draw" on the Government's "past reserves", under Article 144.[127]

The scope of Article 144 has been narrowly interpreted by the Government. The constitutionality of the Government's loan of US$5 billion to Indonesia in 1997 was questioned during a parliamentary debate.[128] The Government, relying on the Attorney-General's opinion, distinguished the "giving" of a guarantee or the "raising" of a loan by the Government on public credit from the giving of a loan by the Government which creates a liability for the borrower and a corresponding asset for the Government. It reiterated that the US$5 billion loan amounted to a "giving" of a loan and not a "raising" of a loan, and was therefore constitutional.[129] This construction of Article 144 requires a restrictive literal interpretation that ignores the underlying intent of the provision. A "giving" of a loan is equivalent to a "giving of any guarantee", and should fall within the President's fiscal oversight.

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[125] *Singapore Constitution*, art. 22(1)(j).

[126] *Supra* note 77.

[127] *Singapore Constitution*, art. 144(2):

> The President, acting in his discretion, may withhold his assent to any Bill passed by Parliament providing, directly or indirectly, for the borrowing of money, the giving of any guarantee or the raising of any loan by the Government if, in the opinion of the President, the Bill is likely to draw on the reserves of the Government which were not accumulated by the Government during its current term of office.

See also the speeches of Mr J.B. Jeyaratnam, Mr Low Thia Khiang, and Mr Chiam See Tong, in Sing., *Parliamentary Debates,* vol. 67 (19 November 1997) and vol. 68 (14 January 1998).

[128] See generally, Sing., *Parliamentary Debates*, vol. 68 (14 January 1998).

[129] *Ibid.*

2. *Intra-group transfers of reserves within the Government and its SBGCs*

A series of amendments altering Articles 22B and 22D, and inserting new Article 148I, has further removed a substantial number of transactions from the President's fiscal oversight. Presently, a "proposed transfer" or "transfers" of "reserves" (comprising current reserves and "past reserves")[130] from any of the Government and its SBGCs to another within the group, which is accompanied by the transferee's undertaking to add the transferor's "reserves" to its "past reserves" ("Intra-Group Transfers"), shall not be "taken into account" in "determining whether the transferor's "past reserves" are "likely to be" or "have been drawn on".

(a) *The initial position*: Since 1991, the President's fiscal oversight has been focused on whether a budget of the Government[131] or an SBGC,[132] or a "proposed transaction" of the Government[133] or an SBGC,[134] is "likely to draw" on or "likely to lead to a drawing" (only in relation to the Government's budget) on its "past reserves". Prior to the amendments, the President's fiscal oversight included all draw-downs, proposed transfers, transfers and any related transaction from the Government or an SBGC to any other entity within or outside the group.

(b) *1994: SBGCs' proposed transfers and transfers of "reserves" to the Government's "past reserves" excluded from President's fiscal oversight*: Articles 22B and 22D were first amended in 1994[135] to allow SBGCs to transfer their respective "reserves" to the Government provided that the Minister for Finance undertakes in writing to add such "reserves" to its "past reserves". Such "reserves" so transferred shall not be taken into account in determining whether the transferor's "past reserves" are "likely to be or have been drawn on", and shall be deemed to form part of the Government's "past reserves".[136]

The Government explained that the new Articles 22B(9) and 22D(8) would allow the transfer of "reserves" from SBGCs to the Government, provided that the transferred reserves form part of the Government's "past reserves", thereby improving management of funds in these entities.[137] The concern that the daily commercial

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[130] *Singapore Constitution*, art. 2(1), *supra* note 77. Although the title of the new art. 148I is "Transfer of Government's Past Reserves", the text of art. 22B(9)-(10); art. 22D(8)-(9) and art. 148I refers to the respective "reserves", which comprise current and past reserves.

[131] *Singapore Constitution*, art. 148A and 148D.

[132] *Singapore Constitution*, art. 22B(1)-(4) (Budgets of statutory boards) and 22D(1)-(4) (Budgets of government companies).

[133] *Singapore Constitution*, art. 148I.

[134] *Singapore Constitution*, art. 22B(6)-(7) (statutory boards) and 22D(5)-(6) (government companies).

[135] *Supra* note 61.

[136] *Singapore Constitution*, art. 22B(9) and 22D(7).

[137] See then Prime Minister and current Senior Minister Goh Chok Tong's speech in Sing., *Parliamentary Debates*, vol. 63 at cols. 422-423 (25 August 1994):

> The Government, key statutory boards and Government companies are regarded as separate entities for the purpose of determining whether they have drawn on reserves. Several companies and statutory boards have accumulated surpluses in excess of their needs. The amendment will allow them to return surplus funds, for example, proceeds from privatization of a GLC, to the Government as past reserves rather than have the funds remain as reserves in the statutory board. The statutory board or GLC so transferring will be deemed not to have drawn on its past reserves. This will improve management of funds in these statutory boards and companies.

operations of the SBGCs should not be hindered is legitimate. A safeguard in the form of the Minister's undertaking ensures that the transfers form part of the Government's "past reserves", thereby ensuring the continued safeguarding of the "past reserves".

