

WATCHMAN, WATCHDOG, WARDEN AND WHAT MORE?

The Constitutional Role and Autochthony of the Singapore Auditor-General

The Singapore Auditor-General has been an important constitutional office since 1991 but remains a severely under-examined institution in local scholarship. In 2015, the office received much attention after its findings on an opposition town council precipitated a protracted political debate. This article seeks to plug the gap in constitutional law literature concerning public finance accountability. It posits that as a whole, the office is moderately high in independence and effectively contributes to constitutionalism as a check on financial power. It further postulates that the office adds to Singapore's constitutional autochthony. Finally, the article proposes reforms, referencing other jurisdictions.

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I. Introduction

1 Almost, if not every, country has an Auditor-General to check and report on public finances and government operations. Due to the critical nature of their work, they often face hostility. Nigeria's Auditor-General of the Federation, for instance, became the target of a 2015 assassination plot,¹ while Canada's Auditor General was being sued by the public in 2011 for withholding a report which reportedly contained misuse of public funds for a G-8 summit.² Auditors-General may also stoke political controversy. An example is Malaysia's Auditor-General,

* This article was written as a Directed Research paper under the joint supervision of Asst Prof Jaclyn L Neo (National University of Singapore ("NUS") Faculty of Law) and Prof Teo Chee Khiang (NUS Business School). The author would like to thank both his supervisors, as well as Adjunct Prof Kevin Tan and Prof Thio Li-ann at the NUS Faculty of Law, for their helpful comments. He is also grateful to Mr Abdul Hamid from the Auditor-General's Office ("AGO") for providing archives of AGO reports.

1 Andrew Oota, "Nigeria: Police Indict Ex-militants, Others over Alleged Assassination Attempt" *Daily Independent (Lagos)* (7 August 2015).

2 *Trotter v Canada (Auditor General)* 2011 FC 498.

who was tasked to investigate the massive 1MDB scandal plaguing the Government.³

2 In Singapore, the Auditor-General (“AuG”) and the Auditor-General’s Office (“AGO”) have maintained a relatively low profile for decades but were thrust into the limelight in recent years, particularly 2015. In February 2015, its special audit findings concerning the Aljunied-Hougang-Punggol East Town Council (“AHPETC”) sparked political crossfire in Parliament between the Government and the opposition Workers’ Party (“WP”).⁴ The Finance Minister had directed the AuG to conduct a special audit after the AHPETC failed to submit financial statements on time and their auditors expressed disclaimers of opinion.⁵ Later in July, coincidentally one-and-a-half months before the general elections (“GE”), the AuG released its routine annual report which highlighted serious lapses in some public agencies, including the People’s Association.⁶ The AGO received further media attention during the GE, when the Prime Minister commended it in his lunchtime rally speech as a key institution keeping the Government “straight” and accountable,⁷ while political candidates cited AGO’s findings when discussing town council issues during rallies.

3 Nonetheless, the Singapore AuG is starkly different from his foreign counterparts and is highly unique in terms of his legal position and roles. Notably, he is independent of all three branches of government and acts as a check on all three. Though under-examined in local constitutional literature, this constitutional office in practice plays a vital role of limiting government power in financial and operational matters, particularly given Singapore’s dominant party political system. Only one political party, the People’s Action Party (“PAP”), has formed the Government after every GE in Singapore since independence.

3 “Saifuddin Sceptical People Will Buy Auditor-General’s Findings on 1MDB” *Malaysian Insider* (17 October 2015).

4 Auditor-General’s Office, *Audit of Aljunied-Hougang-Punggol East Town Council Main Report* (February 2015): The report found breaches of the Town Councils Act (Cap 329A, 2000 Rev Ed) and Town Council Financial Rules (Cap 329A, R 1, 1998 Rev Ed), and indicated no assurance of the Aljunied-Hougang-Punggol East Town Council’s (“AHPETC”) accounts and management of public funds. The breaches were not disputed by AHPETC.

5 *Attorney-General v Aljunied-Hougang-Punggol East Town Council* [2015] 4 SLR 474 at [9] and [10].

6 “Auditor-General’s Report: People’s Association Cited for Multiple Lapses” *Channel NewsAsia* (15 July 2015). The Auditor-General usually releases his report in July every year but the July 2015 release was unusually close to a general election.

7 Lee U-Wen, “PM Lee: Vote for a Govt that Has Its Politics Right” *Business Times* (9 September 2015).

4 The mission of the AGO to “enhance public accountability”⁸ will be ever more crucial for Singapore in future as the 2015 GE appears to further entrench the position of the PAP as the legitimate party to govern Singapore.⁹ This is despite it being the most competitive elections in Singapore’s independence history. Paradoxically, however, the clear voter preference for PAP to govern Singapore comes amidst increasing political participation¹⁰ and civil society activism for transparency and accountability over public moneys.¹¹ In this regard, the non-political office of the AuG would presumably play a crucial role in ensuring such transparency and accountability. One PAP minister had even gone to the extent of characterising the AGO as the “real check” in government, juxtaposing it against the opposition which had claimed to be a “robust check and balance”.¹²

5 This article argues that the AuG plays a largely independent and effective role in Singapore’s constitutional government of promoting public finance accountability. It also postulates the AuG as another innovation within Singapore’s constitutional autochthony. Part II¹³ provides a historical and conceptual understanding of constitutionalism and public finance accountability in common law jurisdictions, introducing parliamentary control, state audit and Singapore’s accountability process. Part III¹⁴ tracks the evolution of Singapore’s AuG. Part IV¹⁵ evaluates the AuG’s independence as a prerequisite of an effective check and discusses impediments. Part V¹⁶ examines the effectiveness of the check itself, characterising roles and functions of the AuG. Part VI¹⁷ reflects on its contribution to Singapore’s constitutional autochthony. Part VII¹⁸ considers international practices and proposes ideas to enhance the AuG’s independence and effectiveness. Part VIII¹⁹ presents concluding reflections.

8 Auditor-General’s Office website <<http://www.ago.gov.sg/about-us/vision-mission-core-values>> (accessed July 2016).

9 See, eg, Eleanor Wong, “Liberal Reflections on Loss and Acceptance in GE2015” *Straits Times* (16 September 2015).

10 Chew Hui Min, “GE2015: Opposition Set to Challenge PAP in All 29 Electoral Divisions” *Straits Times* (1 September 2015).

11 Nurul Azliyah Aripin, “Organisers Claim #ReturnOurCPF Protest Drew 6K Despite Initial Drizzle, Blazing Sun” *Yahoo News* (7 June 2014).

12 *Singapore Parliamentary Debates, Official Report* (13 February 2015) “Auditor-General’s Report on the Audit of AHPETC” vol 93 (Heng Swee Keat, Minister for Education).

13 See paras 6–11 below.

14 See paras 12–13 below.

15 See paras 14–35 below.

16 See paras 36–63 below.

17 See paras 64–70 below.

18 See paras 71–80 below.

19 See paras 81–85 below.

II. Constitutionalism and public finance accountability: A conceptual and historical understanding

A. *Regulating state financial power: Emergence of parliamentary control and budget*

6 At the heart of constitutionalism is the objective of regulating state power. This ensures public accountability, among others.²⁰ One such means of constitutionalism, adopted as early as the 17th century, was to distribute state power across parts of the body politic based on the theory of “separation of powers”.²¹ Consequently, the State distributed power over financial administration (“financial power”) as well. Such power could no longer be in executive secrecy, lest it ran afoul of incompatibility with the constitutional state.²² Instead, the Legislature was given control over aspects of financial power such as taxation and public expenditure. The latter was in line with the “fundamental constitutional principle” that charges upon public revenue should be sanctioned by legislation.²³ Different branches of government, thus, had to submit proper accounts and disclose documents on their finances.²⁴ Over time, “legislative supremacy”²⁵ emerged over the Executive in terms of financial power in countries like the UK and the US. It was Alexander Hamilton who famously noted in the Federalist Papers that the Executive held the “sword” while the Legislature held the “purse”.²⁶ This division of powers was meant to make the Executive more accountable to the Legislature – which represented ordinary citizens – for the public funds and resources it received and managed. The Legislature held the power to release funds to meet government expenditure. These activities evolved into the formal budget mechanism over time.

7 There was, however, recognition over time that this arrangement dividing powers to ensure accountability had to be supplemented by an expert checking mechanism. Thus, for instance, in 1866, the British Exchequer and Audit Department Act (“E&ADA”)

20 Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012) at p 38.

