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Presidential Elections (Amendment) Bill

Bill No. 2/2017.

Read the first time on 9 January 2017.

A BILL

i n t i t u l e d

An Act to amend the Presidential Elections Act (Chapter 240A of the 2011 Revised Edition) and to make consequential amendments to the Parliamentary Elections Act (Chapter 218 of the 2011 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act is the Presidential Elections (Amendment) Act 2017 and comes into operation on a date that the Minister appoints by notification in the *Gazette*.

5 Amendment of section 2

2. Section 2 of the Presidential Elections Act (called in this Act the principal Act) is amended —

(a) by inserting, immediately after the definition of “candidate”, the following definition:

10 ““certificate of eligibility” means a certificate of eligibility issued under Division 2 of Part II;”;

(b) by inserting, immediately after the definition of “Commissioner of National Registration”, the following definitions:

15 ““community” means —

(a) the Chinese community;

(b) the Malay community; or

(c) the Indian or other minority communities;

20 “community certificate” means a community certificate issued by the Community Committee under Division 3 of Part II;

“Community Committee” means the Community Committee established under section 8E;”;

25 (c) by deleting the words “or group of candidates” in paragraph (a) of the definition of “direct recording electronic voting machine” or “DRE voting machine”;

(d) by inserting, immediately after the definition of “election”, the following definition:

“election advertising” means any poster, banner, notice, circular, handbill, illustration, article, advertisement or other material that can reasonably be regarded as intended —

(a) to promote or procure the electoral success of a candidate at an election; or 5

(b) to otherwise enhance the standing of the candidate with the electorate in connection with that election, 10

and such material is election advertising even though it can reasonably be regarded as intended to achieve any other purpose as well and even though it does not expressly mention the name of the candidate, but excludes any button, badge, pen, pencil, balloon and any other thing prescribed by the Minister by notification in the *Gazette*;; 15

(e) by inserting, immediately after the definition of “Registration Officer”, the following definition: 20

“reserved election” means an election reserved under Article 19B(1) of the Constitution read with section 5A, but excludes an election which is an open election under section 5B;;

(f) by inserting, immediately after the definition of “Returning Officer”, the following definition: 25

“Sub-Committee” means any of the following Sub-Committees established under section 8E:

(a) the Chinese Community Sub-Committee; 30

(b) the Malay Community Sub-Committee;

(c) the Indian and Other Minority Communities Sub-Committee;; and

(g) by renumbering the section as subsection (1) of that section, and by inserting immediately thereafter the following subsection:

“(2) For the purposes of this Act —

5 (a) the reference to the electoral success of a candidate at an election is a reference to the return of the candidate at that election;

10 (b) the reference to the doing of anything mentioned in paragraph (a) or (b) of the definition of “election advertising” in relation to a candidate includes a reference to the doing so by prejudicing the electoral prospects of any other candidate or by prejudicing the other candidate’s standing with the electorate; and

15 (c) the reference to a candidate at an election includes a reference to a person who, on or after the date of the issue of a writ for that election, is declared (by himself or others) as seeking nomination as a candidate at that election.”.

New Part IA

25 **3.** The principal Act is amended by inserting, immediately after section 5, the following Part:

“PART IA

COUNTING OF RESERVED ELECTIONS AND QUALIFICATIONS OF PRESIDENT

Reserved elections: how counted

30 **5A.—(1)** The Schedule has effect for the purposes of determining whether an election is reserved under Article 19B(1) of the Constitution.

(2) After the Returning Officer declares a person to be elected as President, the Returning Officer must add the person, and the community (if any) the person belongs to, to the Schedule.

(3) For the purposes of subsection (2) —

(a) if a community certificate was issued to the person, the person is considered to belong to the community stated on the community certificate; and 5

(b) if no community certificate was issued to the person, the person is considered not to belong to the Chinese community, the Malay community or the Indian or other minority communities. 10

(4) If a person has been added to the Schedule and the Election Judge subsequently declares that the person's election is void or that the return of the person is undue, the Returning Officer must remove the entry in the Schedule relating to the election affected by the declaration. 15

(5) An amendment to the Schedule under subsection (2) or (4) must be made by notification in the *Gazette*.

Further provisions on community requirement

5B.—(1) If an election under a writ is reserved for one community under Article 19B(1) of the Constitution and the election wholly fails, elections under all subsequent writs are to be open elections until a person is elected as President. 20

(2) The following provisions apply if an election under a writ is reserved for 2 communities under Article 19B(1) of the Constitution: 25

(a) Article 19B(2)(b)(i) of the Constitution applies to that election;

(b) if that election wholly fails, Article 19B(2)(b)(ii) of the Constitution applies to the election under the next writ; 30

(c) if the election under the next writ wholly fails, elections under all subsequent writs are to be open elections until a person is elected as President.

(3) The following provisions apply if an election under a writ is reserved for 3 communities under Article 19B(1) of the Constitution:

(a) Article 19B(2)(c)(i) of the Constitution applies to that election;

(b) if that election wholly fails, Article 19B(2)(c)(ii) of the Constitution applies to the election under the next writ;

(c) if the election under the next writ wholly fails, Article 19B(2)(c)(iii) of the Constitution applies to the election under the third writ;

(d) if the election under the third writ wholly fails, elections under all subsequent writs are to be open elections until a person is elected as President.

(4) Despite Article 19B(2) of the Constitution, a person does not need to belong to any community to be elected as President in an open election under subsection (1), (2)(c) or (3)(d).

(5) For the purposes of this section, an election under a writ is deemed to have wholly failed only if no person stands or will stand nominated as a candidate on nomination day.

Further provisions on private sector service requirement

5C.—(1) The Minister may make regulations to —

(a) specify how the Presidential Elections Committee is to calculate and determine shareholders' equity for the purposes of Article 19(4)(a)(ii) and (b)(ii) and (5)(a)(ii), (b)(ii) and (c)(ii) of the Constitution;

(b) specify how the Presidential Elections Committee is to calculate and determine profit after tax for the purposes of Article 19(4)(a)(iii) of the Constitution;

(c) prescribe what constitutes an insolvency event for the purposes of Article 19(4)(a)(iv) of the Constitution; and

(d) prescribe the information to be provided by an applicant in relation to paragraphs (a), (b) and (c). 5

(2) In making regulations under subsection (1)(a) or (b), the Minister must have regard to, to the extent that they are applicable —

(a) the accounting standards made or formulated under Part III of the Accounting Standards Act (Cap. 2B) by the Accounting Standards Council established under that Act; and 10

(b) the accounting standards generally accepted in Singapore before 1 November 2007.

(3) In making regulations under subsection (1)(c), the Minister must have regard to the general law relating to the insolvency of companies.”. 15

Amendment of section 6

4. Section 6(3) of the principal Act is amended by deleting the words “5 days” and substituting the words “10 days”. 20

New Divisions 2 and 3 of Part II

5. Sections 8 and 8A of the principal Act are repealed and the following Divisions substituted therefor:

*“Division 2 — Presidential Elections Committee
and Certificate of Eligibility* 25

Application for certificate of eligibility

8.—(1) A person desiring to be elected as President must apply in the prescribed manner to the Presidential Elections Committee for a certificate of eligibility.

(2) An application for a certificate of eligibility must be made within the period — 30

(a) starting on —

(i) if the office of President falls vacant before the incumbent’s term expires, the date on which the office of President fell vacant; or

(ii) in any other case, the date that is 3 months before the expiry of the incumbent’s term; and

(b) ending on the date which is 5 days after the date of the writ.

Consideration of application

8A.—(1) Subject to subsection (2), the Presidential Elections Committee must issue a certificate of eligibility in the prescribed form to an applicant if the Committee is satisfied that —

(a) the applicant is a person of integrity, good character and reputation for the purposes of Article 19(2)(e) of the Constitution; and

(b) the applicant has met the service requirements in Article 19(2)(g) of the Constitution.