(c) *2002: Statutory board's proposed transfers and transfers of "reserves" to another statutory board's "past reserves" excluded from President's fiscal oversight*: In 2002, Article 22B(9) was further amended,[138] allowing a "proposed transfer" or transfer of "reserves" by a statutory board to any other statutory board on the Fifth Schedule, upon the passing of a resolution by the statutory board resolving to add those "reserves" to its "past reserves".

As mentioned in the earlier section, these amendments and the deletion of the Board of Commissioners of Currency as an SBGC were necessitated by the merger of the Monetary Authority of Singapore and the Board of Commissioners of Currency. The new Article 22B(9) enabled "reserves" of the Board of Commissioners of Currency to be transferred to the Monetary Authority of Singapore's "past reserves". Prime Minister Lee Hsien Loong provided the assurance that the transfer would not affect the total amount of "past reserves" that were subject to the constitutional safeguards.[139]

(d) *2004: Proposed transfers and transfers of "reserves" from statutory board to government company, government company to statutory board or another government company, and government to statutory board or government company, excluded from the President's fiscal oversight*: In 2004, further amendments to Article 22B(9) and Article 22D(8)[140] were effected. The amended provisions allowed a "proposed transfer" or transfer of "reserves" from (i) a statutory board on the Fifth Schedule to a government company on the Fifth Schedule, and (ii) a government company on the Fifth Schedule to another government company on the Fifth Schedule or a statutory board on the Fifth Schedule. A new Article 148I relating to the transfer of the Government's "reserves" to the SBGCs' "past reserves" was also introduced; this provision merely completed the framework for such permitted transfers.

The Government's rationale was that these amendments enabled more timely responses by the Government to changing economic conditions. For example, swift transfers of reserves from the Government to an SBGC may be needed to seize opportunities in new areas of growth, and the inter-transfers between the SBGCs should be expedited to facilitate the restructuring, merger or corporatization thereby resulting in better delivery of public services and management of Government assets.[141]

(e) *Current position of intra-group of proposed transfers or transfers*: At present, three types of flows of "reserves" are immune from the President's fiscal powers, because they are not taken into account in determining whether the transferee's "past reserves" are "likely to be or have been drawn on", and the transferred "reserves"

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138 *Constitution of Republic of Singapore (Amendment) Act*, No. 24 of 2002.

139 See the speech of then Deputy Prime Minister Lee Hsien Loong in Sing., *Parliamentary Debates*, vol. 75 at cols. 793-795 (27 August 2002).

140 *Constitution of Republic of Singapore (Amendment) Act*, No. 12 of 2004.

141 See Prime Minister Lee Hsien Loong's speech in Sing., *Parliamentary Debates*, vol. 77 at col. 792 (19 April 2004).

are deemed[142] to form part of the transferee's "past reserves". First, a Key Statutory Board may transfer any of its current reserves or "past reserves" to the "past reserves" of any of the Government and the SBGCs. Second, a Key Government Company may transfer any of its current reserves or "past reserves" to the "past reserves" of any of the Government and the SBGCs. Third, the Government may transfer any of its current reserves or "past reserves" to the "past reserves" of any of the SBGCs. By virtue of the respective deeming provisions, these Intra-Group Transfers form part of the "past reserves" of the transferee, and hence do not draw down on "past reserves".

(f) *Consequent implications*: The concern to avoid unnecessary hindrance to the daily operations of the Government and the SBGCs is valid. However, the amendments assume that there should be no differentiation of SBGCs which are in reality not constituted with similar principal activities and objectives in mind. For example, different considerations relate to the use of reserves of a Statutory Board which has a public function, as opposed to a Government Company which has commercial and profit-making concerns and targets.[143] Indeed, it has been clarified in the Third White Paper (1999) that each of the SBGCs and the Government is considered a separate entity for the purpose of determining whether "past reserves" have been drawn upon.[144] The Government and the SBGCs require separate but parallel sets of principles because the Government accounts are on a cash basis, whereas the SBGCs practise accrual accounting.[145] The Government should clarify whether sufficient allowance and distinctions have been made for the differing accounting standards applied to the Government and the SBGCs.

3. *The cumulative effect of NII & Intra-Group Transfers*

The operation of the new fiscal mechanism governing the two 'types' of flows of "reserves", NII and Intra-Group Transfers, may result in transfers from the "past reserves" of the Government or an SBGC, to the "current reserves" of another in the group. Such transfers bypass the President's fiscal scrutiny, and enlarge the "current reserves". This undermines the President's role as a fiscal guardian of "past reserves".