21 E L Normanton, *The Accountability and Audit of Governments* (Manchester University Press, 1966) at p 4.

22 E L Normanton, *The Accountability and Audit of Governments* (Manchester University Press, 1966) at p 3.

23 Ian Harden, “Money and the Constitution: Financial Control, Reporting and Audit” (1993) 13(1) *Legal Stud* 16 at 16.

24 E L Normanton, *The Accountability and Audit of Governments* (Manchester University Press, 1966) at pp 3–4.

25 E L Normanton, *The Accountability and Audit of Governments* (Manchester University Press, 1966) at p 5.

26 See, eg, Alexander Hamilton, *The Federalist No 78* (1788).

created the office of Comptroller and Auditor General (“C&AG”), tasking him to certify and report on public accounts and ensure propriety of public expenditure. This laid the final touches to a “complete financial control system”, with parliamentary and treasury financial powers, supported by the C&AG.²⁷ This is significant because most British colonies subsequently modelled their local ordinances concerning local public finance management on the British E&ADA.²⁸ Similarly, as a British colony, Singapore inherited the budget system and the Singapore (Constitution) Order in Council 1958²⁹ formally included finance as a distinct subject in the constitutional order, covering, *inter alia*, budget estimates, authorisation of expenditure and the Consolidated Fund.³⁰ This was later supplemented by the Financial Procedure Ordinance of 1959³¹ when Singapore attained full self-government. It is interesting to note, however, that state audit appeared to have predated the implementation of the budget mechanism in Singapore. The Audit Office of the Straits Settlements (“SS”) was established as early as 1867 and submitted annual reports to the Colonial Secretary in London.³² In 1932, the audit offices of the SS and Federated Malay States were consolidated into one audit department. The Singapore Audit Office (later renamed the Singapore Audit Department) was then created.³³

8 Parliament’s power over the purse or “parliamentary control” of public finances does not, however, mean it has power to make all public spending decisions. There are in fact three levels of decisions concerning government expenditure: (a) planning and controlling total expenditure; (b) determining priorities between different heads of expenditure; and (c) optimising public resources available for each head and programme. The primary locus of Parliament’s financial power rests on item (b), with which parliamentary financial procedures are formally concerned.³⁴ Nonetheless, Parliament oversees the other two levels of decisions to some extent when the Executive reports to Parliament on these matters. Ultimately, all three levels of decision-making will be

27 E L Normanton, “Reform in the Field of Public Accountability and Audit: A Progress Report” (1980) 51(2) *The Political Quarterly* 175 at 176.

28 Ian Lienert, “British Influence on Commonwealth Budget Systems: The Case of the United Republic of Tanzania” IMF Working Paper (WP/07/78, April 2007).

29 SI 1958 No 1956.

30 Kevin Y L Tan, “Singapore’s 1958 Constitution: Fifty Fascinating Facts from Fifty Years” *Law Gazette* (November 2008).

31 Ord 39 of 1959.

32 Lim Soo Ping, “Audit Profile: The Auditor-General’s Office of Singapore” *International Journal of Government Auditing* (October 2008).

33 Auditor-General’s Office website, “History” <<http://www.ago.gov.sg/about-us/history>> (accessed July 2016).

34 Ian Harden, “Money and the Constitution: Financial Control, Reporting and Audit” (1993) 13(1) *Legal Stud* 16 at 17.

accounted for in the budget cycle, from its beginning to end. This will be explained further in the next section.

B. Budget cycle and state audit as added check

9 Typically, at the start of the budget cycle, the Executive would plan policies for the upcoming financial year, prepare revenue and expenditure estimates, and present them to the Legislature.³⁵ In Singapore, the budget statement is delivered by the Finance Minister to Parliament before the new financial year. The Minister would introduce the Supply Bill to seek Parliament's approval of funds³⁶ and Members of Parliament ("MPs") would debate on the budget statement.³⁷ Parliament subsequently votes to approve the budget. If the Elected President ("EP") gives his assent, the Supply Bill passed is enacted in law as the Supply Act, controlling the Government's spending in the new financial year.³⁸ Sums approved will then be released from the Consolidated and the Development Funds.³⁹

10 After this, the budget cycle enters into the "accountability phase".⁴⁰ This is where state audit plays its crucial role as a check on financial power. The AGO typically examines five dimensions of public finance accountability: (a) financial statement propriety;⁴¹ (b) compliance with laws, regulations and internal controls; (c) excess; (d) extravagance; and (e) efficiency. The first two dimensions constitute financial regularity audits, while the latter four are included in selective audits.⁴² During its audits, the AGO typically compares government and departmental accounts with the budget approved at the beginning,

35 E L Normanton, *The Accountability and Audit of Governments* (Manchester University Press, 1966) at p 4; Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 147(1).

36 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Arts 148(1) and 148(2).

37 Budget 2015 website <http://www.singaporebudget.gov.sg/budget_2015/AboutTheBudgetProcess.aspx> (accessed July 2015).

38 Budget 2015 website <http://www.singaporebudget.gov.sg/budget_2015/AboutTheBudgetProcess.aspx> (accessed July 2015).

39 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Arts 146(1) and 146(4).

40 E L Normanton, *The Accountability and Audit of Governments* (Manchester University Press, 1966) at p 24.

41 Financial statements audits involve the checking of accounts to provide an audit opinion on the financial statements prepared by the government entity. It ensures that government financial statements submitted at the end of each financial year are prepared in accordance with the law. See *Singapore Parliamentary Debates, Official Report* (17 August 2015) "Ministries' Follow-up Action from AuG Report" vol 93 at p 6 (Tharman Shanmugaratnam, Deputy Prime Minister and Minister for Finance).

42 Auditor-General's Office, *What Is Public Accountability?* (November 2011) at p 10.

checking actual expenditure against estimates authorised by Parliament. This helps in evaluating the implementation and performance of policies and programmes proposed by the Executive to Parliament, and has the aim of keeping the Executive accountable for its financial decisions.

11 It is also at this phase that the audited government financial statements and a report of the AuG for the preceding financial year are submitted to the EP and Parliament for review (typically in July of each year).⁴³ This report is accessible to the public and contains key observations on various public institutions and agencies under audit. Parliament may debate the findings before the reports are referred to the Public Accounts Committee (“PAC”), comprising up to eight MPs.⁴⁴ The PAC, a parliamentary select committee, will examine the accounts, study the AuG’s report⁴⁵ and follow up on issues identified before presenting its recommendations and actions in a separate report.⁴⁶ The following diagram summarises the accountability process in Singapore. The next section examines the evolution of the office of the AuG in Singapore.

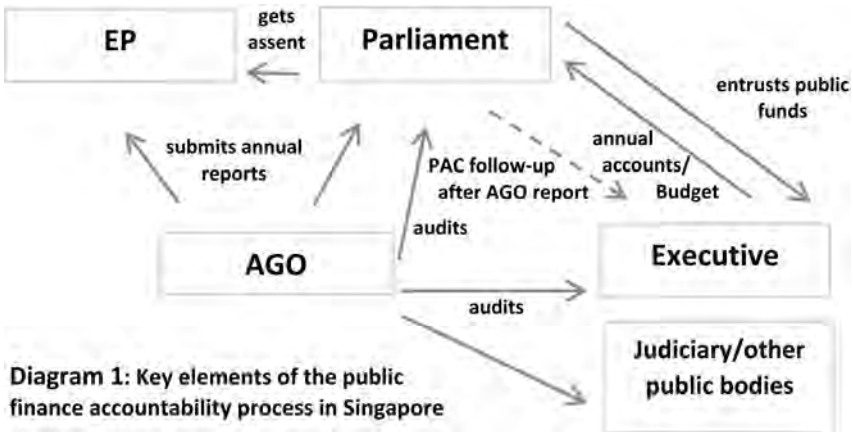


Diagram 1: Key elements of the public finance accountability process in Singapore

43 Audit Act (Cap 17, 1999 Rev Ed) ss 8(1) and 8(3).
 44 Auditor-General’s Office, *What Is Public Accountability?* (November 2011) at p 5.
 45 *Singapore Parliamentary Debates, Official Report* (9 March 2010) “Budget: Head M – Ministry of Finance” vol 86 at col 3590 (Lim Hwee Hua, Second Minister for Finance); *Singapore Parliamentary Debates, Official Report* (2 March 2012) “Budget: Head M – Ministry of Finance” vol 86 (Cedric Foo, Member of Parliament (Pioneer)).
 46 Parliament of Singapore website, “Public Accounts Committee” <<https://www.parliament.gov.sg/public-accounts-committee>> (accessed July 2016).

III. Evolution of Singapore's Auditor-General

12 As discussed above, Singapore's AGO had its roots in the Audit Office of the Straits Settlement and the Audit Office of the Federated Malay States. Following Malaya's independence in 1957, Britain appointed the first Director of Audit for the Singapore Audit Department, supervised by the Overseas Audit Department in London.⁴⁷ In 1959, an Audit Ordinance⁴⁸ ("the 1959 Ordinance") was enacted. It gave the Director of Audit legal authority for his duties, raising the official standing of the department.⁴⁹ Singapore subsequently adopted the 1957 Malaysian Audit Ordinance when it joined Malaysia. After independence, Singapore in 1966 re-enacted the 1959 Ordinance with some changes, creating a new Audit Act⁵⁰ backdated to independence. In 1970, there were further amendments, including renaming the "Director of Audit" as "AuG".⁵¹ However, it was only in 1985 that Singapore renamed its "Audit Department" the "AGO".⁵²

13 In 1991, the Government introduced the Elected Presidency in the Constitution as a check on the Executive.⁵³ Empowered to veto drawdowns on past reserves, the EP functioned as a safeguard against future profligate or rogue governments.⁵⁴ To support this new fiscal guardianship role, the Government carved out a new constitutional duty for the AuG, which is to inform the EP of transactions likely to draw on past reserves.⁵⁵ At the same time, the Constitution incorporated his terms of appointment and statutory duties, formally elevating the office to a constitutional level.⁵⁶ Since 1991, there have only been few amendments to the Constitution and/or Audit Act⁵⁷ affecting the AuG,

47 Auditor-General's Office, "History" <<http://www.ago.gov.sg/about-us/history>> (accessed July 2016).

48 Ord 48 of 1959.

49 Auditor-General's Office, "History" <<http://www.ago.gov.sg/about-us/history>> (accessed July 2016).

50 *Singapore Parliamentary Debates, Official Report* (21 April 1966) "Audit Bill" vol 25 at cols 62–63 (Lim Kim San, Minister for Finance).