(2) The Presidential Elections Committee —

(a) may, subject to paragraph (b), reject an application if it is not made according to this Act; and

(b) must reject an application if the applicant did not submit a community declaration in accordance with Division 3.

Time for deciding application

8B. The Presidential Elections Committee must issue a certificate of eligibility to an applicant, or inform an applicant in writing of its decision not to issue a certificate of eligibility, no later than the day before nomination day.

Certificate to be conclusive

8C. A certificate of eligibility is conclusive of the matters it certifies and is not subject to appeal or review in any court.

Immunity of Presidential Elections Committee

8D.—(1) The Presidential Elections Committee is not, in the absence of malice on its part, liable to any action at the suit of any person in respect of —

- (a) any statement which the Committee makes in the discharge of any of its functions under this Act, whether the statement is made orally or in writing; or 5
- (b) the publication of any document prepared by the Committee in the course of performing its functions under this Act. 10

(2) Subsection (1) does not limit or affect any other right, privilege or immunity that the Presidential Elections Committee has, apart from this section, as a defendant in any action.

Division 3 — Community Committee and Community Certificate

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Establishment of Community Committee and Sub-Committees

8E.—(1) For the purposes of Article 19B of the Constitution, the Community Committee is established and consists of the following 16 persons: 20

- (a) the chairman;
- (b) 5 members belonging to the Chinese community;
- (c) 5 members belonging to the Malay community;
- (d) 5 members belonging to the Indian or other minority communities. 25

(2) The chairman is to be appointed by the Prime Minister on the nomination of the Presidential Council for Minority Rights.

(3) The 5 members who belong to the Chinese community —

- (a) are to be appointed by the Prime Minister on the nomination of the Presidential Council for Minority Rights after consulting such organisations of the Chinese community as the Council sees fit; and 30

(b) constitute the Chinese Community Sub-Committee.

(4) The 5 members who belong to the Malay community —

(a) are to be appointed by the Prime Minister on the nomination of the Presidential Council for Minority Rights after consulting such organisations of the Malay community as the Council sees fit; and

(b) constitute the Malay Community Sub-Committee.

(5) The 5 members who belong to the Indian or other minority communities —

(a) are to be appointed by the Prime Minister on the nomination of the Presidential Council for Minority Rights after consulting such organisations of the Indian or other minority communities as the Council sees fit; and

(b) constitute the Indian and Other Minority Communities Sub-Committee.

(6) One member of each Sub-Committee is to be appointed as the chairman of the Sub-Committee and the appointment must be made by the Prime Minister on the nomination of the Presidential Council for Minority Rights.

Submission of community declaration

8F.—(1) A person desiring to be elected as President must submit a community declaration in the prescribed form to the Community Committee.

(2) A person making a community declaration must make one (and only one) of the following statements:

(a) that the person considers himself to be a member of the Chinese community, and wishes to apply for a community certificate stating that the person belongs to the Chinese community;

(b) that the person considers himself to be a member of the Malay community, and wishes to apply for a

community certificate stating that the person belongs to the Malay community;

(c) that the person considers himself to be a member of the Indian or other minority communities, and wishes to apply for a community certificate stating that the person belongs to the Indian or other minority communities; 5

(d) that the person does not consider himself to be a member of the Chinese community, the Malay community, or the Indian or other minority communities. 10

(3) A community declaration must be submitted within the period —

(a) starting on —

(i) if the office of President falls vacant before the incumbent's term expires, the date on which the office of President fell vacant; or 15

(ii) in any other case, the date that is 3 months before the expiry of the incumbent's term; and

(b) ending on the date which is 5 days after the date of the writ. 20

Consideration of community declaration in reserved elections

8G.—(1) This section applies to a reserved election.

(2) The Community Committee must accept a community declaration submitted to the Committee and notify the declarant in writing of the acceptance, subject to the following provisions: 25

(a) subject to paragraph (b), the Community Committee may reject a community declaration if it is not made according to this Act; 30

(b) the Community Committee must reject a community declaration if —

- (i) the declarant did not apply for a certificate of eligibility; or
- (ii) the declarant does not state that he considers himself to be a member of the community to which the election is reserved.

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(3) If the Community Committee accepts a community declaration, the Committee must then refer the community declaration to the Sub-Committee for the community to which the election is reserved.

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(4) In a case referred to a Sub-Committee for a community under subsection (3) —

- (a) the Sub-Committee must consider whether the declarant belongs to that community and report its conclusions to the Community Committee;
- (b) the Sub-Committee must be guided by the merits of the case without regard to legal forms and technicalities, or to whether the evidence before it is in accordance with the law of evidence or not;
- (c) if the Sub-Committee concludes that the declarant belongs to that community, the Community Committee must issue a community certificate to the declarant stating that the declarant belongs to that community; and
- (d) if the Sub-Committee concludes that the declarant does not belong to that community, the Community Committee must reject the declarant’s application for a community certificate and inform the declarant in writing.

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Consideration of community declaration in non-reserved elections

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8H.—(1) This section applies to an election other than a reserved election.

(2) The Community Committee must accept a community declaration submitted to the Committee and notify the declarant in writing of the acceptance, subject to the following provisions:

- (a) subject to paragraphs (b) and (c), the Community Committee may reject a community declaration if it is not made according to this Act; 5
- (b) subject to paragraph (c), if the declarant states that he does not consider himself to be a member of the Chinese community, the Malay community or the Indian or other minority communities, the Community Committee may, instead of accepting the community declaration, invite the declarant to submit another community declaration; 10
- (c) the Community Committee must reject a community declaration if the declarant did not apply for a certificate of eligibility. 15

(3) If the Community Committee accepts a community declaration by a declarant who wishes to apply for a community certificate in relation to a community, the Community Committee must refer the community declaration to the Sub-Committee for that community. 20

(4) In a case referred to a Sub-Committee for a community under subsection (3) —

- (a) the Sub-Committee must consider whether the declarant belongs to that community and report its conclusions to the Community Committee; 25
- (b) the Sub-Committee must be guided by the merits of the case without regard to legal forms and technicalities, or to whether the evidence before it is in accordance with the law of evidence or not; 30
- (c) if the Sub-Committee concludes that the declarant belongs to that community, the Community Committee must issue a community certificate to the declarant stating that the declarant belongs to that community; and 35

(d) if the Sub-Committee concludes that the declarant does not belong to that community, the Community Committee must —

(i) reject the declarant's application in writing; or

5 (ii) invite the declarant to submit another community declaration.

10 (5) In considering whether to invite a person to submit another community declaration under subsection (2)(b) or (4)(d)(ii), the Community Committee must be guided by the merits of the case without regard to legal forms and technicalities, or to whether the evidence before it is in accordance with the law of evidence or not.

15 (6) If the Community Committee invites a person to submit another community declaration under subsection (2)(b) or (4)(d)(ii), the Community Committee —

(a) must specify the time within which the person must submit the fresh community declaration, which must be no later than 3 days before nomination day;

20 (b) may require the person to provide such information as may be specified; and

(c) may specify such other terms that the person must comply with.

(7) If a person submits another community declaration on an invitation under subsection (2)(b) or (4)(d)(ii) —

25 (a) the person is deemed to have withdrawn his earlier community declaration;

(b) the Community Committee may decline to accept the later community declaration if it does not comply with the terms of the invitation; and

30 (c) the later community declaration must be dealt with according to subsections (2), (3) and (4) (so far as they are applicable), except that the Community Committee may not invite the person again to submit another community declaration.

(8) If a person declines to submit another community declaration despite an invitation under subsection (2)(b) or (4)(d)(ii) —

- (a) if the invitation is made under subsection (2)(b), the Community Committee must accept the community declaration earlier submitted by the person; and
- (b) if the invitation is made under subsection (4)(d)(ii), the Community Committee must reject the person's application for a community certificate.