There are three distinct aspects to the new fiscal mechanism. As explained in the earlier section, the constitutional amendments in 1994, 2001 and 2004, allow for Intra-Group Transfers, from current reserves and "past reserves" of any entity within the group comprising the Government and the SBGCs, to the "past reserves" of another entity subject to its undertaking ("Intra-Group Transfers Mechanism"). Second, the 2001 constitutional amendment to Article 142 allows at least 50% of the NII derived from "past reserves" of the Government to remain in its "past reserves". The remaining NII derived from "past reserves" and NII derived from current reserves of the Government belongs to the current reserves. ("Government NII mechanism"). The third aspect is that NII derived from "past reserves" and current reserves of SBGCs still belongs to the current reserves of SBGCs ("SBGCs' NII mechanism").

[142] *Singapore Constitution*, art. 22B(10), 22D(9) and 148I(2).
[143] Increasingly, the private transactions and business of Temasek Holdings.
[144] Third White Paper (1999), *supra* note 24 at para. 7.
[145] Third White Paper (1999): Contents of the Principles, *supra* note 24 at para. 8.

At all times, there is no direct transfer from "past reserves" to current reserves. The cumulative effect of these two regimes of constitutional amendments, relating to Intra-Group Transfers and NII, may result in enlarged "past reserves" of the Government or an SBGC *via* the Intra-Group Transfers Mechanism, and the corresponding increase in current reserves of the Government or an SBGC *via* the Government NII mechanism and the SBGCs' NII mechanism. There may then be a net increase in the respective current reserves depending on whether there is a deficit. There are three possibilities:-

(a) *Consequent NII Flow from Government's "past reserves" to an SBGC's current reserves*: The Government can transfer any of its "reserves" being its current reserves or "past reserves" to the "past reserves" of any SBGC under Article 148I. Such a transfer will enlarge the "past reserves" of the SBGC recipient. At this point, the exemption from the President's scrutiny raises no concern. However, the NII derived from the enlarged "past reserves" of the SBGC recipient will be part of its current reserves. This is because Article 142 relating to the attribution of a minimum of 50% NII derived from "past reserves" to the current reserves applies only to the Government. There is thus a movement of NII funds from the constitutionally protected "past reserves" of the Government to the SBGC's current reserves.

(b) *Consequent NII flow from SBGCs' "past reserves" to Government's current reserves*: Theoretically, the SBGC recipient can transfer the monies (from its enlarged "past reserves", or its current reserves (receiving a higher NII derived from its enlarged "past reserves") to the Government's "past reserves". The Government's "past reserves" will be enlarged and the NII derived from such enlarged "past reserves" will correspondingly increase. This means that pursuant to Article 142, in addition to its enlarged "past reserves", there will be an increase in the Government's current reserves (less than 50% of the NII from its enlarged "past reserves" will be transferred to its current reserves).

(c) *Consequent NII Flow from an SBGC's "past reserves" and current reserves, to the current reserves of another SBGC*: Article 142 of the *Singapore Constitution* applies only to the Government. All NII whether derived from the "past reserves" or current reserves of an SBGC remains in its current reserves. An SBGC can transfer any of its "past reserves" or current reserves to the "past reserves" of another SBGC pursuant to Articles 22B and 22D. There will then be a consequent NII flow from the latter SBGC's enlarged "past reserves" to its current reserves *via* the SGBCs' NII mechanism.

4. *Investment & paper losses?*

This article does not purport to provide an accounting or financial analysis of the fiscal constitutional provisions and the Third White Paper (1999), and given the lack of full and complete details concerning the accounts of the Government and its SBGCs, only general observations on potential investment and paper losses will be made.

A controversial case study is the investment or paper losses[146] incurred by Temasek Holdings Pte. Ltd. arising out of its failed acquisition of Thailand's Shin Corp.[147] The Government's longstanding position[148] is that it does not interfere with the commercial management and operations of the SBGCs such as GIC[149] and Temasek Holdings and its group companies.[150] However, on 15 January 2007, Prime Minister Lee stated that Temasek Holdings should be held accountable[151] if its controversial purchase of Shin Corp does not work out.[152] The recent parliamentary debates[153] focused on the need for the Government and Temasek Holdings Pte. Ltd. (which is wholly owned by Ministry for Finance) to be transparent and accountable for the investment.

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[146] As of January 2007, the Temasek-led consortium sat on a loss on paper of about US$2 billion and one of Shin Corp's units might be liable to pay fines and damages of about US$2.7 billion. See "Temasek should be accountable for Shin deal: PM Lee" *The Straits Times Interactive* (15 January 2007).