51 Audit (Amendment) Bill 1970 (Bill 24 of 1970) cl 3(a).

52 Auditor-General's Office website, "History" <<http://www.ago.gov.sg/about-us/history>> (accessed July 2016).

53 Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012) at p 412.

54 *Singapore Parliamentary Debates, Official Report* (4 October 1990) "Constitution of the Republic of Singapore (Amendment No 3) Bill" vol 56 at cols 462 and 467 (Goh Chok Tong, First Deputy Prime Minister and Minister for Defence).

55 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148G.

56 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F.

57 Cap 17, 1999 Rev Ed.

with the most notable changes pertaining to tenure and retirement. There have been four AuGs since 1970.⁵⁸

IV. Independence of the Auditor-General

A. *Tenets of independence*

14 The independence of an AuG is a crucial prerequisite for him to function properly as a legitimate check on financial power. The International Organisation of Supreme Audit Institutions (“INTOSAI”) noted in its Lima Declaration that protection from external influence, as well as functional and organisational independence, are necessary for effective and objective state audits.⁵⁹ While such institutions “cannot be absolutely independent”⁶⁰ in reality, state audit institutions should strive to progress in independence. To this end, INTOSAI identifies eight key tenets as guidance in evaluating the independence of state audit.⁶¹ They are:

- (a) the existence of appropriate and effective constitutional/statutory frameworks;
- (b) security of tenure/legal immunity;
- (c) access to information;
- (d) freedom of content and timing of reports;
- (e) right to report/comment;
- (f) effective follow-up mechanisms;
- (g) broad mandate and discretion; and
- (h) financial/administrative autonomy.

B. *Singapore’s Auditor-General: Moderately high in independence*

15 Based on INTOSAI’s tenets of independence, Singapore’s AuG is moderately high in independence. He enjoys firstly, significant legal protection over his appointment, termination, remuneration, access and

58 They are Chee Keng Soon (1970–1994), Chuang Kwong Yong (1994–2007), Lim Soo Ping (2007–2013) and Willie Tan (2013–present).

59 International Organisation of Supreme Audit Institutions, *The Lima Declaration* (ISSAI 1, 1998) s 5.

60 International Organisation of Supreme Audit Institutions, *The Lima Declaration* (ISSAI 1, 1998) s 5.

61 International Organisation of Supreme Audit Institutions, *INTOSAI Guidelines and Good Practices Related to SAI Independence* (ISSAI 11, 2007).

power of reporting; and secondly, organisational and functional independence through administrative autonomy and discretion.

(1) *Legal protection and safeguards*

16 The AuG can discharge his audit duties “without fear or favour” and exercise independence of mind, primarily because of various legal safeguards.⁶² These include provisions in the Constitution as well as the Audit Act.

(a) *Appointment*

17 Firstly, the Constitution safeguards the process of the AuG’s appointment. It is the EP, a formally independent institution, who makes the appointment or re-appointment.⁶³ Although the Prime Minister (“PM”) nominates the AuG⁶⁴ and appointment is done “in accordance with the advice of the PM”,⁶⁵ the AuG’s independence is not impugned entirely. Two additional safeguards in the Constitution, for instance, help to ensure fair and proper appointment.

(a) The PM has to consult the Public Service Commission (“PSC”) chairman before tendering any advice to the EP regarding the appointment.⁶⁶ This prevents cronyism or arbitrary recommendation and reduces bias since PSC is an independent organ of state.⁶⁷

(b) The EP has the discretion to refuse the PM’s recommendation(s) if he does not concur with his advice.⁶⁸ Having veto power over key public appointments,⁶⁹ the EP thus serves as a “check on the quality” of the AuG nominee⁷⁰ and

62 Auditor-General’s Office, *What Is Public Accountability?* (November 2011) at p 8.

63 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(1).

64 *Singapore Parliamentary Debates, Official Report* (11 August 1988) “Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services” vol 51 at cols 533–534 (Lim Boon Heng, Member of Parliament (Kebun Baru)).

65 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(1).

66 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(2).

67 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 105.

68 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Arts 22(1)(i) and 148F(1).

69 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 22(1).

70 *Singapore Parliamentary Debates, Official Report* (11 August 1988) “Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services” vol 51 at col 534 (Lim Boon Heng, Member of Parliament (Kebun Baru)).

safeguards the “integrity” of the public office.⁷¹ Undergirding this is the Government’s rationale that it is dangerous⁷² and not advisable⁷³ for appointment of key public office-holders to be left solely to the Government, including the PM or any Minister. The EP is, therefore, empowered to appoint an AuG whom he believes will display integrity.

(b) Termination

18 Secondly, the Constitution strongly protects the AuG from being arbitrarily removed from office. He enjoys the same degree of protection as the Attorney-General (“AG”) and Chief Justice (“CJ”).⁷⁴ The PM can tender advice on removing the AuG but the EP has discretion on whether to concur with it.⁷⁵ Further, the PM has to satisfy very stringent criteria in his advice.

(a) He has to seek concurrence from an external branch of government: a judicial tribunal comprising the CJ and two Supreme Court judges.⁷⁶

(b) The Constitution prescribes specific grounds for his advice on termination:

(i) inability of the AuG to discharge his functions (such as infirmity or other causes); and

71 *Singapore Parliamentary Debates, Official Report* (11 August 1988) “Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services” vol 51 at col 531 (Lim Boon Heng, Member of Parliament (Kebun Baru)); *Singapore Parliamentary Debates, Official Report* (4 October 1990) “Constitution of the Republic of Singapore (Amendment No 3) Bill” vol 56 at col 466 (Goh Chok Tong, First Deputy Prime Minister and Minister for Defence).

72 *Singapore Parliamentary Debates, Official Report* (12 August 1988) “Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services” vol 51 at col 603 (Lee Hsien Loong, Minister for Trade and Industry and Second Minister for Defence).

73 *Singapore Parliamentary Debates, Official Report* (12 August 1988) “Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services” vol 51 at col 628 (Goh Chok Tong, First Deputy Prime Minister and Minister for Defence).

74 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Arts 35(6)(a) and 98(2).

75 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(8).

76 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(8).

(ii) misbehaviour,⁷⁷ similar to those for the CJ and AG.⁷⁸

(c) Remuneration and terms of service

19 Thirdly, the Constitution stipulates that the AuG's terms of service, including remuneration, "shall not be altered to his disadvantage" during his term.⁷⁹ This is the exact same protection for the AG and CJ.⁸⁰ His remuneration is considered and passed by resolution in Parliament,⁸¹ taking discretion away from the Executive, which is the biggest branch of government he audits. In addition, other terms of service may be prescribed in regulations made by the EP and published in the Gazette, and where they are not prescribed as such, further terms may be determined by the EP.⁸² This gives the EP, a formally independent party, more power than the Executive or Parliament over the AuG's terms of service.

(d) Access to information⁸³

20 Fourthly, the Constitution allows the AuG to exercise powers in relation to his duties of auditing and reporting on the accounts of public institutions.⁸⁴ These powers can be found in the Audit Act and they include the power to: (a) call on any person for explanation and information; (b) search and extract information in any public office; and (c) access records anytime.⁸⁵ The Audit Act also excludes any provision relating to secrecy from operating when the AuG exercises his powers.⁸⁶

77 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(8).

78 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Arts 35(6)(a) and 98(3).

79 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(11).

80 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Arts 35(12) and 98(8).

81 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(10).

82 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(10A).

83 It should be noted, however, that this power may be subject to certain privileges in law, such as legal advice privilege. See, eg, *British Columbia (Auditor General) v British Columbia (Attorney General)* (2013) BCSC 98 at [23]: The court held that legal advice privilege must be protected against the Auditor-General's quest for accountability as it is "fundamental to the proper functioning of our legal system" and "virtually an absolute privilege".

84 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Arts 148F(3) and 148F(4).

85 Audit Act (Cap 17, 1999 Rev Ed) ss 3(2) and 6(1).

86 Audit Act (Cap 17, 1999 Rev Ed) s 7(1).

These powers allow the AuG to gather or inspect information which otherwise would not be available publicly, helping him form a fair and independent audit opinion.

(e) Power to report and comment

21 Fifthly, the Constitution empowers the AuG to report on the accounts of public entities.⁸⁷ Besides the annual reports to Parliament and the EP,⁸⁸ the AuG has the discretion to make recommendations and “generally comment” on “all matters relating to public accounts, public moneys and public stores” in any report he wishes to publish.⁸⁹ He is also allowed to make a report at any time on any matter to the EP.⁹⁰ This gives the AuG both the fortitude and latitude to independently report his audit observations, even if they might be controversial findings. In the event that any public institution is unco-operative in allowing him access to information, this power to comment and bring the matter to public or parliamentary attention may serve as the AuG’s ultimate remedy.⁹¹

(2) *Organisational and functional independence*

22 Besides legal protection, the AuG of Singapore scores high on organisational and functional independence.⁹² Organisational independence refers to administrative autonomy of the office, while functional independence concerns the discretion of the AuG in executing his functions.