(9) To avoid doubt, a person may not submit another community declaration except on the invitation of the Community Committee under subsection (2)(b) or (4)(d)(ii).

Time for issuing community certificate, etc.

8I. The Community Committee must, no later than the day before nomination day, do one of the following things in respect of a community declaration:

- (a) inform the declarant that the community declaration is not accepted;
- (b) if the community declaration is accepted and includes an application for a community certificate —
 - (i) issue a community certificate to the declarant; or
 - (ii) inform the declarant in writing that it has rejected the application;
- (c) if the community declaration is accepted and does not include an application for a community certificate, notify the declarant in writing of the acceptance.

Decision to be final; certificate to be conclusive

8J.—(1) The decisions (however named) of the Community Committee and its Sub-Committees in relation to a community declaration is final and is not subject to appeal or review in any court.

(2) A community certificate is conclusive of the matters it certifies and is not subject to appeal or review in any court.

Immunity of Community Committee and Sub-Committees

5 **8K.**—(1) The Community Committee is not, in the absence of malice on its part, liable to any action at the suit of any person in respect of —

(a) any statement which the Committee makes in the discharge of any of its functions under this Act, whether the statement is made orally or in writing; or

10 (b) the publication of any document prepared by the Committee in the course of performing its functions under this Act.

(2) Subsection (1) does not limit or affect any other right, privilege or immunity that the Community Committee has, apart from this section, as a defendant in any action.

(3) Subsections (1) and (2) apply to a Sub-Committee.

Procedure of Community Committee and Sub-Committees

20 **8L.**—(1) A decision of the Community Committee must be made by a simple majority of the members present and voting, except that in the case of an equality of votes, the chairman or the member presiding has a casting vote in addition to his original vote.

(2) The Community Committee may act despite the absence of any member.

25 (3) Subject to this section, the Community Committee may regulate its own procedure.

(4) The validity of any proceedings of the Community Committee is not affected by any defect in the appointment of any member of the Committee.

30 (5) Regulations may be made under section 81 to provide for regulating and facilitating the performance by the Community Committee of its functions under this Act.

(6) Subsections (1) to (5) apply, with the necessary modifications, to a Sub-Committee.”.

Amendment of section 9

6. Section 9 of the principal Act is amended —

(a) by inserting, immediately after the words “statutory declaration” in subsection (3)(c), the words “in the prescribed form”; 5

(b) by deleting the word “and” at the end of subsection (3)(c)(i);

(c) by deleting the full-stop at the end of sub-paragraph (ii) of subsection (3)(c) and substituting the word “; and”, and by inserting immediately thereafter the following sub-paragraph: 10

“(iii) that he understands the President’s role under the Constitution, including any particular aspect of the President’s role stated in the prescribed form.”; 15

(d) by deleting the word “and” at the end of subsection (4)(a);

(e) by deleting paragraph (b) of subsection (4) and substituting the following paragraphs: 20

“(b) a certificate of eligibility issued to him;

(c) if the election is a reserved election, a community certificate stating that he belongs to the community to which the election is reserved; and 25

(d) if the election is not a reserved election —

(i) if the candidate submitted a community declaration that included an application for a community certificate — 30

(A) a community certificate issued to him; or

(B) the written decision of the Community Committee rejecting the application; or

(ii) if the candidate submitted a community declaration that did not include an application for a community certificate —

(A) the Community Committee's written notification that the community declaration is accepted; and

(B) a statutory declaration that he does not consider himself to be a member of the Chinese community, the Malay community or the Indian or other minority communities.”; and

(f) by inserting, immediately after the word “certificate” in subsection (5), the words “or document”.

Amendment of section 20

7. Section 20 of the principal Act is amended by deleting subsections (1) and (2) and substituting the following subsections:

“(1) Before the poll opens at a polling station, the presiding officer or the senior presiding officer at that station must cause a notice about the poll to be displayed on or at a conspicuous place outside that station.

(2) The notice mentioned in subsection (1) —

(a) must contain such information, presented in such form or manner, as may be prescribed; and

- (b) must remain displayed on or at a conspicuous place outside the polling station until the poll closes at that station.”.

Amendment of section 23

8. Section 23(2) of the principal Act is amended by inserting, immediately after paragraph (a), the following paragraph: 5

- “(aa) clearly demarcate the area within which a voter must mark his vote for a candidate;”.

New section 23A

9. The principal Act is amended by inserting, immediately after section 23, the following section: 10

“Candidates’ photographs on ballot paper

23A.—(1) The Returning Officer must include on every ballot paper in an election a candidate’s photograph if —

- (a) the candidate delivers that photograph to the Returning Officer at such place, within such time, and in such form and manner, as the Returning Officer specifies; and 15
- (b) that photograph is in accordance with the Returning Officer’s specifications and requirements to ensure accuracy and consistency. 20

(2) If subsection (1)(a) or (b) is not complied with, the Returning Officer must indicate in the area designated on the ballot paper for the candidate’s photograph that there is no photograph for the candidate. 25

(3) The Returning Officer must cause to be published, as soon as practicable after the issue of the writ for the election and in such manner as will secure adequate publicity to the candidates, the Returning Officer’s specifications and requirements under subsection (1)(a) and (b).” 30

Amendment of section 25

10. Section 25 of the principal Act is amended —

(a) by deleting the word “The” in subsection (4) and substituting the words “Subject to subsection (4AA), the”;

(b) by inserting, immediately after subsection (4), the following subsection:

“(4AA) The voter’s mark on the ballot paper must be made in the area demarcated on the ballot paper for that purpose, and not elsewhere.”.

Amendment of section 31A

11. Section 31A of the principal Act is amended —

(a) by deleting subsection (2) and substituting the following subsection:

“(2) The Returning Officer must cause notice of every direction issued under subsections (1) and (1A) to be published in the *Gazette* at least 2 clear days before polling day.”; and

(b) by deleting the words “in writing to each candidate or his principal election agent” in subsections (3) and (4) and substituting in each case the words “in the *Gazette*”.

Amendment of section 32A

12. Section 32A of the principal Act is amended —

(a) by deleting subsections (1) and (2) and substituting the following subsections:

“(1) Subject to section 36DB, every sealed ballot box containing votes cast at an overseas polling station in an election must, in order for those votes to be counted in the election, reach the custody of the Returning Officer in Singapore —

(a) within 10 days after polling day in Singapore for the election; or

(b) where the Returning Officer extends time under subsection (2), within the extended time.

(2) The Returning Officer may extend time by another 7 days if the Returning Officer —

(a) has made a declaration under section 32(8)(b) or (8D)(b); and

(b) is satisfied, for any reason, that any sealed ballot box containing votes cast at an overseas polling station in the election is not likely to reach the custody of the Returning Officer in Singapore within the time specified in subsection (1)(a).

(2A) If the Returning Officer extends time under subsection (2) —

(a) the counting of the votes cast at the overseas polling stations in the election stands postponed to the date specified by the Returning Officer under paragraph (b)(ii); and

(b) the Returning Officer must, as soon as practicable, publish a notice in the *Gazette* —

(i) stating that the Returning Officer has extended the time; and

(ii) specifying the date on, the time at and the counting place in Singapore at which the votes cast at the overseas polling stations in the election will be counted.”;

(b) by deleting the words “such arrangements shall provide” in subsection (3) and substituting the words “the Returning Officer must arrange”; and

(c) by deleting subsection (4) and substituting the following subsection:

“(4) Section 32 applies to the counting of votes cast by overseas electors, with the necessary modifications.”.

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Repeal and re-enactment of section 32B

13. Section 32B of the principal Act is repealed and the following section substituted therefor:

“Recounting of votes

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32B.—(1) The Returning Officer must conduct a recount of the votes cast in Singapore at an election if the difference between the number of votes given to the candidate with the most votes and the number of votes given to any other candidate at the election is 2% or less of the total number of votes cast in Singapore (excluding rejected votes and tendered votes) at the election.