[147] See generally, Yvonne C.L. Lee, "The Corporate Rule of Law: Singapore's Securities Regulators", The Corporate Governance Law Review (Vol. 3 No. 2, 2007) 225. In January 2006, a new telecommunications law which raised foreign ownership cap from 25% to 49% was implemented a day before Prime Minister Thaksin sold his $3 billion stake in Thai telecom giant Shin Corp to Temasek Holdings. See, *e.g.*, "Temasek's stake in Thai bank under scrutiny" *The Business Times* (6 April 2006) See generally, "Shin Corp losses hit Temasek after coup" *The Financial Times* (22 September 2006) and "Singapore may see worst fallout from Thai coup" *The Financial Times* (20 September 2006). The Thai police have commenced an investigation pursuant to the findings of the Thai Commerce Ministry that Temasek Holdings' purchase might have contravened the foreign ownership laws: "Temasek 'may have overstepped ownership laws' in Shin Deal" *The Straits Times Interactive* (3 October 2006) and "Thai probe turns up heat on Temasek's Shin deal" *The Straits Times Interactive* (2 October 2006). The military coup and toppling of Mr Thaksin as the Prime Minister of Thailand on 19 September 2006 renewed a sharp focus upon Temasek Holdings' initial purchase of 49 per cent stake in Shin Corp from Thaksin and his family which triggered a mandatory offer for the remaining stake. Consequently, a 96 per cent stake was purchased by the Temasek consortium. The change in the telecommunication laws governing the foreign ownership cap shortly before Temasek Holdings' initial purchase in January 2006 has raised doubts about the non-involvement of political and government considerations.

[148] See *e.g.*, "MPs scrutinize role of govt-linked companies" *The Straits Times* (28 August 2002). For a rebuttal, see "Govt rebuts articles on GLCs in new Review; Statements made 'unsubstantiated and misleading'" *The Straits Times Interactive* (22 January 2005).

[149] *E.g.*, the GIC website states: "Although GIC is government-owned and manages government funds, the relationship between GIC and the government is that of a fund manager and a client".

[150] See Temasek Holdings' website, *e.g.*, FAQs, online: <http://www.temasekholdings.com.sg/ news_room/mediakit_faqs.htm>; and "Perceived govt links don't hinder business: Temasek—On the contrary, investment says it is fast developing a brand name that gives it an edge" *The Straits Times Interactive* (7 September 2006). In relation to the Shin Corp deal, the Singapore Government and Temasek Holdings have reiterated their independence and separate operations from each other. See Sing., *Parliamentary Debates* (3 April 2006). See also "Temasek keen to keep its stake in Thailand's Shin Corp: Singapore investment company says deal was concluded on a purely commercial basis" *The Straits Times Interactive* (30 September 2006).

[151] It is unclear how Temasek Holdings can be held accountable given the Government's position that the deal was not a government matter. Temasek Holdings as a private exempt company under the *Companies Act* (Cap. 50, 2006 Rev. Ed. Sing.) of Singapore is not required to disclose its accounts. Its voluntarily released Temasek Reviews are not subject to the generally accepted accounting and auditing standards. Temasek Holdings has a current portfolio of S$164 billion according to its Temasek Review 2007. See online: <http://www.temasekholdings.com.sg/media_centre_temasek_review.htm>.

[152] "Temasek should be accountable for Shin deal: PM Lee", *The Straits Times Interactive* (15 January 2007).

[153] See Sing., *Parliamentary Debates*, vol. 82 at col. 2303 (28 February 2007), particularly Ms Eunice Elizabeth Olsen's statements, "I think it is not unreasonable for a company which manages our reserves and our hard-earned taxes to be more forthcoming in explaining its decisions and sharing its assessments. I note worryingly that our 2007 estimates for capital receipts are 54% less or $3.8 billion less than last year's revised estimates. How much of Shin Corp has a bearing on this?"

However, investment and paper losses occurred during a Financial Year are not likely to fall within the President's fiscal oversight unless these losses affect the figures in the budgets of the Government and the SBGCs such that a drawing on "past reserves" is "likely", or these losses amount to certain liabilities of the Government. These fiscal mechanisms are 'general' and not transaction- or loss-specific. Should investment or paper losses be subject to the President's fiscal scrutiny? Given the Government's stake-holding in or control of the SBGCs, the President is the more appropriate fiscal check, being independent in principle and the least "interested person". There should be a constitutional duty to inform the President of such investment or paper losses which are "likely to draw" on "past reserves", and the President may publish his opinion in the Gazette if he views such losses are "likely to draw" on "past reserves". Articles 22B, 22D and 148H should therefore be amended to reflect these additional duties of disclosure by the Government and the SBGCs.

In light of the increasing significance of Government and state enterprise activities,[154] greater scrutiny of decisions concerning investment, divestment and privatization[155] should be implemented. Singapore's reserves exist in several forms and in various ministries of the Government, statutory boards and government-linked companies including the SBGCs. Transactions such as investments may cause a drawing upon "past reserves" of the Government and the SBGCs, depending on various accounting and financial practices including the consolidating of group accounts.