23 First, Singapore’s AuG has organisational independence as he neither works under nor is beholden to any branch of government. Interestingly, in the Constitution, the AuG is placed under Pt XI (Financial Provisions)⁹³ and not the parts relating to the branches of

87 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(3).

88 Audit Act (Cap 17, 1999 Rev Ed) s 3(3).

89 Audit Act (Cap 17, 1999 Rev Ed) s 8(7).

90 Audit Act (Cap 17, 1999 Rev Ed) s 8(9).

91 See, eg, *Canada (Auditor General) v Canada (Minister of Energy, Mines and Resources)* [1989] 2 SCR 49, where the apex Supreme Court of Canada refused to grant the Canadian Auditor-General access to information in a government trust account, of which public money was used to fund an acquisition by Petro-Canada, a Crown corporation. The court held that the Auditor-General had no recourse to the courts and his ultimate remedy was “to report to the House of Commons ... and leave the issue to be resolved politically” as it had exhausted all other statutory remedies, including requesting the assistance of the Governor in Council, which had rejected its request.

92 International Organisation of Supreme Audit Institutions, *The Lima Declaration* (ISSAI 1, 1998) s 5.

93 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F.

government.⁹⁴ This suggests a unique position of high independence unlike other AuGs. In the UK and Canada, the state audit head is an “officer”⁹⁵ or “servant”⁹⁶ of Parliament; China’s AuG is under the executive State Council;⁹⁷ while some European countries recognise state audit⁹⁸ as part of the Judiciary.⁹⁹ The affiliations of those AuGs to a particular branch may affect their independence of mind.

24 Secondly, the AuG has functional independence through his discretion over planning and reporting activities. For planning, he has the freedom to decide which ministries and statutory boards (“SBs”) the AGO will audit in any year and which to be outsourced to commercial auditors,¹⁰⁰ while advising the Minister on their appointment.¹⁰¹ The AuG also has the discretion to choose which SBs to undergo selective audits, as such audits are done rotationally once in five to seven years.¹⁰² Further, he has autonomy to initiate *ad hoc* audits arising from complaints, feedback or past observations.¹⁰³

25 For reporting, the AuG has full discretion over what and when to report. The AGO first reports its findings to the public entities it audits through direct management letters before selecting key or material observations to be included in the annual public report of the AuG.¹⁰⁴ The AuG does not need clearance or approval from any branch of government or the EP before publishing the report.

94 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Pts V (The Government (President and Executive)), VI (The Legislature) and VIII (The Judiciary).

95 *Parliament’s Watchdogs – At the Crossroads* (Oonagh Gay & Barry K Winetrobe eds) (Department of Political Science, University College London, 2008) at pp 12 and 72.

96 E L Normanton, *The Accountability and Audit of Governments* (Manchester University Press, 1966) at p 371.

97 State Council, People’s Republic of China, “State Council Organisational Chart” <http://english.gov.cn/state_council/2014/09/03/content_281474985533579.htm> (accessed July 2016).

98 The *cour des comptes* (court of accounts) in Italy, France and Spain has judicial and administrative authority, making judgment on compliance with laws and ensuring proper public spending through audit.

99 World Bank, *PREM Notes: Features and Functions of Supreme Audit Institutions* (No 59, October 2001).

100 Auditor-General’s Office, *Report of the Auditor-General for the Financial Year 2011/12* (2012) at p 3: “Exercising its discretion, AGO would audit the financial statements of a few selected statutory boards ...”.

101 Auditor-General’s Office, *Report of the Auditor-General for the Financial Year 2014/15* (2015) Annex II at para 2.

102 Auditor-General’s Office, *Report of the Auditor-General for the Financial Year 2014/15* (2015) at p 19.

103 Auditor-General’s Office, *Report of the Auditor-General for the Financial Year 2014/15* (2015) at p 20.

104 Auditor-General’s Office, *Report of the Auditor-General for the Financial Year 2014/15* (2015) at p 2.

C. *Impediments to independence*

26 Although Singapore's AuG is moderately high in independence based on the Lima standards,¹⁰⁵ barriers to complete independence still exist in the areas of appointment, tenure, post-tenure opportunities and legal immunity. Furthermore, the political context within which the AuG operates, that is, with a single dominant party having formed the Government since independence, could make it difficult for it to provide completely independent robust checks on government.

(1) *Appointment*

27 The first impediment to independence lies in the AuG's appointment process. Although the EP's veto power is a significant constitutional safeguard, the power of nomination still vests in the PM. The EP's power of appointment in the form of a veto is therefore a negative and passive power. Following his veto of a nominee, the EP has no power to propose a new name.¹⁰⁶ Instead, the PM will come up with new recommendations until the EP assents.¹⁰⁷ This tips the balance of power in favour of the PM, giving the Executive a degree of influence over the AuG appointment.¹⁰⁸ The AuG could thus be perceived as non-independent, even if he truly is.

28 Furthermore, the PM might be inclined to nominate an AuG whom the Executive can work with harmoniously, potentially exerting influence over him. The Government's disdain towards a confrontational relationship with a constitutional institution was clearly evident following President Ong Teng Cheong's end-of-term press conference, when it cited the need for a "smooth"¹⁰⁹ and "harmonious working

105 See para 14 above. As a summary, the tenets are: constitutional or statutory frameworks; security of tenure and legal immunity; unrestricted access to information; freedom to decide content and timing of audit reports; effective follow-up mechanisms; mandate and discretion; and financial/administrative autonomy.

106 *Singapore Parliamentary Debates, Official Report* (11 August 1988) "Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services" vol 51 at col 533 (Lim Boon Heng, Member of Parliament (Kebun Baru)).

107 *Singapore Parliamentary Debates, Official Report* (5 October 1990) "Constitution of the Republic of Singapore (Amendment No 3) Bill" vol 56 at col 564 (Goh Chok Tong, First Deputy Prime Minister and Minister for Defence).

108 *Singapore Parliamentary Debates, Official Report* (5 October 1990) "Constitution of the Republic of Singapore (Amendment No 3) Bill" vol 56 at col 563 (Goh Chok Tong, First Deputy Prime Minister and Minister for Defence).

109 *Singapore Parliamentary Debates, Official Report* (5 October 1990) "Issues Raised by President Ong Teng Cheong at His Press Conference on 16th July 1999" vol 70 at col 2039 (Goh Chok Tong, Prime Minister).

relationship” for effective governance.¹¹⁰ Like the EP, the AuG serves as a check on the Executive’s power. It is therefore unsurprising if the PM nominates an AuG whom the Government can have a smooth working relationship with. Notably, three of Singapore’s four AuGs, except the first AuG Chee Keng Soon,¹¹¹ were formerly from government ministries or statutory boards.¹¹²

29 Yet another contentious area is the PM’s consultation of only the PSC chairman before his nomination. There might again be a degree of influence of the PM on the PSC chairman, since he himself is a product of the PM’s recommendation to the EP.¹¹³ In contrast, for appointment of the AG, the PM has to consult not only the PSC chairman but the current AG and the CJ before advising the EP.¹¹⁴ Further, it is not known how much weight the PM accords to the PSC chairman’s advice in his recommendations.

(2) *Security of tenure*

30 The second impediment to the AuG’s independence is security of tenure. The AuG initially had tenure of office until his retirement.¹¹⁵ A significant change occurred in 2001 when Parliament amended the Constitution to a renewable, fixed term of six years for the AuG.¹¹⁶

31 The Minister explained that tenure until retirement created rigidity in talent management, especially the inability to appoint

110 White Paper, *The Principles for Determining and Safeguarding the Accumulated Reserves of the Government and the Fifth Schedule Statutory Boards and Government Companies* (Cmd 5, 1999) Annex I, Letter of Prime Minister Goh Chok Tong to President Ong Teng Cheong.

111 Chee Keng Soon served in the Auditor-General’s Office for 37 years (1957–1994), of which the last 24 years he was Auditor-General (1970–1994). See Sembcorp Marine, *Annual Report 2001* at p 8 <<http://www.sembmarine.com/scm2016/wp-content/uploads/2016/03/08-09-board-of-directors.pdf>> (accessed July 2016).

112 Chuang Kwong Yong (1994–2007) was from the Ministry of Finance (information available at <http://www.ess.org.sg/Events/Files/2004/Ngiam_TD_Speech1.pdf> (accessed July 2016)); Lim Soo Ping (2007–2013) worked for 30 years in various public agencies, including 12 years in the Public Works Department (information available at <<http://www.sji-international.com.sg/page.cfm?p=454>> (accessed July 2016)); Willie Tan (present) was from the Ministry of Defence and Central Provident Fund (Maryam Mokhtar, “Willie Tan to take over from Lim Soo Ping as Auditor-General on Feb 8” *Straits Times* (7 January 2013)).

113 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Arts 22(1)(f) and 105(1).

114 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 35(2).