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(2) The recount of the votes under subsection (1) may be conducted only once, and must take place as soon as practicable —

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(a) in the case of a sole counting place specified under this Act for the election, after the counting of the votes at the sole counting place is completed; or

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(b) in the case of more than one counting place specified under this Act for the election, after the Returning Officer has ascertained the total number of votes given to each candidate in the election under section 32(8C).

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(3) Where a recount of the votes is to be conducted, the votes at the sole counting place or, if there is more than one counting place, at every counting place must be recounted and added following the same procedure set out in sections 32 and 33.

(4) This section applies to the recounting of votes cast by overseas electors, with the necessary modifications.”.

Amendment of section 33

14. Section 33 of the principal Act is amended —

- (a) by deleting the word “Where” in subsection (2) and substituting the words “Subject to subsection (2A), where”; and
- (b) by inserting, immediately after subsection (2), the following subsection:

“(2A) When determining whether a mark made on a ballot paper clearly indicates the voter’s intention and the candidate for whom the voter gives his vote, the Returning Officer must disregard any mark on the ballot paper that is not made within the area demarcated on the ballot paper for the voter to mark his vote for a candidate.”.

New sections 36DA and 36DB

15. The principal Act is amended by inserting, immediately after section 36D, the following sections:

“Ballot box lost or destroyed after close of poll in Singapore

36DA.—(1) The Returning Officer must wholly abandon the counting of all the votes cast at a polling station in Singapore (called in this section the affected polling station) in an election if any sealed ballot box containing votes cast at the affected polling station in the election is lost or destroyed at any time —

- (a) after the close of the poll at the affected polling station; and
- (b) before the ballot box reaches the counting place specified under this Act for the counting of the votes cast at the affected polling station.

(2) The Returning Officer must re-start (within the time delimited by Article 17A(2) of the Constitution) the polling at the affected polling station if the Returning Officer is satisfied that the aggregate of the following is equal to or more than the

difference between the number of votes given in Singapore to the candidates with the 2 greatest number of votes:

(a) the total number of affected electors lawfully entitled to vote in the election;

5 (b) the total number of overseas electors lawfully entitled to vote in the election.

(3) The Returning Officer must, as soon as practicable, inform the candidates of the abandonment of the counting of the votes cast at the affected polling station and whether the polling at the affected polling station must re-start.

(4) Where the polling at the affected polling station must re-start, the counting of the votes cast at the overseas polling stations in the election stands postponed —

15 (a) in the case where a sealed ballot box containing votes cast at an overseas polling station in the election is also lost or destroyed and section 36DB(2) applies in respect of that overseas polling station, to the date specified by the Returning Officer under section 36DB(5)(b)(ii); and

20 (b) in any other case, to the date specified by the Returning Officer under subsection (5)(b)(iii).

(5) The Returning Officer must, as soon as practicable, publish a notice in the *Gazette* —

25 (a) stating that the Returning Officer has abandoned the counting of all the votes cast at the affected polling station; and

(b) where subsection (2) applies, specifying —

30 (i) the date on which the polling is to re-start, the hours of the poll and the location of the polling station in Singapore (whether or not at the same location as the affected polling station) where the poll will be conducted;

(ii) the date on, the time at and the counting place in Singapore at which the votes cast at the polling

station during the re-started poll will be counted;
and

- (iii) the date on, the time at and the counting place in Singapore at which the votes cast at the overseas polling stations in the election will be counted. 5

(6) Any re-start of polling in an election or other change under this section is valid and sufficient, and any polling day or polling station specified by the Returning Officer under this section is deemed to be the polling day or polling station, as the case may be, specified in the notice published under section 16(5) in respect of that election. 10

(7) Nothing in this section restricts the exercise of any power under section 33C(3).

(8) The Minister may prescribe the manner in which the abandonment of the counting of votes, the re-start of polling, or the counting of votes, under this section is to be carried out. 15

(9) In this section, “affected electors”, in relation to an election, means the electors (excluding overseas electors) who are allotted to an affected polling station under section 18(1)(c) for the purposes of the election. 20

Ballot box lost or destroyed after close of poll at overseas polling station

36DB.—(1) The Returning Officer must wholly abandon the counting of all the votes cast at an overseas polling station (called in this section the affected overseas polling station) in an election if any sealed ballot box containing votes cast at the affected overseas polling station in the election is lost or destroyed at any time — 25

- (a) after the close of the poll at the affected overseas polling station; and 30
- (b) before the ballot box reaches the counting place specified under this Act for the counting of the votes cast at the affected overseas polling station.

5 (2) The Returning Officer must re-start (within the time delimited by Article 17A(2) of the Constitution) the polling at the affected overseas polling station if the Returning Officer is satisfied that any of the following is equal to or more than the difference between the number of votes given in Singapore to the candidates with the 2 greatest number of votes:

10 (a) in the case where a sealed ballot box containing votes cast at a polling station in Singapore in the election is also lost or destroyed and section 36DA(2) applies in respect of that polling station, the aggregate mentioned in that section;

(b) in any other case, the total number of overseas electors lawfully entitled to vote in the election.

15 (3) The Returning Officer must, as soon as practicable, inform the candidates of the abandonment of the counting of votes cast at the affected overseas polling station and whether the polling at the affected overseas polling station must re-start.

20 (4) Where the polling at the affected overseas polling station must re-start, the counting of the votes cast at the other overseas polling stations in the election stands postponed to the date specified by the Returning Officer under subsection (5)(b)(ii).

(5) The Returning Officer must, as soon as practicable, publish a notice in the *Gazette* —

25 (a) stating that the Returning Officer has abandoned the counting of all the votes cast at the affected overseas polling station; and

(b) where subsection (2) applies, specifying —

30 (i) the date on which the polling is to re-start, the hours of the poll and the location of the overseas polling station (whether or not at the same location as the affected overseas polling station) where the poll will be conducted; and

(ii) the date on, the time at and the counting place in Singapore at which the votes cast during the

re-started poll and the votes mentioned in subsection (4) will be counted.

(6) Any re-start of polling in an election or other change under this section is valid and sufficient, and any polling day, polling hours or overseas polling station specified by the Returning Officer under this section is deemed to be the polling day, polling hours or overseas polling station, as the case may be, specified in the notice published under section 16(5) in respect of that election.

(7) Nothing in this section restricts the exercise of any power under section 33C(3).

(8) The Minister may prescribe the manner in which the abandonment of the counting of votes, the re-start of polling, or the counting of votes, under this section is to be carried out.”.

Amendment of section 42

16. Section 42 of the principal Act is amended —

(a) by deleting paragraph (c) of subsection (1) and substituting the following paragraph:

“(c) publishes or causes to be published any election advertising during the period beginning with the day the writ of election is issued for an election and ending with the start of polling day at that election which —

(i) in the case of an election advertising that is, or is contained in, a printed document, does not bear on its face or, if there is more than one side of printed matter, on the first or last page of the document, the names of its printer, its publisher and the person for whom or at whose direction the election advertising is published; or

(ii) in the case of any other election advertising, does not bear, in the form and manner prescribed under section 60AA, the names of its publisher and the person for whom or at whose direction the election advertising is published;” and

(b) by inserting, immediately after subsection (3), the following subsections:

“(4) Where any election advertising is published in contravention of subsection (1)(c), the printer of the election advertising as well as the person for whom or at whose direction the election advertising is published shall each also be guilty of a corrupt practice and shall each be liable on conviction to the same punishment and incapacity under this section as the publisher of the election advertising.