A mechanism monitoring the implementation of Budgets of the Government and the SBGCs during the respective Financial Years (as opposed to the start and end thereof) should therefore be implemented. A general itemized listing of investment amounts with varying levels of specificity for different markets or industries, according to the type, nature and degree of sensitivity and corresponding necessity of secrecy, should be adopted. For example, itemized annual reports of statutory boards[156] and government-linked companies (including transaction and

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[154] See the speech of Minister for Finance, Dr Tony Tan, in Sing., *Parliamentary Debates*, vol. 45 at cols. 480-481 (8 March 1985):

> Over the last 25 years the Government in Singapore has ventured into areas which would traditionally have been regarded as being the preserve of the private sector and not within the province of government. In my view such intervention was necessary in order to build up our economic base. If the Government had not taken the initiative in areas where the private sector was hesitant, especially in the earlier years when the political climate was unsettled, our economic framework today would be a far cry from the strong, resilient structure which as enabled us to weather so many economic storms.

See also Ian Thynne, *The Administrative State in Transition in Privatisation: Singapore's Experience in Perspective* (Singapore: Longman, 1988); R.W. Hopkins, *An Accounting Perspective in Privatisation: Singapore's Experience in Perspective* (Singapore: Longman, 1988) in relation to privatization; Linda Low, *The Political Economy of Privatisation in Singapore: Analysis, Interpretation and Evaluation* (Singapore: McGraw-Hill Book Co, 1991); Phillip N. Pillai, *State Enterprise in Singapore: Legal Importation and Development* (Singapore: Singapore University Press, 1983); Report of the Public Sector Divestment Committee (as established by Minister for Finance, 21 February 1987).

[155] Privatisation and divestment of investments involves a number of key financial decisions to be made by the government before the initiative is taken. *E.g.*, decision on market value for services rendered, financial targeting of rate of return, valuation of assets at time of divestment: see Mohamed Ariff, *A Financial Management Perspective in Privatisation: Singapore's Experience in Perspective* (Singapore: Longman, 1988).

[156] See Tan Chwee Huat, *An Evaluation of the State Enterprise System Profitability of Statutory Boards in State Enterprise System and Economic Development in Singapore* (Michigan: University Microfilms International, 1974).

non-transaction data in monetary and non-monetary forms) should be made available. Further, parallel systems of adequate accounting (external reporting) and internal control (management) should also be implemented, particularly in relation to SBGCs.

This mechanism will enable effective scrutiny by the President, and facilitate an informed and considered debate by Members of Parliament. The countervailing argument against the disclosure of information on the basis of transparency is that such disclosure will prejudice national security and interest in sensitive matters such as defence and security, as well as the economic edge over other governmental entities and private entities competing for the early foothold in a new market which will have higher yields and return. Such an argument is overstated, since a modified transparency regime which strikes an appropriate balance between the competing concerns can be implemented. A more accountable and transparent fiscal mechanism will result in greater political legitimacy for all fiscal actors, particularly the Government, Parliament and the President. This strengthens the rule of law in fiscal matters.

D. *Removing Fiscal Functions Granted under Legislative Provisions*

Under Article 21(5), Parliament may by law require the President to act on the recommendation of any person or body in the exercise of his functions other than those under the *Singapore Constitution*. For example, the old section 23(1)(m) of the *Monetary Authority of Singapore Act*[157] stipulated that, *inter alia*, the Monetary Authority of Singapore could purchase and sell securities and investments authorized by the President on the recommendation of the board of the Monetary Authority of Singapore. The Government however recently viewed the need to obtain the President's approval as "cumbersome" given the "complex" and "wide" range of new securities and assets.[158] Consequently, section 23(1)(m) has been amended such that the purchases and sales can be made on the recommendation of the board, without the President's authorisation.[159] No specific figures were furnished to substantiate the Government's view. The amendment bill was passed by Parliament without debate.

IV. CONCLUDING OBSERVATIONS

The Elected Presidency continues to be an innovative institution in a state of flux. President S R Nathan, in his second swearing-in speech in 2005, declared that the "custodial function of the Elected Presidency is by now well-established" and the "detailed rules and procedures to operationalise the concept" would have to be

[157] Cap. 186, 1999 Rev. Ed. Sing.

[158] See Mr Lim Hng Kiang's speech in Sing., *Parliamentary Debates*, vol. 82 (12 February 2007):

> The range of new securities and assets is getting wider and more complex; it is very cumbersome for the President to have to approve every recommendation of new security and investment. Over the years, MAS has put in place a governance framework with a set of independent checks with regard to the investment of MAS' funds. The MAS Board is also well positioned to approve these new securities and investments. We therefore propose that the MAS Board be empowered to do so. MAS will continue to provide regular reports to keep the President's Office updated on its overall financial performance. These amendments have been endorsed by the President.

[159] *Constitution of the Republic of Singapore (Amendment) Act*, No. 13 of 2007.