115 Constitution of the Republic of Singapore (1992 Rev Ed) Art 148F(5).

116 Constitution of the Republic of Singapore (Amendment No 2) Act 2001 (Act 32 of 2001) Art 148F(5); *Singapore Parliamentary Debates, Official Report* (12 January 2001) “Constitution of the Republic of Singapore (Amendment) Bill” vol 72 at col 1306 (Richard Hu Tsu Tau, Minister for Finance).

younger leaders for the office.¹¹⁷ Such a policy did not allow “systematic renewal and rejuvenation” of the AGO, unlike other public agencies where Permanent Secretaries are appointed on fixed terms.¹¹⁸ The Government was also concerned that repetitive audit cycles could result in the AuG’s complacency. Further, it felt that six-year renewable terms “should not adversely affect” the AuG’s independence since other constitutional safeguards keep him “immune” from external influence,¹¹⁹ and other countries too have limited terms for the AuG.¹²⁰

32 However, even if a fixed term is preferred, six years might be too short for such an office,¹²¹ compared to most Commonwealth practices of ten or 15 years.¹²² Further, the AuG should not be seen as any other public service appointment such as Permanent Secretaries who are part of the Executive. He is a constitutional office independent of the branches of government; his key role is to check financial power. Independence, therefore, should be valued highly over leadership renewal. If the AG and CJ, who are heads of organs of state and key public appointments, have tenure until retirement,¹²³ there is no compelling reason why the AuG’s tenure should be shortened. Having short, fixed terms could instead affect the AuG’s independent judgment

117 *Singapore Parliamentary Debates, Official Report* (12 January 2001) “Constitution of the Republic of Singapore (Amendment) Bill” vol 72 at cols 1305 and 1329 (Richard Hu Tsu Tau, Minister for Finance).

118 *Singapore Parliamentary Debates, Official Report* (12 January 2001) “Constitution of the Republic of Singapore (Amendment) Bill” vol 72 at col 1305 (Richard Hu Tsu Tau, Minister for Finance).

119 *Singapore Parliamentary Debates, Official Report* (12 January 2001) “Constitution of the Republic of Singapore (Amendment) Bill” vol 72 at col 1306 (Richard Hu Tsu Tau, Minister for Finance).

120 *Singapore Parliamentary Debates, Official Report* (12 January 2001) “Constitution of the Republic of Singapore (Amendment) Bill” vol 72 at col 1329 (Richard Hu Tsu Tau, Minister for Finance).

121 *Singapore Parliamentary Debates, Official Report* (12 January 2001) “Constitution of the Republic of Singapore (Amendment) Bill” vol 72 at col 1325 (Assoc Prof Toh See Kiat, Member of Parliament (Aljunied)).

122 *Singapore Parliamentary Debates, Official Report* (12 January 2001) “Constitution of the Republic of Singapore (Amendment) Bill” vol 72 at col 1329 (Richard Hu Tsu Tau, Minister for Finance):

Australia has a 10-year non-renewable term; Canada also has a 10-year non-renewable term. Japan has a 7-year term. New Zealand also has a non-renewable 7-year term. In the case of USA, it is a 15-year non-renewable term.

UK now has a fixed ten-year term: see <<http://www.nao.org.uk/about-us/our-work/history-of-the-nao>> (accessed July 2016).

123 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 35(4).

since he will have to consider whether he will be reappointed.¹²⁴ It may also undermine public confidence in his standing.¹²⁵

(3) *Restrictions on post-Auditor-General opportunities*

33 A third impediment relates to opportunities after the AuG leaves office. In the same bill amending the AuG's tenure, the provision prohibiting a former AuG from taking up other public office appointments was also removed.¹²⁶ Describing it as a "corollary" to the new fixed term policy, the Minister opined that there was "no reason" why a good individual should be prevented from rejoining the public service after relinquishing the AuG post.¹²⁷ However, this might create unintended effects. The AuG might be more susceptible to inducement of a post-AuG "reward posting" in another public office or a government-linked company and might be less critical on the Government to avoid sabotaging his post-AuG career plans, especially since he knows his term is only for six years.

(4) *Legal immunity*

34 The fourth impediment to independence is the lack of legal immunity. The AuG does not receive legal immunity in Singapore under the Constitution or Audit Act in the exercise of his duties. Unlike the EP which has protection against proceedings,¹²⁸ the AuG is vulnerable to legal threats from members of the public entities he audits, thus weakening his position of independence. In the UK, the Comptroller and AuG receives parliamentary privilege for his reports to Parliament,¹²⁹ while in Canada, the AuG is statutorily protected from prosecution and defamation when discharging his duties in good faith.¹³⁰

124 *Singapore Parliamentary Debates, Official Report* (12 January 2001) "Constitution of the Republic of Singapore (Amendment) Bill" vol 72 at col 1318 (Low Thia Kiang, Member of Parliament (Hougang)).

125 *Singapore Parliamentary Debates, Official Report* (12 January 2001) "Constitution of the Republic of Singapore (Amendment) Bill" vol 72 at col 1318 (Low Thia Kiang, Member of Parliament (Hougang)).

126 Constitution of the Republic of Singapore (Amendment) Act 2001 (Act 32 of 2001) Art 148F(6) (deleted).

127 *Singapore Parliamentary Debates, Official Report* (12 January 2001) "Constitution of the Republic of Singapore (Amendment) Bill" vol 72 at col 1306 (Richard Hu Tsu Tau, Minister for Finance).

128 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 22K.

129 John Bourne, "Reply of UK C&AG to the Chairman of Joint Committee of Parliament Privilege" (27 November 1998); Parliamentary Papers Act 1840 (c 9) (UK) s 1.

130 Canada Auditor General Act (RSC 1985, c A-17) s 18.2.

(5) *Dominant party government*

35 Finally, the political context of Singapore's dominant party government can also be a significant hurdle to independence. In the recent 2015 GE, opposition MP Sylvia Lim cited how "a dominant ruling party ... can use government departments" to attack political opponents and "the PAP has become very strong ... [with a] huge machinery"¹³¹ Nonetheless, the AuG office has hitherto been perceived by many, including opposition leaders, to be independent of the dominant party's influence.¹³² The recent financial year ("FY") 2014/2015 AuG report demonstrates this clearly. Released barely less than two months before the 2015 GE, it did not shy away from serious public sector breaches¹³³ despite the widely anticipated imminence of the elections. However, this may not be the case for future AuGs. Even with robust constitutional safeguards, independence ultimately hinges on the tone at the top; the AuG must be one with the moral fortitude and conviction to act without fear or favour.

V. Role of the Singapore Auditor-General in constitutionalism

36 Having established the prerequisite independence of the AuG, this section explores his actual role as a check on financial power in terms of his legal and non-legal functions. It simultaneously evaluates his effectiveness in these functions.

A. *Primary legal functions: Watchman, watchdog and warden*

37 The first category of the AuG's functions, legal functions, stems from his constitutional and statutory obligations. He can be conceived as a watchman over Singapore's reserves, a watchdog by monitoring public finance management and a warden enhancing compliance with financial provisions in the law.

(1) *Watchman*

38 The AuG can first be characterised as a watchman of Singapore's past reserves, assisting the EP to safeguard Singapore's accumulated wealth. He is like a security guard of a safe requiring two keys, obliged

131 "Episode Shows How Dominant Party Can 'Eat up' Opponents, Says Sylvia Lim" *TODAY* (31 August 2015).

132 *Singapore Parliamentary Debates, Official Report* (12 January 2001) "Constitution of the Republic of Singapore (Amendment) Bill" vol 72 at col 1318 (Low Thia Khiang, Member of Parliament (Hougang)).

133 Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2014/15* (2015) at pp 24–26.

to inform the co-owner whenever the other owner intends to open it. Under the Constitution, the AuG must inform the EP of any “proposed transaction” by the Government, which “to [his] knowledge” is “likely to draw on” past reserves.¹³⁴ This new obligation in 1991 was created to support the EP’s role as a “fiscal guardian” holding the second key¹³⁵ to Singapore’s reserves.¹³⁶ Ultimately, such a control mechanism seeks to deter future profligate governments from “incurring reckless debts” and using past reserves to meet these liabilities.¹³⁷

39 This role is, however, of limited effectiveness in reality. One significant challenge is the impracticalities arising from the phraseology of the provision, particularly “proposed transaction”, “to their knowledge” and “likely to draw on”. These phrases envision the role of the AuG as a prospective and preventive check. However, the AuG does not know of every expenditure before it is incurred, since the AGO typically audits post-events. He is therefore not in a strong position to inform the EP unless the transaction has taken place and he comes across it or the Government discloses it.

40 In the latter scenario, the role of the AuG as a watchman is retrospective and redundant since the Government had already sought the EP’s concurrence. This was the case during the global financial crisis: a 2008 potential drawdown involving a \$150bn guarantee on bank deposits and an actual \$4.9bn drawdown for the Resilience Package budget in 2009.¹³⁸ In the hypothetical case of a profligate government, such a transaction might be concealed from the AuG until audit, and his watchman role might also be ineffective.

41 Even if the AuG had the ability to highlight a potential drawdown, his role to safeguard reserves is limited because he is not obliged to question the quantum or rationale for drawing down. The security guard has no right to question whether the safe should be

134 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148G(1).

135 Yvonne C L Lee, “Under Lock and Key: The Evolving Role of the Elected President As a Fiscal Guardian” [2007] Sing JLS 290.