(5) Subsection (1)(c) does not apply in respect of —

(a) the distribution of a book, or the promotion of the sale of a book, for not less than its commercial value, if the book was planned to be published regardless of whether there was to be an election;

(b) the publication of a document directly by a person or a group of persons to their members, employees or shareholders, as the case may be;

(c) the publication of any news relating to an election —

(i) in a newspaper in any medium by a person permitted to do so under the Newspaper and Printing Presses Act (Cap. 206); or

- (ii) in a radio or television broadcast by a person licensed to do so under the Broadcasting Act (Cap. 28);
- (d) the telephonic or electronic transmission by an individual to another individual of the firstmentioned individual's own political views, on a non-commercial basis; or
- (e) such other circumstances or activities as may be prescribed by the Minister by order in the *Gazette*.”

New section 60AA

17. The principal Act is amended by inserting, immediately after section 60, the following section:

“Regulations for other election advertising

60AA.—(1) The Minister may make regulations —

- (a) prescribing the form and manner in which details as to the names of the publisher of any election advertising not comprising printed matter and of the person for whom or at whose direction it is published must be included in such election advertising for the purpose of complying with section 42(1)(c)(ii); and
- (b) regulating election advertising and its publication during an election period on what is commonly known as the Internet by candidates or their election agents, including prescribing the features that must or must not appear or be used in any such election advertising.

(2) Any person who contravenes any regulations made under subsection (1)(b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) Every offence under subsection (2) is an arrestable offence within the meaning of the Criminal Procedure Code (Cap. 68).

(4) In this section, “election period” means the period beginning with the day the writ of election is issued for an election and ending with the start of polling day at the election.”.

New sections 60B, 60C and 60D

5 **18.** The principal Act is amended by inserting, immediately after section 60A, the following sections:

“Blackout period for election survey results

10 **60B.**—(1) A person must not publish or permit or cause to be published the results of any election survey during the period beginning with the day the writ of election is issued for an election and ending with the close of all polling stations on polling day at the election.

15 (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,500 or to imprisonment for a term not exceeding 12 months or to both.

(3) The offence under subsection (2) is an arrestable offence within the meaning of the Criminal Procedure Code (Cap. 68).

20 (4) In this section, “election survey” means an opinion survey of how electors will vote at an election or of the preferences of electors respecting any candidate or any issue with which an identifiable candidate is associated at an election.

Exit polls ban on polling day

25 **60C.**—(1) A person must not publish or permit or cause to be published on polling day at an election before the close of all polling stations on that day —

30 (a) any statement relating to the way in which voters have voted at the election where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted; or

(b) any forecast as to the result of the election which is (or might reasonably be taken to be) based on information so given.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,500 or to imprisonment for a term not exceeding 12 months or to both.

(3) The offence under subsection (2) is an arrestable offence within the meaning of the Criminal Procedure Code (Cap. 68). 5

(4) In this section —

(a) “forecast” includes estimates; and

(b) the reference to the result of an election is a reference to the result of an election either as a whole or so far as any particular candidate at the election is concerned. 10

Defence for election advertising offences

60D.—(1) It shall be a defence for a person charged with an offence under section 42(1) or (4), 60AA(2), 60A(3), 60B(2) or 60C(2) to prove — 15

(a) that the contravention of section 42(1)(c), (d) or (e), 60A(1), 60B(1) or 60C(1) or any regulations made under section 60AA(1)(b), as the case may be, arose from circumstances beyond his control; and

(b) that he took all reasonable steps, and exercised all due diligence, to ensure that the contravention would not arise. 20

(2) Nothing in subsection (1) limits the operation of section 26 of the Electronic Transactions Act (Cap. 88) in relation to network service providers.”. 25

Amendment of section 71

19. Section 71 of the principal Act is amended by deleting the full-stop at the end of paragraph (e) and substituting a semi-colon, and by inserting immediately thereafter the following paragraph:

- 5 “(f) that the candidate intentionally or knowingly made a materially false or misleading statement of fact, or intentionally or knowingly failed to state a material fact, to the Presidential Elections Committee for the purpose of demonstrating his eligibility to be elected
10 as President.”.

Repeal and re-enactment of section 73

20. Section 73 of the principal Act is repealed and the following section substituted therefor:

“Who may make application under section 71

15 **73.** An application under section 71 may be made to the Supreme Court —

- (a) in respect of section 71(a), (b), (c), (d) or (e), by any one or more of the following persons:
- 20 (i) any person who voted or had a right to vote at the election to which the application relates;
- (ii) any person claiming to have had a right to be returned or elected at the election;
- (iii) any person alleging himself to have been a candidate at the election; and
- 25 (b) in respect of section 71(f), by the Presidential Elections Committee.”.

New sections 83A and 83B

21. The principal Act is amended by inserting, immediately after section 83, the following sections:

“Offences by corporations

83A.—(1) Where, in a proceeding for an offence under this Act, it is necessary to prove the state of mind of a corporation in relation to a particular conduct, evidence that — 5

(a) an officer, employee or agent of the corporation engaged in that conduct within the scope of his actual or apparent authority; and 10

(b) the officer, employee or agent had that state of mind, is evidence that the corporation had that state of mind.

(2) Where a corporation commits an offence under this Act, a person —

(a) who is — 15

(i) an officer of the corporation, or a member of the corporation (in the case where the affairs of the corporation are managed by its members); or

(ii) an individual who is involved in the management of the corporation and is in a position to influence the conduct of the corporation in relation to the commission of the offence; and 20

(b) who —

(i) consented or connived, or conspired with others, to effect the commission of the offence; 25

(ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the offence by the corporation; or 30

(iii) knew or ought reasonably to have known that the offence by the corporation (or an offence of

the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the commission of that offence,

shall be guilty of the same offence as is the corporation, and shall be liable on conviction to be punished accordingly.

(3) A person mentioned in subsection (2) may rely on a defence that would be available to the corporation if it were charged with the offence with which the person is charged and, in doing so, the person bears the same burden of proof that the corporation would bear.

(4) To avoid doubt, this section does not affect the application of —

(a) Chapters V and VA of the Penal Code (Cap. 224); or

(b) the Evidence Act (Cap. 97) or any other law or practice regarding the admissibility of evidence.

(5) To avoid doubt, subsection (2) also does not affect the liability of the corporation for an offence under this Act, and applies whether or not the corporation is convicted of the offence.

(6) In this section —

“corporation” includes a limited liability partnership within the meaning of section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

“officer”, in relation to a corporation, means any director, partner, chief executive, manager, secretary or other similar officer of the corporation, and includes —

(a) any person purporting to act in any such capacity; and

(b) for a corporation whose affairs are managed by its members, any of those members as if the member is a director of the corporation;

“state of mind” of a person includes —

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

5

Offences by unincorporated associations or partnerships

83B.—(1) Where, in a proceeding for an offence under this Act, it is necessary to prove the state of mind of an unincorporated association or a partnership in relation to a particular conduct, evidence that —

10

- (a) an employee or agent of the unincorporated association or the partnership engaged in that conduct within the scope of his actual or apparent authority; and
- (b) the employee or agent had that state of mind,

15

is evidence that the unincorporated association or partnership had that state of mind.

(2) Where an unincorporated association or a partnership commits an offence under this Act, a person —

- (a) who is —
 - (i) an officer of the unincorporated association or a member of its governing body;
 - (ii) a partner in the partnership; or
 - (iii) an individual who is involved in the management of the unincorporated association or partnership and who is in a position to influence the conduct of the unincorporated association or partnership (as the case may be) in relation to the commission of the offence; and

20

25

(b) who —

- (i) consented or connived, or conspired with others, to effect the commission of the offence;

30

(ii) is in any other way, whether by act or omission, knowingly concerned in, or is party to, the commission of the offence by the unincorporated association or partnership; or

5 (iii) knew or ought reasonably to have known that the offence by the unincorporated association or partnership (or an offence of the same type) would be or is being committed, and failed to take all reasonable steps to prevent or stop the
10 commission of that offence,

shall be guilty of the same offence as is the unincorporated association or partnership (as the case may be), and shall be liable on conviction to be punished accordingly.