"worked out progressively".[160] This 'work in progress' approach was also reiterated during the parliamentary debates on Budget 2007.[161] Deputy Prime Minister and Minister for Law, Professor S Jayakumar, endorsed the continuing abeyance of Article 5(2A) as the entrenching provision, and confirmed that the Government is "still refining the Presidential safeguards, especially in regard to the country's reserves".[162]

Indeed, the President's fiscal role has been substantially reduced during a period of sixteen years. The series of amendments retained the fiscal structure[163] but substantially reduced his fiscal powers by altering the various aspects of the fiscal mechanisms. However, these amendments are not merely "refinements" or "operational" amendments, since they have undermined the core of the "concept" of the Elected Presidency, which is the limitation of "untrammelled powers" of the Prime Minister and Cabinet as the parliamentary executive. The refusal to entrench the Elected Presidency provisions, based on the tenuous distinction between "concept" and "refinements", underscores the attitude of the parliamentary executive towards the *Singapore Constitution* as a supreme law limiting governmental power. Instead of the *Singapore Constitution* acting as a substantive legal limit on Parliament, its Elected Presidency provisions have been re-made on numerous occasions.[164]

The President's exercise of his fiscal powers to effectively limit governmental and parliamentary powers is conditional upon the stability of the laws constituting such powers. Whilst it is necessary to amend the provisions to ensure smooth and efficient operation thereof, the critical question is whether such amendments go beyond procedural adjustments and hence undermine the President's role as fiscal guardian of "past reserves". Although the fundamental purpose of the Elected Presidency has been confirmed by the Government, it has also promised further changes.[165] The definition of NII is expected to be expanded in the forthcoming parliamentary debates.

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[160] Singapore Government Press Release, "Speech by President S R Nathan at the Swearing-in Ceremony at the Istana" (1 September 2005), online: STARS <http://stars.nhb.gov.sg/stars/public/view HTML.jsp?pdfno=2005090101>.

[161] See generally, Sing., *Parliamentary Debates*, vol. 82 (15, 27 & 28 February 2007, and 1 March 2007).

[162] *Supra* note 18 at para. 10.

[163] See Singapore Government Press Release, "Speech by Prime Minister Lee Hsien Loong at the Swearing-In Ceremony of the Sixth President at the Istana" (1 September 2005), online: <http://app.sprinter.gov.sg/data/pr/2005090102.htm>:

> But as it is a new institution, it is bound to take time for us to appreciate fully how the mechanism works in practice, and to develop the detailed rules and procedures which implement the concept … While we continue to improve the detailed workings of the elected Presidency, we have not altered its fundamental purpose, which remains as valid as ever. This is to provide a second key to protect the accumulated reserves of the country and the integrity of public sector appointments. On specific issues in these two areas, the Government and the President will from time to time take different views, as is to be expected given our different responsibilities. But on the overarching goal we are at one.

[164] See the speech of then Prime Minister and present Minister Mentor, Mr Lee Kuan Yew, in Sing., *Parliamentary Debates*, vol. 44 at cols. 1735-1736 (24 July 1984), where the *Singapore Constitution* was likened to a shoe which must be softened, resoled and repaired to fit the specific circumstances.

[165] See Prime Minister Lee Hsien Loong, *supra* note 163. See however the view of then Non-Constituency Member of Parliament, Mr Steve Chia, on the inherent unworkability: "You can't elect two institutions—government and president—with the expectation that the President should check on the Government and still expect harmony between the two". As reported by Sue-Ann Chia, "Elected presidency: What

This will result in an increased NII derived from "past reserves" being transferred to "current reserves", for use by the current Government.

There has been only one[166] public disagreement between the Government and an Elected President[167] during the last sixteen years. The Third White Paper (1999) arose out of the controversy and embodied their agreed approach of consensus.[168] Instead of adversarial checks and balances, the current operating fiscal framework is based on conciliation and mutual understanding between the President and the Government.[169] This reduces the Elected Presidency's efficacy as a check on governmental powers. Moreover, the President, as an elected representative of the people, should be accountable to the people for his performance of his constitutional duties, beyond the closed door arrangements, and the Government's endorsement or approval expressed during the swearing-in speeches and in the press. Instances whereby the President informs and discusses with the Government before exercising any of his fiscal powers, as set out in the Third White Paper (1999), should be made known to the public.

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to change? Observers believe changes will be on President's work" *The Straits Times Interactive* (5 September 2005).

[166] A separate amicable incident involving differing interpretations of constitutional provisions occurred in 1995. See Kevin Y. L. Tan & Thio Li-ann, *Tan Yeo & Lee's Constitutional Law in Malaysia & Singapore* (Singapore: Butterworths Asia, 1997) at 242. In 1995, the Government proposed changes to art. 22H which in its view was wrongly drafted. The issue whether the failure to bring art. 5(2A) into operation conferred power on the President under the then existing art. 22H to withhold his assent to any Bill seeking to amend any of the provisions in art. 5(2A), specifically, an amendment of art. 22H. Although art. 5(2A) which governs the amendment process was not in force, former President Ong Teng Cheong requested that the issue be decided by the Special Tribunal established under art. 100 in 1994 to render opinions on constitutional issues. The Special Tribunal unanimously held that the President did not have the power under art. 22H to withhold his assent to any Bill seeking to amend art. 22H. For further details of the decision, see "Constitutional Reference No 1 of 1995" [1995] 2 Sing. L.R. 201. For a critique of the Special Tribunal's decision, see Thio Li-ann, "Working Out the Presidency: The Rites of Passage" [1995] S.J.L.S. 509; the rejoinder by Chan Sek Keong, "Working Out the Presidency: No Passage of Rights—In Defence of the Opinion of the Constitutional Tribunal" [1996] S.J.L.S. 1.