136 *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill No 23/90)* (Parl 9 of 1990, 18 December 1990) at paras 64 and 70.

137 *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill No 23/90)* (Parl 9 of 1990, 18 December 1990) at para 64.

138 Ministry of Finance website <<http://www.mof.gov.sg/Policies/Our-Nations-Reserves/Section-II-What-is-the-Presidents-role-in-safeguarding-the-reserves>> (accessed July 2016); *Singapore Parliamentary Debates, Official Report* (22 January 2009) “Annual Budget Statement” vol 85 at col 1307 (Tharman Shanmugaratnam, Deputy Prime Minister and Minister for Finance).

opened or how much money to take out; that is a matter left to the co-owners to decide. This mirrors the AuG's practice of questioning policy implementation, not policy planning, such that he does not overstep his boundaries in financial power or enter political confrontation.¹³⁹ In practice, the AGO may informally render advice to the EP concerning reserves, but this is not cast in law.¹⁴⁰

42 It is also worth noting that the AuG is not the sole watchman of Singapore's reserves and seems to be more of a secondary line of defence. Parliament, the Accountant-General and the Council of Presidential Advisers ("CPA") are among other fiscal actors constituting an "inter-checking" of fiscal powers.¹⁴¹ However, unlike the AuG, an independent organ of state, the Accountant-General is part of the Executive in the Ministry of Finance.¹⁴² He is thus more informed in discovering "proposed transactions" dipping into reserves, fulfilling the watchman role in a much better capacity than the AuG.

(2) *Watchdog*

43 The AuG also plays the role of a watchdog in monitoring public finance management, thereby enhancing transparency and accountability over public moneys.¹⁴³ It is his constitutional duty to audit and report on accounts of all government departments and offices (including the EP), the PSC, the legal service, the courts and Parliament.¹⁴⁴ He is also statutorily authorised to audit the accounts of any "public authority"¹⁴⁵ and sometimes "bodies administering public funds",¹⁴⁶ if provided for by any written law. If the public interest requires, the Minister may also direct the AuG to audit any public authority,¹⁴⁷ such as the special audit on opposition-run AHPETC.¹⁴⁸ Besides ensuring financial propriety of

139 E L Normanton, *The Accountability and Audit of Governments* (Manchester University Press, 1966) at p 404.

140 According to Former Deputy Auditor-General Prof Teo Chee Khiang, the Auditor-General's Office seconds personnel to the Istana to assist the EP in financial reserves matters and may provide advisory on an informal basis.

141 Yvonne C L Lee, "Under Lock and Key: The Evolving Role of the Elected President As a Fiscal Guardian" [2007] Sing JLS 290 at 294.

142 Yvonne C L Lee, "Under Lock and Key: The Evolving Role of the Elected President As a Fiscal Guardian" [2007] Sing JLS 290 at 296.

143 Auditor-General's Office, *What Is Public Accountability?* (November 2011) at p 8; Philip N Pillai, *State Enterprise in Singapore: Legal Importation and Development* (Singapore University Press, 1983) at p 79.

144 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(3).

145 Audit Act (Cap 17, 1999 Rev Ed) ss 4(1)(a) and 3(4).

146 Audit Act (Cap 17, 1999 Rev Ed) ss 4(1)(b) and 3(4).

147 Audit Act (Cap 17, 1999 Rev Ed) s 4(4).

148 Auditor-General's Office, *Audit of Aljunied-Hougang-Punggol East Town Council Main Report* (February 2015).

accounts, the AuG also checks for excess, extravagance and gross inefficiency in operations.¹⁴⁹

44 The AuG has been generally effective in his watchdog role. His independent and frank disclosure of audit findings to the EP, Parliament and the public has earned the office confidence from various quarters. PM Lee, for instance, considered the AGO an important institution for keeping the Government, statutory boards and town councils “straight”, and corruption at bay.¹⁵⁰ Minister Heng Swee Keat, meanwhile, described it as “the real check” in government, juxtaposing it against the opposition’s claim of being a “robust check and balance”.¹⁵¹ WP chief Low Thia Kiang had also previously lauded the AuG as “an important instrument in our system” to check on public accounts.¹⁵²

45 On the quality of his disclosure, it is notable his audits have unearthed a wide spectrum of public institution weaknesses, from major accounting lapses in AHPETC¹⁵³ to smaller but perennial breaches in government bodies like procurement,¹⁵⁴ and even criminal wrongdoing like fraud.¹⁵⁵ Further, most of such information would not have been available or accessible to the public, Parliament and the Attorney-General’s Chambers if not for the AuG’s disclosure. Nonetheless, there are three significant challenges to the AuG’s effectiveness as a watchdog, namely the scope of auditees, the quality of audit and the scope of disclosure.

149 Auditor-General’s Office, *What is Public Accountability?* (November 2011) at p 10.

150 Lee U-Wen, “PM Lee: Vote for a Govt that Has Its Politics Right” *Business Times* (9 September 2015).

151 *Singapore Parliamentary Debates, Official Report* (13 February 2015) “Auditor-General’s Report on the Audit of AHPETC” vol 93 (Heng Swee Keat, Minister for Education).

152 *Singapore Parliamentary Debates, Official Report* (12 January 2001) “Constitution of the Republic of Singapore (Amendment) Bill” vol 72 at col 1318 (Low Thia Kiang, Member of Parliament (Hougang)).

153 *Singapore Parliamentary Debates, Official Report* (13 February 2015) “Auditor-General’s Report on the Audit of AHPETC” vol 93 (Heng Swee Keat, Minister for Education).

154 Certified Practising Accountants Australia, KPMG Services Pte Ltd, National University of Singapore, *Standing in Good Stead: Enhancing Accountability of Public Financial Management over 25 Years* (July 2015): The top five perennial issues from 1990 to 2015 identified are procurement, IT systems, grant administration, payments and revenue.

155 Auditor-General’s Office, *Report of the Auditor-General for the Financial Year 2009/10* (2010) at p 8, paras 15–16; see also *Law Society of Singapore v Wan Hui Hong James* [2013] 3 SLR 221 at [39].

(a) Challenge 1: Scope of auditees

46 The first challenge deals with auditees who are left outside the purview of the AuG's audit. Although the Constitution narrowly defines the AuG's auditees to government departments and offices, the PSC, the legal service, the courts and Parliament,¹⁵⁶ his actual scope or mandate is slightly broader in the Audit Act. He is empowered to perform duties and exercise powers concerning accounts of "public authorities"¹⁵⁷ and "bodies administering public funds",¹⁵⁸ but only if they "may be prescribed by or under any written law". The AuG's reach thus extends to most statutory boards ("SBs"),¹⁵⁹ government funds¹⁶⁰ and town councils¹⁶¹ under their respective statutes or subsidiary legislation, but is severely limited to entities with law(s) providing for his audit. He cannot initiate any audit into any other public institution unless requested by it or directed by the Minister.¹⁶² They include SBs with no enabling provisions, town councils and government-related companies.

(i) STATUTORY BOARDS

47 A few SBs do not have an enabling provision in their Acts, presenting a practical limitation to the AuG's audit scope. They were established before the standard enabling provision for the AuG's audit

156 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(3).

157 Audit Act (Cap 17, 1999 Rev Ed) s 2(1):

'public authority' means the President, the Government, any statutory authority exercising powers vested in it by any written law, any tribunal other than the Supreme Court and the subordinate courts, or any officer or authority appointed by or acting on behalf of any of the aforesaid; ...

158 Audit Act (Cap 17, 1999 Rev Ed) s 2(1):

'public funds' means any moneys, bonds, debentures or securities, received from individuals, corporations or bodies by way of loans, trusts or any other voluntary payments, which are intended to be disbursed or are in fact disbursed for the benefit of the citizens of Singapore or any part of them, and includes any public moneys.

159 See, eg, Central Provident Fund under the Second Sched to the Central Provident Fund Act (Cap 36, 2013 Rev Ed) and the Housing and Development Board under s 71(4) of the Housing and Development Act (Cap 129, 2004 Rev Ed): "The accounts of the Board shall be audited by the Auditor-General or by an auditor appointed annually by the Minister in consultation with the Auditor-General."

160 See, eg, Workers' Fund under Work Injury Compensation (Workers' Fund) Regulations (Cap 354, Rg 2, 2010 Rev Ed) under the Work Injury Compensation Act (Cap 354, 2009 Rev Ed).

161 Town Councils Act (Cap 329A, 2000 Rev Ed) s 38(1).

162 Audit Act (Cap 17, 1999 Rev Ed) s 4(4): Where the Minister is satisfied that the public interest requires, he may direct the accounts of such authority to be audited by the Auditor-General.

was introduced in their governing statutes¹⁶³ and these include the Sentosa Development Corporation¹⁶⁴ and Majlis Ugama Islam Singapura.¹⁶⁵ Although the AuG in 2009 submitted a recommendation for his audit mandate of SBs to be under one umbrella legislation (Audit Act)¹⁶⁶ and the Prime Minister's Office had subsequently agreed to it,¹⁶⁷ the Audit Act has not been amended since.