15 (3) A person mentioned in subsection (2) may rely on a defence that would be available to the unincorporated association or partnership if it were charged with the offence with which the person is charged and, in doing so, the person bears the same burden of proof that the unincorporated association or partnership would bear.

20 (4) To avoid doubt, this section does not affect the application of —

(a) Chapters V and VA of the Penal Code (Cap. 224); or

(b) the Evidence Act (Cap. 97) or any other law or practice regarding the admissibility of evidence.

25 (5) To avoid doubt, subsection (2) also does not affect the liability of the unincorporated association or partnership for an offence under this Act, and applies whether or not the unincorporated association or partnership is convicted of the offence.

30 (6) In this section —

“officer”, in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any member of the committee of the unincorporated association, and includes —

(a) any person holding a position analogous to that of president, secretary or member of a committee of the unincorporated association; and

(b) any person purporting to act in any such capacity;

5

“partner” includes a person purporting to act as a partner;

“state of mind” of a person includes —

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person’s reasons for the intention, opinion, belief or purpose.”.

10

New Schedule

22. The principal Act is amended by inserting, immediately after section 84, the following Schedule:

“THE SCHEDULE

15

Section 5A

PRESIDENTIAL TERMS COUNTED FOR THE PURPOSES OF RESERVED ELECTIONS

<i>Term No.</i>	<i>President</i>	<i>Community that President belongs to</i>
1	President Wee Kim Wee	Chinese community
2	President Ong Teng Cheong	Chinese community
3	President S R Nathan	Indian community
4	President S R Nathan	Indian community
5	President Tony Tan Keng Yam	Chinese community

20

25

Miscellaneous amendments

23. The principal Act is amended —

- (a) by inserting, immediately above section 6, the following Division heading:

5 “*Division 1 — Issuance of Writ, etc.*”;

- (b) by inserting, immediately above section 9, the following Division heading:

 “*Division 4 — Nomination Proceedings*”;

- (c) by inserting, immediately above section 15, the following Division heading:

10 “*Division 5 — Uncontested Elections*”;

- (d) by inserting, immediately above section 16, the following Division heading:

 “*Division 6 — Contested Elections*”;

- 15 (e) by deleting the words “or 36C” in section 22(4) and substituting the words “, 36C or 36DA”;

- (f) by deleting the words “in this section and any regulations made thereunder” in section 22A(3) and substituting the words “by or under this section”;

- 20 (g) by deleting the words “all or any of the prescribed declarations” in section 27(1) and substituting the words “to all or any of the declarations set out in the prescribed form”;

- (h) by deleting subsection (2) of section 27;

- 25 (i) by deleting the words “prescribed declaration” in section 27(3) and (4) and substituting in each case the words “declaration required under subsection (1)”;

- 30 (j) by deleting the words “in any direction made under section 31A(1) specified a polling station to be a counting place” in section 31(4) and substituting the words “specified a polling station to be a counting place under this Act”;

- (k) by deleting the words “in the direction made under section 31A(1)” in section 32(2) and substituting the words “under this Act”;
- (l) by deleting the words “in a direction made under section 31A(1)” in section 32(2A)(a) and (b), (8) and (8A) and substituting in each case the words “under this Act”;
- (m) by deleting the word “allowed” in section 32(8), (8A), (8D) and (9) and substituting in each case the word “conducted”;
- (n) by deleting the words “and any regulations made thereunder” in section 33B(1)(b);
- (o) by deleting the sub-heading immediately above section 36A and substituting the following Division heading:
- “Division 7 — Postponement and Adjournment of Elections”;*
- (p) by deleting the word “and” at the end of section 36B(3)(b);
- (q) by deleting the full-stop at the end of paragraph (c) of section 36B(3) and substituting the word “; and”, and by inserting immediately thereafter the following paragraph:
- “(d) must specify the latest time by which a candidate must make his indication (regarding his name) to the Returning Officer under section 11(5).”;*
- (r) by deleting the words “Article 17(3)” in sections 36C(1) and (3) and 36E(1)(iv) and substituting in each case the words “Article 17A(2)”;
- (s) by deleting the words “in the direction under section 31A” in section 36E(1)(iv) and substituting the words “under this Act”;

(t) by deleting the Chapter heading immediately above section 37 and substituting the following Division heading:

“Division 1 — Offences”;

(u) by deleting the Chapter heading immediately above section 38 and substituting the following Division heading:

“Division 2 — Corrupt Practices”;

(v) by deleting the Chapter heading immediately above section 43 and substituting the following Division heading:

*“Division 3 — Election Agent,
Election Expenses and Illegal Practices”*;

(w) by deleting the words “and regulations made thereunder” in section 60(3);

(x) by deleting subsections (6) and (7) of section 60A;

(y) by deleting the words “(within the meaning of section 60A)” in section 65(1A);

(z) by deleting the Chapter heading immediately above section 68 and substituting the following Division heading:

*“Division 4 — Excuse for Corrupt and
Illegal Practice”*; and

(za) by deleting the words “or any regulations made thereunder” in section 84(1).

Consequential amendments to Parliamentary Elections Act

24. The Parliamentary Elections Act (Cap. 218) is amended —

(a) by deleting the words “section 13 or 13A in any register of electors” in the definition of “overseas elector” in section 2(1) and substituting the words “this Act”;

(b) by deleting subsection (1) of section 13A and substituting the following subsection:

“(1) Any person who is not resident in Singapore but whose name is entered in the register of electors for an electoral division and who is entitled to have his name

so entered or retained in that register of electors may, at any time and in such form or manner as may be prescribed, apply to the Registration Officer to be registered as an overseas elector for that electoral division.”;

5

(c) by inserting, immediately after the words “an overseas elector shall” in section 13A(2), the words “contain or”;

(d) by deleting the words “the date he left Singapore and” in section 13A(2)(b);

(e) by inserting, immediately after the word “entered” in section 13A(2)(e), the words “or retained”;

10

(f) by deleting subsections (3) and (3A) of section 13A and substituting the following subsections:

“(3) An overseas elector may, at any time and in such form or manner as may be prescribed, apply to the Registration Officer —

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(a) to change the overseas polling station allotted to him under subsection (3A)(a); or

(b) to cancel his registration.

(3A) Despite section 13, the Registration Officer may —

20

(a) in the case of an application made under subsection (1), register the applicant as an overseas elector and allot to the applicant an overseas polling station;

25

(b) in the case of an application made under subsection (3)(a), allot to the applicant another overseas polling station;

(c) in the case of an application made under subsection (3)(b), cancel the applicant’s registration as an overseas elector; or

30

(d) reject any application made under subsection (1) or (3).

(3AA) If the Registration Officer receives an application under subsection (1) or (3) during the specified period of an election, the Registration Officer is not required to take any action on the application under subsection (3A) until after that specified period.”; and

(g) by inserting, immediately after subsection (5) of section 13A, the following subsection:

“(6) In this section, “specified period” means —

(a) in the case of an election for an electoral division under this Act, the period starting on the third day (including a Sunday or public holiday) after the issue of the writ of election under section 24 for that election and ending on the nomination day for that election or, if a poll is to be taken, the polling day (or if there is more than one polling day, the last polling day) for that election; and

(b) in the case of an election under the Presidential Elections Act (Cap. 240A), the period starting on the third day (including a Sunday or public holiday) after the issue of the writ of election under section 6 of that Act and ending on the nomination day or, if a poll is to be taken, the polling day (or if there is more than one polling day, the last polling day) under that Act for that election.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Presidential Elections Act (Cap. 240A) for the following main purposes:

- (a) to give effect to, and make amendments consequent to, the amendments to the Constitution made by the Constitution of the Republic of Singapore (Amendment) Act 2016 (Act 28 of 2016);
- (b) to formalise the inclusion of candidates' photographs on ballot papers;
- (c) to provide that the adjudication and counting of ballot papers must be based solely on the marks made by voters in the area demarcated on ballot papers for that purpose;
- (d) to remove the requirement for applications to be made for a recount of votes and to require the Returning Officer to carry out a recount of votes when the criteria for recount is met;
- (e) to empower the Returning Officer to extend the time for ballot boxes from overseas polling stations to reach Singapore (applicable only where the total number of overseas electors will be material to the election outcome);
- (f) to provide for the contingency of the loss or destruction of ballot boxes while being transported from polling stations (whether in Singapore or overseas) to counting places;
- (g) to align the Act with certain provisions of the Parliamentary Elections Act (Cap. 218) relating to election advertising, publication of election survey results and exit polls;
- (h) generally to improve the administration of the Act and election procedures.