[167] See the speech of then Prime Minister Goh Chok Tong in Sing., *Parliamentary Debates*, vol. 70 at col. 2036 (17 August 1999). The Government, in response to the various issues concerning definitional and operational difficulties, confirmed that the Auditor-General, Accountant-General, the relevant Ministries, and the CEOs of the SBGCs had fully cooperated with Mr Ong. The Third White Paper (1999), drafted by the Government in consultation with Mr Ong, was approved by Parliament after the controversy.

[168] See paragraphs 2.3.2, 2.3.3 and 9.3 of the Third White Paper (1999), *supra* note 24, in relation to drawing on past reserves under *Singapore Constitution*, art. 22B, 22D, 144, 148A, 148B, 148C, 148G, and 148I. The Preamble endorses the development of a "common understanding" of the principles in determining and safeguarding the accumulated reserves, and the evolving set of working norms and arrangements amended by "mutual agreement". Certain provisions stipulate that the President will first inform the Government before causing his decision and/or opinion to be published in the Gazette.

[169] *Supra* note 18, Minister for Law, Professor S Jayakumar's reply to Nominated Member of Parliament, Professor Thio Li-ann's question whether art. 5(2A) would be brought into operation:

> Sir, that whether the Article is entrenched or not, the Government has made it a practice to always seek the President's views whenever it intends to move Constitutional amendments that affect the relevant provisions. The President's views have been reflected in the respective Second Reading speeches in this House. We have not made any amendments which the President had not agreed with, except once in 1995 when we referred a legal question to a Tribunal of Supreme Court judges set up under Article 100, which ruled in favour of the Government's interpretation of the Constitution.

The conciliatory approach, coupled with the President's dependency[170] on Government's staff, undermines the efficacy of the President as an independent fiscal guardian.[171] The constitutional provisions and recent developments fail to address the potential for a deadlock or stalemate between the fiscal actors. The concern is best expressed as "Who will guard the guards?", a rough translation from Roman poet Juvenal's Latin phrase, *quis custodiet ipsos custodes*.[172] There are three main permutations, ignoring the worst case scenario where all fiscal actors are 'bad' and act in concert together. First, will there be a paralyzing stalemate or gridlock if a 'good' President and a 'good' Prime Minister make different judgment calls?[173] What if both parties were unable to arrive at an amicable position? Do we prevail on their respective 'good' senses? Second, if we have a 'good' President, and a 'bad' Prime Minister leading the Cabinet, can the parliamentary executive persistently undermine the President by exercising the Parliamentary overriding votes or garnering the requisite two-thirds majority vote in Parliament to amend the constitutional provisions? Third, if we have a 'bad' President and a 'good' Prime Minister, do the provisions impose sufficient accountability and disclosure measures upon the President, and can the Parliament's overriding vote be effectively used? These questions will be examined in detail under the theme of constitutional dispute resolutions in a separate article.

In conclusion, despite the numerous difficulties and the series of amendments which have substantially reduced the President's fiscal role, the Elected Presidency should not be dismissed as a redundant or ineffectual fiscal check. Given the justifiable concern that the Government and the SBGCs remain operationally agile and poised to make swift economic decisions which benefit Singapore, the Elected Presidency should continue to be re-made in an autochthonous fashion that adapts to Singapore's contemporaneous political and economic realities. Pending the entrenchment of the Elected Presidency, a fourth White Paper setting out the specific components of "past reserves", and the exact transactions subject to the President's

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[170] The President depends on the Government's staff for support in the discharge of his constitutional duties. His office should be enhanced, at least by adding staff such as auditing and legal advisers, to enable the President to effectively exercise his fiscal powers which include reviewing sophisticated and specialized information submitted by the Auditor-General, Accountant-General, Minister for Finance and the SBGCs. See the speech of then Prime Minister Goh Chok Tong in Sing., *Parliamentary Debates*, vol. 70 at col. 2036 (17 August 1999): "Presidential safeguard is designed to work through officials in the Government whom he has vetted and can rely upon, and not through a large parallel staff in the office of the President". See also Singapore Ministry of Finance, *Budget Statement 2007*, "Expenditure Estimates", *supra* note 120: The allowance for the President's office remains at S$6,887,700, no change over Financial Year 2006, as opposed to a 10.8%, 4.7%, 11.2% changes for Auditor-General (S$14,032,720), Public Service Commission (S$1,197,500) and Ministry of Finance (S$594,220,000) respectively.

[171] See "President: My new priorities. Mr Nathan, returned unopposed for second term, wants to strengthen community role of presidency" *The Straits Times Interactive* (18 August 2005). President Nathan indicated that his focus is to strengthen the "community role", since the "ceremonial and custodial roles are already well-established".