(II) TOWN COUNCILS

48 For town councils ("TCs"), the law provides for the audit of their accounts "by the AuG or such other auditor as may be appointed annually by the Minister in consultation with the AuG".¹⁶⁸ While conventional practice has been for the AuG to have the first right to audit the TC, as *per* statutory boards,¹⁶⁹ the phraseology of the law suggests that the power of appointment is ultimately vested in the Minister. He may decide against appointing the AuG as the auditor for a particular TC, even after consulting the AuG. Adding to the complexity is the fact that TCs are political entities in nature¹⁷⁰ and a majority of TCs are run by the ruling government.¹⁷¹ A Minister could thus prefer to appoint a commercial auditor for the government-run TCs to avoid over-scrutiny by the AuG, especially in a hypothetical scenario of a government-run TC fraught with lapses. In such a tricky situation, it would be in the public interest for the AuG to audit the government-run TC but he will not have the direct mandate to do so, or could avoid doing so to steer clear of politics. Only the Minister has the discretion to

163 Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2007/08* (2008) at p 4; see also *Second Report of the Public Accounts Committee to Parliament* (Parl 1 of 2008, 7 May 2008) at para 29.

164 Sentosa Development Corporation Act (Cap 291, 1998 Rev Ed) s 16: "[T]he accounts of the Corporation shall be audited by auditors appointed by the Corporation with the approval of the Minister", not the Auditor-General.

165 Majlis Ugama Islam Singapura is governed under s 3 of the Administration of Muslim Act (Cap 3, 2009 Rev Ed) but does not have any provision on audit.

166 Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2008/09* (2009) at p 3.

167 Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2010/11* (2011) at p 4.

168 Town Councils Act (Cap 329A, 2000 Rev Ed) s 38(1).

169 Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2014/15* (2015) at p 19.

170 Li-ann Thio, "Neither Fish nor Fowl: Town Councils, Community Development Councils and the Cultivation of Local Government/Governance" in *Municipi d'Oriente: Il Governo Locale in Europa Orientale, Asia e Australia* (Hiroko Kudo, Giampaolo Ladu & Lucio Pegoraro eds) (Centre for Constitutional Studies and Democratic Development, 2009) at pp 373–411; see also s 9 of the Town Councils Act (Cap 329A, 2000 Rev Ed): The town council chair must be an elected Member of Parliament.

171 Candice Cai, "Singapore to Have 16 Town Councils, 2 New Town Councils Created" *Straits Times* (1 October 2015).

appoint him¹⁷² or direct him¹⁷³ to do so. To date, the AuG has not audited any town councils since FY 1994/1995,¹⁷⁴ except the special audit it was directed to undertake on AHPETC in 2014.¹⁷⁵ It is not explained officially why TC audits are farmed out to commercial auditors, but practical considerations ranging from the AGO's resource limitations to timeline constraints¹⁷⁶ are likely in play. Given that the AHPETC lapses occurred over several years and the commercial auditor could only give disclaimers of opinion without much impact, a case can be made for the AuG's return to auditing town councils to provide public assurance.

(III) GOVERNMENT-OWNED COMPANIES

49 The 100% government-owned companies, including MND Holdings, GIC and Temasek Holdings ("Temasek"), do not have to be audited by the AuG and their accounts escape parliamentary and public scrutiny. These Fifth Sched companies, however, are required to present a fully audited income statement and balance sheet to the EP,¹⁷⁷ and their budgets are subject to the EP's approval.¹⁷⁸ Nonetheless, the AuG has in practice been auditing the main companies in the GIC group¹⁷⁹ and the Government's portfolio in GIC¹⁸⁰ at GIC's request.¹⁸¹ GIC's audited financial statements are submitted to the EP and CPA annually by the AuG,¹⁸² but are not disclosed to Parliament or the public because

172 Town Councils Act (Cap 329A, 2000 Rev Ed) s 38(1).

173 Audit Act (Cap 17, 1999 Rev Ed) s 4(4).

174 Auditor-General's Office, *Report of the Auditor-General for the Financial Year 1994/95* (1995): Six town councils were last audited in FY 1994/1995 – Aljunied, Bishan-Serangoon, Bukit Batok, Hong Kah, Hougang and Potong Pasir.

175 Auditor-General's Office, *Audit of Aljunied-Hougang-Punggol East Town Council* (2015).

176 Auditor-General's Office, *Report of the Auditor-General for the Financial Year 1991/92* (1992) at p 26, para 115: To meet the six-month submission deadline of the audited financial statements, it was decided between the Ministry of National Development and Attorney-General's Office that public accounting firms be appointed to audit 21 town councils while Auditor-General only audited four.

177 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 22D(1)(c).

178 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Arts 22D(2) and 22D(3).

179 GIC Asset Management Pte Ltd, GIC Real Estate Pte Ltd, GIC Special Investment Pte Ltd and GIC Pte Ltd.

180 GIC, *Report on the Management of the Government's Portfolio for the Year 2014/15* at p 36.

181 Audit Act (Cap 17, 1999 Rev Ed) s 4(1)(b), per Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2014/15* (2015).

182 *Singapore Parliamentary Debates, Official Report* (8 July 2014) "Oral Answers to Questions: Investment of CPF Monies" vol 92 (Tharman Shanmugaratnam, Deputy Prime Minister and Minister for Finance).

they contain competitive information,¹⁸³ including the amount of reserves GIC invests abroad and the type of assets involved.¹⁸⁴ Such disclosure could make the Singapore dollar vulnerable to speculative attacks and is deemed detrimental to “public interest”.¹⁸⁵ Without the need to disclose financial accounts, the AuG’s audit findings on GIC in his annual report then plays a key role in accountability to Parliament.¹⁸⁶

50 This is a commendable attempt to strike a prudent balance on several fronts. The first involves a balance between efficiency and accountability. Subjecting GIC to overly rigorous state audit involves trade-offs of competitiveness or opportunity costs, given the fast-paced investment environment. Not having any, however, detracts from principles of public accountability. The second balance is between capability and scope of audit. There might be a strain on the AGO’s limited resources to audit GIC’s many overseas subsidiaries and ten global offices.¹⁸⁷ Having an audit on GIC’s main companies, rather than all, seems to be a good midpoint. It is, however, problematic that the AuG has no legal mandate to audit GIC unless requested by GIC and with the Minister’s consent.¹⁸⁸ It is possible that GIC can someday choose not to allow its accounts to be audited by the AuG, in favour of commercial auditors. Further, GIC can select which companies under the group to be audited by the AuG. This presents the possibility of many of its subsidiaries escaping state audit altogether.

51 Unlike GIC and MND Holdings, Temasek is not subject to any form of state audit. It is instead audited by a commercial auditor, KPMG LLP.¹⁸⁹ This means that it would likely be subject to mainly financial statement audits and not operational audits, which are crucial in evaluating efficiency and effectiveness. Temasek’s accountability hitherto depends much on the integrity of its leaders, but this cannot be taken for

183 *Singapore Parliamentary Debates, Official Report* (12 March 2001) “Budget, Ministry of Finance” vol 73 at col 801 (Richard Hu Tsu Tau, Minister for Finance).

184 *Singapore Parliamentary Debates, Official Report* (16 May 2001) “Oral Answers to Questions: GIC (Disclosure of Annual Accounts)” vol 73 at col 1671 (Lee Hsien Loong, Deputy Prime Minister).

185 *Singapore Parliamentary Debates, Official Report* (16 May 2001) “Oral Answers to Questions: GIC (Disclosure of Annual Accounts)” vol 73 at col 1671 (Lee Hsien Loong, Deputy Prime Minister).

186 *Singapore Parliamentary Debates, Official Report* (1 October 1996) “Oral Answers to Questions: GIC Pte Ltd (Measures Taken in Response to AuG’s Findings)” vol 66 at cols 575–576 (Lee Hsien Loong, Deputy Prime Minister and Acting Minister for Finance).

187 GIC, *Report on the Management of the Government’s Portfolio for the Year 2014/15* at p 62.

188 Audit Act (Cap 17, 1999 Rev Ed) s 4(1)(b).

189 Temasek Holdings, *Embracing the Future: Temasek Review 2015* at p 78.

granted in future.¹⁹⁰ The reason as to why Temasek is excluded from state audit, unlike GIC, is unclear. It could be attributed to business imperatives of efficiency and competitiveness, especially since it takes on higher risk investments than GIC or the Monetary Authority of Singapore as a predominantly equity investor.¹⁹¹ However, it is precisely the higher risk that warrants the purview of the AuG to ensure adequate financial controls. Even in GIC, breaches have been found with regard to controls in payment,¹⁹² credit limit breaches¹⁹³ and unauthorised purchases of securities.¹⁹⁴ In the latter case, the AuG disagreed with GIC's management's judgment that securities it purchased need not be explicitly guaranteed by the Government. The Government subsequently followed the AuG's interpretation and GIC addressed its shortfalls.¹⁹⁵ It was also contended that GIC's management had not discovered the multiple breaches before the AuG's findings.¹⁹⁶ This shows the importance of state audit in a government investment vehicle like Temasek. In the wake of the 1MDB scandal in Malaysia, it is prudent for state investment entities to be subject to institutional safeguards like state audit and not be left unchecked. 1MDB had three

190 *Singapore Parliamentary Debates, Official Report* (27 August 2002) "New Charter of Government-linked Companies" vol 75 at cols 881–882 (Inderjit Singh, Member of Parliament (Ang Mo Kio)).