The Bill also makes consequential amendments to the Parliamentary Elections Act —

- (a) to extend the time to 2 days after the writ of election for electors to register as overseas electors or change their overseas polling stations; and
- (b) to improve the operation of the procedural rules relating to the registration of overseas electors.

Clause 1 relates to the short title and commencement.

Clause 2 amends certain definitions in the Act, and inserts new definitions of certain expressions used in the Bill.

Clause 3 inserts a new Part IA (consisting of new sections 5A, 5B and 5C).

The new section 5A provides that the new Schedule (inserted by clause 22) has effect for the purpose of determining whether an election is reserved under the new Article 19B(1) of the Constitution. The new Schedule sets out the terms of office that are counted and the communities that the Presidents who hold those terms belonged to. The first term of office to be counted is the last term of office of President Wee Kim Wee, during which he became the first President to exercise the functions created by the Constitution of the Republic of Singapore (Amendment) Act 1991 (Act 5 of 1991). The Returning Officer is responsible for updating the Schedule after every election according to the community certificate (if any) issued to the person declared to be elected.

The new section 5B links the reserved election mechanism in the new Article 19B of the Constitution to writs of election issued under the Act, and provides for open elections if a reserved election wholly fails. For example, if an election is reserved for 2 communities under the new Article 19B, the election under the first writ will be reserved to the community from which a person has not held the office for the greater number of consecutive terms immediately before the election. If the first writ wholly fails, the election under the second writ will be reserved for the other community. If the second writ also wholly fails, elections under the third and all subsequent writs will be open elections, until a person is elected as President. In an open election, a person does not, despite the new Article 19B(2), have to belong to any community to qualify to be elected as President.

The new section 5C empowers the Minister to make further provisions on the shareholders' equity, profitability after tax and solvency criteria for the purposes of the automatically qualifying limb of the private sector service requirement under Article 19 of the Constitution. The further provisions could include further definitions, calculation methods, as well as requiring prospective private sector candidates to submit relevant information.

Clause 4 amends section 6(3) to require that nomination day must be at least 10 days after the date of the writ of election (an increase from the current 5 days).

Clause 5 repeals sections 8 and 8A and substitutes new Divisions 2 and 3.

The new Division 2 (consisting of new sections 8 to 8D) relates to the Presidential Elections Committee and the application process for a certificate of eligibility. The new sections mostly re-enact the repealed sections 8 and 8A with drafting improvements. The key substantive changes are as follows: (1) The deadline for applying for a certificate of eligibility is extended to 5 days after the date of the writ of election (an increase from the current 3 days). (2) All the service requirements under new Article 19(2)(g) of the Constitution must now be certified. (3) The Presidential Elections Committee must reject an application for a certificate of eligibility if the applicant did not submit a community declaration.

The new Division 3 (consisting of new sections 8E to 8L) establishes the Community Committee and sets out the community certification process. The certification process serves 2 main purposes: (1) to determine the community to which every person elected as President belongs to, for the purposes of determining whether a future election is reserved under new Article 19B(1) of the Constitution, and (2) to ensure that, in a reserved election, only persons belonging to the community to which the election is reserved qualify to stand for election.

All prospective candidates in all elections therefore have to submit a community declaration, in which a declarant must state which (if any) of the 3 main communities he considers himself to be a member of and (where applicable) apply for a community certificate. The deadline for submission is 5 days after the date of the writ of election. The Community Committee must decline to accept a community declaration if the declarant did not apply for a certificate of eligibility.

In a reserved election, the Community Committee will accept a community declaration only if the declarant considers himself to belong to the community to which the election is reserved. The Community Committee will then refer the declaration to the Sub-Committee for that community. If the Sub-Committee is satisfied that the declarant belongs to that community, the Community Committee will issue the declarant with a community certificate to that effect.

In non-reserved elections, the Community Committee will generally refer community declarations to the appropriate Sub-Committee (except where a declarant does not consider himself to be a member of any of the 3 main communities). If the Sub-Committee for a community is satisfied that a declarant belongs to that community, the Community Committee will issue the declarant with a community certificate to that effect. If the Sub-Committee is not so satisfied, the Community Committee can refuse to issue a community certificate or invite the declarant to submit another community declaration. In the case of a declarant who does not consider himself to be a member of any of the 3 main communities, the Community Committee can either accept the community declaration or invite the person to submit another community declaration. A re-submitted community declaration will be referred to the appropriate Sub-Committee for further consideration or (in the case of a declarant who does not consider himself to belong to any of the 3 main communities) simply accepted.

Provision is also made for the immunity of the Community Committee and the finality of its decisions, in similar terms as the existing provisions in relation to the Presidential Elections Committee.

Clause 6 amends section 9 to add certain items to the nomination papers that a prospective candidate must submit. The first item is a statutory declaration that the prospective candidate understands the role of the President under the Constitution. The second item relates to the community certification process. In a reserved election, a prospective candidate must submit a community certificate stating that he belongs to the community to which the election is reserved. In other

elections, a prospective candidate who applied for a community certificate in his community declaration must submit either a community certificate or the Community Committee's written decision rejecting the application. A prospective candidate who did not apply for a community certificate in his community declaration must submit the Community Committee's written notification that his declaration is accepted, as well as a statutory declaration stating that he does not consider himself to belong to any of the 3 main communities.

Clause 7 amends section 20 (on facilities at polling stations) to remove the prescription in that section of the types of information to be included in the notices outside polling stations and to leave such details to be prescribed by the Minister in regulations made under the Act.

Clause 8 amends section 23 (on ballot papers) to stipulate that the ballot paper must have a clearly demarcated area for a voter to mark his vote for a candidate. This ties with the amendments to section 33 (inserted by clause 14) on how ballot papers are to be adjudicated and counted.

Clause 9 inserts a new section 23A to formalise the inclusion of candidates' photographs on ballot papers and to stipulate the conditions that must be satisfied before a candidate's photograph will be included on the ballot paper.

Clause 10 amends section 25 (on manner of voting) to state that a voter's mark must only be made in the area demarcated on the ballot paper for that purpose. This ties with the amendments to section 33 (inserted by clause 14) on how ballot papers are to be adjudicated and counted.

Clause 11 amends section 31A (on counting places) to remove the current requirement for the Returning Officer to inform candidates or their principal election agents in writing as to the places where votes will be counted or the postponement of counting due to certain contingencies described in that section. Instead, the Returning Officer will publish the information in the *Government Gazette*.

Clause 12 amends section 32A (on counting of overseas votes) to empower the Returning Officer to extend the time for the sealed ballot boxes from overseas polling stations to reach Singapore. Currently, an overseas ballot box must reach Singapore within 10 days after polling day in Singapore in order for the votes contained in that ballot box to be counted. The amendments to that section confer a discretion on the Returning Officer to extend time by another 7 days for the overseas ballot boxes to reach Singapore if —

- (a) the total number of overseas electors is material to the election outcome (i.e. where the Returning Officer has made a declaration under section 32(8)(b) or (8D)(b)); and

- (b) the Returning Officer is satisfied that any of the overseas ballot boxes is not likely to reach Singapore within the initial 10-day period.