[172] See generally, Thio Li-ann, "The Elected President & Legal Control: Quis Custodiet Ipsos Custodies" in Kevin Y. L. Tan & Lam Peng Er, eds., *Managing Political Change: The Elected Presidency of Singapore*, 1st ed. (New York: Routledge, 1997) at 100.

[173] See Lam Peng Er, "The Elected Presidency: Towards the Twenty First Century", in Kevin Y. L. Tan & Lam Peng Er, eds., *Managing Political Change: The Elected Presidency of Singapore*, 1st ed. (New York: Routledge, 1997) 200 at 215-216.

scrutiny, as agreed by the President and the Government, should be issued. Will an appropriate balance between maintaining the original rationale of curbing the "untrammelled power" of the Prime Minister and the Cabinet as the parliamentary executive, and avoiding unduly hindering the functions and operations of the Government and the SBGCs,[174] be struck? Only a further passage of time will reveal the answer.[175]

APPENDIX

KEY CONSTITUTIONAL AMENDMENTS TO THE ELECTED PRESIDENCY SINCE 1991[176]

ARTICLE	SOURCE (AMENDMENT ACT)
1. New Elected Office—Chapter 1	Act 5 of 1991
2. Council of Presidential Advisors	
(a) New Part VA	Act 5 of 1991
(b) Amended Articles 37B(2), 37F(1) and new Articles 37L and 37M: appointment of one member as chairman by the President, appointment of staff to assist the Council members and payment of honoraria to Council members.	Act 17 of 1994
(c) Amended Articles 37B(1)(c); 37C; 37J(2A)-(2B) and 37K: Enlargement of Council from 5 to 6 members, and provision of casting vote to the Chairman.	Act 41 of 1996
(d) Amended Article 37(B)(3): Tenure from 6 years to first term of 6 years subject to further terms of 4 years each.	Act 2 of 2001
(e) Amended Articles 37A, 37B and 37H; repealed and re-enacted Article 37C: Appointment of alternate members.	Act 31 of 2007

174 The key concern first articulated in 1990 by the Select Committee, was to protect the reserves without imposing an undue restriction on the operations of SBGCs or rending the daily operations of the Government totally unworkable. An unduly strengthened Elected Presidency will hinder the daily operations of the Government and its SBGCs and work towards reducing their reserves, thereby negating the initial objective to safeguard such reserves.

175 See then President Ong Teng Cheong's swearing-in speech, in Singapore Government Press Release, "Speech at the Swearing in of the Fifth President at the Istana, 1 September 1993 at 8.00 pm" (No.: Ol/Sep Ol-L/93/09/01 93-Otc-1): "Changing circumstances are liable to throw up new challenges and unanticipated issues … Through practice and precedent we will be defining how these Presidential safeguards will function". See also President S R Nathan's swearing-in speech: "Speech at the Swearing-in Ceremony at the Istana", *supra* note 160: "And from time to time, these working arrangements will have to be refined due to changing circumstances. I will continue to work with the Government to improve the detailed mechanics of this institution, so that it can grow in effectiveness over time."

176 For complete amendments, see the Legislative Source and Legislative History of the *Singapore Constitution*.

ARTICLE	SOURCE (AMENDMENT ACT)
3. Key Appointments	
(a) Statutory Boards & Government Companies: New Articles 22A(1A)-(1B), 22C (1A)-(1B). Subject to overriding decision of at least two-thirds majority in Parliament.	Act 41 of 1996
(b) Amended Article 22(g): Inclusion of Chief Valuer in list of protected key appointments.	Act 11 of 1998
(c) Amended Article 22: Addition of a Legal Service Commission member.	Act 31 of 2007
4. Fiscal Powers	
(a) Amended Article 144(3): President's concurrence to guarantees given by the Government under the EDB Act and the JTC Act is required.	Act 17 of 1994
(b) Fifth Schedule	
(i) *Deletion of Post Office Savings Bank*	Act 36 of 1998
(ii) *Deletion of Singapore Technologies Holdings*	Act 17 of 1994
(iii) *Deletion of Board of Commissioners of Currency*	Act 24 of 2002
(c) Exclusion of Defence and Security Measures: New Article 151A	Act 7 of 1995
(d) Proposed Transfers & Transfers of Reserves	
(i) Amended Article 22B (Statutory Boards)	Act 17 of 1994; Act 24 of 2002; Act 12 of 2004
(ii) Amended Article 22D (Government Companies)	Act 17 of 1994; Act 12 of 2004
(iii) New Article 148I (Government)	Act 12 of 2004
(e) Government Budget	
(i) New Article 148(2A)	Act 17 of 1994
(ii) Amended Article 148A(1), 2(a)-(b), (3), and new Article 148A(3A)	Act 17 of 1994
(iii) Amended Article 142—"net investment income"	Act 2 of 2001