If the Returning Officer extends time, the counting of the votes cast at all the overseas polling stations will be postponed to another date specified by the Returning Officer.

Clause 13 repeals and re-enacts section 32B (on recounting of votes) to remove the requirement for a candidate or his counting agent to apply to the Returning Officer for a recount of votes. Under the re-enacted section, the Returning Officer must carry out a recount of the votes if the criteria for recount is met.

Clause 14 amends section 33 (on adjudication and rejection of ballot papers) to require the Returning Officer to only consider the marks made by voters in the area demarcated on ballot papers for voters to mark their votes. Under the amended section, if a voter makes a mark outside of this area, the Returning Officer must disregard that mark when determining whether the voter has given his vote to any candidate and if so, to which candidate.

Clause 15 inserts new sections 36DA and 36DB.

The new section 36DA states that if any sealed ballot box containing votes cast at a polling station in Singapore (called the affected polling station) is lost or destroyed while it is being transported from the affected polling station to a counting place, the Returning Officer must do the following:

- (a) abandon the counting of all the votes cast at the affected polling station (this includes the votes cast at the affected polling station that were not in the lost or destroyed ballot box);
- (b) re-start the poll for the affected polling station only if it will be material to the outcome of the election.

It will be material to the outcome of the election if the aggregate of the following is equal to or more than the difference in the votes given in Singapore to the candidates with the 2 greatest number of votes:

- (a) the total number of electors (excluding overseas electors) allotted to the affected polling station and entitled to vote in the election;
- (b) the total number of overseas electors entitled to vote in the election.

The Returning Officer may hold the re-started poll at the affected polling station or at another polling station in Singapore.

Where polling for the affected polling station must be re-started, the counting of the votes cast at the overseas polling stations in the election will be postponed to another date specified by the Returning Officer. This will facilitate the holding of the re-started poll and will enable the votes cast at the re-started poll and the overseas votes to be counted on the same day.

The new section 36DB deals with the loss or destruction of a sealed ballot box containing votes cast at an overseas polling station (called the affected overseas polling station) while the ballot box is being transported from the affected overseas polling station to the counting place in Singapore (this includes the transport of the overseas ballot box within Singapore to the counting place). Similar to the new section 36DA, the Returning Officer must do the following:

- (a) abandon the counting of all the votes cast at the affected overseas polling station;
- (b) re-start the poll for the affected overseas polling station if it will be material to the outcome of the election.

It will be material to the outcome of the election if —

- (a) in the case where the only ballot box in the election that is lost or destroyed is an overseas ballot box, the total number of overseas electors (i.e. not just the overseas electors allotted to the affected overseas polling station) entitled to vote in the election is equal to or more than the difference in the votes given in Singapore to the candidates with the 2 greatest number of votes; and
- (b) in the case where a ballot box from a Singapore polling station in the election is also lost or destroyed (i.e. in addition to the overseas ballot box), the aggregate mentioned in section 36DA(2) is equal to or more than the difference in the votes given in Singapore to the candidates with the 2 greatest number of votes.

The Returning Officer may hold the re-started poll at the affected overseas polling station or at another overseas polling station.

Where polling for the affected overseas polling station must be re-started, the counting of the votes cast at all the other overseas polling stations will be postponed to another date specified by the Returning Officer. This is so that the votes cast at the re-started poll and the other overseas votes can be counted on the same day.

Clause 16 amends section 42 (on punishment for corrupt practice) to replicate certain provisions in section 61 of the Parliamentary Elections Act on offences relating to election advertising.

Clause 17 inserts a new section 60AA.

The new section 60AA (adapted from section 78A of the Parliamentary Elections Act) empowers the Minister to make regulations relating to election advertising in non-print medium and on the Internet, and to create offences for the breach of such regulations.

Clause 18 inserts new sections 60B, 60C and 60D.

The new section 60B replicates section 78C of the Parliamentary Elections Act. It prohibits the publication of election survey results during the period beginning with the day on which the writ of election is issued and ending with the close of all polling stations on polling day.

The new section 60C replicates section 78D of the Parliamentary Elections Act. It prohibits the publication of exit polls on polling day until all the polling stations are closed.

The new section 60D is on defences for election advertising offences and replicates section 78E of the Parliamentary Elections Act.

Clause 19 amends section 71 to provide that an election can be declared void if the elected candidate made a materially false or misleading statement of fact, or omitted to state a material fact, to the Presidential Elections Committee. This new ground for avoidance is identical to the ground for removing a President in the new Article 22L(3)(e) of the Constitution.

Clause 20 repeals and re-enacts section 73 to further provide that only the Presidential Elections Committee can apply to avoid an election on the ground stated in the new section 71(f).

Clause 21 inserts new sections 83A and 83B.

The new section 83A deals with corporate offenders and attributes criminal liability to officers of corporate entities for offences committed by those entities. Corporations like companies can be held directly liable for, and can be found guilty of and punished for, the commission of an offence. As a separate legal entity, liability for the offence is imposed on the corporation itself and is not generally attributed to its officers and employees unless there is a provision like the new section 83A. A similar provision exists in the Parliamentary Elections Act. The provision has been redrafted here consistent with the modern Singapore drafting style to make it easier to read and understand.

The new section 83B deals with unincorporated entities like partnerships and associations and attributes criminal liability to officers of unincorporated entities for offences committed by those bodies.

Clause 22 inserts the Schedule mentioned in the new section 5A (inserted by clause 3).

Clause 23 makes miscellaneous amendments to the Act.

Clause 23(a) to (d) inserts Division headings to improve the organisation of Part II.

Clause 23(e) makes a consequential amendment to section 22(4) arising from the new section 36DA (inserted by clause 15).

Clause 23(*f*), (*n*), (*w*) and (*za*) makes editorial amendments to sections 22A(3), 33B(1)(*b*), 60(3) and 84(1) to remove the references to regulations in those sections since the references to the Act in those sections include subsidiary legislation made under the Act (this is provided in the Interpretation Act (Cap. 1)).

Clause 23(*g*), (*h*) and (*i*) makes editorial amendments to section 27 in relation to declarations by voters.

Clause 23(*j*), (*k*), (*l*) and (*s*) makes editorial changes to sections 31(4), 32(2), (2A), (8) and (8A) and 36E(1)(iv) to remove the references in those sections to directions made under section 31A (as regards counting places) as the Returning Officer may specify counting places under other sections in cases where certain contingencies arise.

Clause 23(*m*) makes consequential amendments to section 32(8), (8A), (8D) and (9) arising from the repeal and re-enactment of section 32B (inserted by clause 13).

Clause 23(*o*) substitutes the sub-heading before section 36A with a Division heading, in line with current drafting practice.

Clause 23(*p*) and (*q*) amends section 36B(3) to deal with a procedural issue arising from the postponement of the hours of nomination proceedings. The amendments enable the Returning Officer in such an event to specify the time by which candidates are to make their indications to the Returning Officer under section 11(5) as to how their names are to be reflected on the ballot papers.

Clause 23(*r*) corrects the references to the Constitution in sections 36C(1) and (3) and 36E(1)(iv), arising from the Constitution of the Republic of Singapore (Amendment) Act 2016.

Clause 23(*t*), (*u*), (*v*) and (*z*) substitutes the Chapter headings in Part III with Division headings, in line with current drafting practice.

Clause 23(*x*) and (*y*) deletes section 60A(6) and (7) and makes a consequential amendment to section 65(1A).

Clause 24 makes consequential amendments to the Parliamentary Elections Act in relation to the registration of overseas electors. The consequential amendments are mainly to section 13A of that Act. The time within which an elector has to register as an overseas elector or apply to change the overseas polling station allotted to the elector is being extended to 2 days after the writ of election. The consequential amendments also simplify the text of that section and improve the operation of the procedural rules relating to the registration of overseas electors.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