191 *Singapore Parliamentary Debates, Official Report* (9 March 2010) "Budget: Head M – Ministry of Finance" vol 86 at col 3592 (Lim Hwee Hua, Second Minister for Finance).

192 See, eg, Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2007/08* (2008) at p 38, para 2: The Auditor-General's Office observed an instance where the staff processing payment in GIC did not sight proper documentation before paying a fund manager on his invoice of US\$3.39m.

193 See, eg, Auditor-General's Office, *Report of the Auditor-General for the Financial Year 1995/96* (1996) at p 34, para 139: The Auditor-General's Office found nine breaches of credit limits not reported to heads of the investment departments, citing ineffective monitoring.

194 See, eg, Auditor-General's Office, *Report of the Auditor-General for the Financial Year 1995/96* (1996) at p 35, paras 144–145: The Auditor-General's Office found that GIC had entered into nine transactions to purchase securities on behalf of the Board of Commissioners of Currency which were unauthorised under the Currency Act (Cap 69, 1992 Rev Ed).

195 *Singapore Parliamentary Debates, Official Report* (1 October 1996) "Oral Answers to Questions: GIC Pte Ltd (Measures Taken in Response to AuG's Findings)" vol 66 at col 576 (Lee Hsien Loong, Deputy Prime Minister and Acting Minister for Finance):

Under the Currency Act, the Board of Commissioners of Currency's funds have to be invested in securities which are guaranteed by foreign governments or international financial institutions ... GIC had, on behalf of BCCS, purchased certain securities which were not explicitly guaranteed by a government ... [but] were regarded in the market as implicitly guaranteed.

196 *Singapore Parliamentary Debates, Official Report* (1 October 1996) "Oral Answers to Questions: GIC Pte Ltd (Measures Taken in Response to AuG's Findings)" vol 66 at col 576 (Low Thia Khiang, Member of Parliament (Hougang)).

commercial auditors over four years¹⁹⁷ and is now facing money laundering and criminal breach of trust investigations.¹⁹⁸

(IV) GOVERNMENT-LINKED COMPANIES

52 A closely related category of entities are the government-linked companies, which are often privatised public bodies, such as the Port of Singapore Authority. As they are not 100%-owned by the Government and could involve other financial stakeholders, the arguments for subjecting them to state audit would be weaker than those proffered previously. However, the bigger the Government's stake in these companies, the more compelling the justification for state audit.

(b) Challenge 2: Quality of audit

53 Besides the limitations in terms of scope, another challenge the AuG faces is in the quality of audit. Delegation is one thorny aspect. Due to resource constraints,¹⁹⁹ the AuG outsources audit work for various ministries, statutory boards and town councils to commercial auditors.²⁰⁰ However, these auditors might not be as stringent as the AuG concerning legal compliance or performance (eg, wastefulness),²⁰¹ and their terms of reference might primarily involve financial statements audits.

54 Another area of concern is the under-emphasis of performance audits. The law adopts a pro-regularity approach towards state audit, focusing on financial and administrative propriety.²⁰² It does not prescribe the "vital product of public accountability", which is evaluating

197 "Will Deloitte Be Replaced As 1MDB's Auditor, Asks Tony Pua?" *Malaysian Insider* (4 October 2015).

198 Melissa Goh, "FBI Has Yet to Confirm Probe into 1MDB" *Channel NewsAsia* (21 September 2015).

199 See, eg, Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2010/11* (2011) at p 5 ("if resources permit") and Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2011/12* (2012) at p 3 ("limited manpower resources").

200 The only exception is the Monetary Authority of Singapore ("MAS"), which has to be audited by the Auditor-General annually under s 33 of the MAS Act (Cap 186, 1999 Rev Ed).

201 Philip N Pillai, *State Enterprise in Singapore: Legal Importation and Development* (Singapore University Press, 1983) at p 79.

202 See s 5 of the Audit Act (Cap 17, 1999 Rev Ed), where the nature of audit covers: (a) safeguarding collection and custody of public moneys, (b) ensuring proper authority and documentation for transactions; and (c) compliance with the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint), the Financial Procedure Act (Cap 109, 2012 Rev Ed) and other financial provisions in the law.

economy, efficiency and effectiveness of the organisation (“3Es”).²⁰³ Although not cast in law, the AGO has since FY 2011/2012 started checking for excess, extravagance and gross inefficiency tantamount to waste “in the course of” auditing ministry and departmental accounts.²⁰⁴ Further, the Ministry of Finance has in practice allowed the AuG to conduct selective audits²⁰⁵ on statutory boards separately from financial statements audits.²⁰⁶

(c) Challenge 3: Scope of disclosure

55 A third challenge deals with the scope of disclosure of audit findings. Annually, the AuG presents his audit report to the EP and Parliament. However, there is one exceptional occasion where his findings may be exempted from presentation to Parliament. This concerns any matter which the PM and the Defence Minister (“DM”), on the recommendations of the Permanent Secretary of the Ministry of Defence (“MINDEF”) and the Chief of Defence Force, “certify to be necessary for the defence and security of Singapore.”²⁰⁷ The PM and the DM’s certification of the matter are treated as “conclusive.”²⁰⁸ Such information is not intended for public disclosure as it is deemed to “compromise security” and create alarm in a period of political tension or crisis.²⁰⁹

56 Despite the sensitivity and need for secrecy surrounding security and defence transactions, such a move could in fact be dangerous for Singapore. Nominated MP (“NMP”) Walter Woon postulated the scenario of an irresponsible, profligate government.²¹⁰ In the absence of the EP’s veto on security and defence transactions,²¹¹ such a government could circumvent all safeguards and certify any transaction as necessary for national security, especially since national

203 E L Normanton, *The Accountability and Audit of Governments* (Manchester University Press, 1966) at p 22.

204 Auditor-General’s Office, *Report of the Auditor-General for the Financial Year 2011/12* (2012) at p 2.

205 Auditor-General’s Office, *What Is Public Accountability?* (November 2011) at p 10.

206 Ministry of Finance, M3/2011 circular (10 March 2011).

207 Audit Act (Cap 17, 1999 Rev Ed) s 8(4).

208 Audit Act (Cap 17, 1999 Rev Ed) s 8(5).

209 *Singapore Parliamentary Debates, Official Report* (25 August 1994) “Constitution of the Republic of Singapore (Amendment No 2) Bill” vol 63 at col 424 (Lee Hsien Loong, Deputy Prime Minister).

210 *Singapore Parliamentary Debates, Official Report* (25 August 1994) “Constitution of the Republic of Singapore (Amendment No 2) Bill” vol 63 at col 435 (Walter Woon, Nominated Member of Parliament).

211 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Arts 151A(1) and 151A(2).

security is such a broad term.²¹² While the AuG can still audit and report to the EP on these defence and security transactions, he would in effect be ineffective as a check on financial power, which would be concentrated in the PM and DM. It is therefore important not to curtail the AuG's power of disclosure, even on matters of national security and defence. Further, such a move would prevent Parliament from exercising its true supervisory role over government expenditure on defence and hinder proper debate on matters relating to national security, leading to an unhealthy concentration of decision-making power in the Executive.²¹³ What is truly needed, however, is a balance between secrecy and accountability. It is submitted that the AuG report to a bipartisan PAC for such matters.²¹⁴

(3) Warden

57 A third characterisation of the AuG is a warden who enhances compliance with financial provisions²¹⁵ and flags constitutional and statutory breaches for corrective action. This mirrors the traditional view of the state auditor as a “policeman” enforcing “regularity”.²¹⁶ He also alerts criminal wrongdoing such as fraud and corruption through his audit, albeit not actively detecting them.²¹⁷

58 The AuG is highly effective in his warden role. From FY 1991/1992 to present, the AuG has flagged at least 16 constitutional breaches²¹⁸ and many more statutory breaches. A majority of the constitutional breaches involve non-payments into the Consolidated Fund,²¹⁹ as well as re-allocating funds from the Consolidated and Development Funds for non-approved purposes.²²⁰ Other constitutional breaches include circumventing the parliamentary budget process,²²¹ and failures to seek the EP's concurrence over a Contingencies Fund

212 *Singapore Parliamentary Debates, Official Report* (25 August 1994) “Constitution of the Republic of Singapore (Amendment No 2) Bill” vol 63 at col 436 (Walter Woon, Nominated Member of Parliament).

213 *Singapore Parliamentary Debates, Official Report* (25 August 1994) “Constitution of the Republic of Singapore (Amendment No 2) Bill” vol 63 at cols 442–443 (Low Thia Khiang, Member of Parliament (Hougang)).

214 See Recommendation D at para 80 below.

215 Audit Act (Cap 17, 1999 Rev Ed) s 5(c).

216 E L Normanton, *The Accountability and Audit of Governments* (Manchester University Press, 1966) at p 26.

217 Auditor-General's Office, *What Is Public Accountability?* (November 2011) at p 11.

218 See Appendix A below.

219 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 145.

220 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148.

221 See, eg, Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2000/01* (2001) and Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2004/05* (2005).

payment²²² and issuing a promissory note.²²³ Apart from financial breaches, the AuG has also observed criminal breaches leading to prosecution and justice. In FY 1999/2000, for instance, the AuG reported misappropriation by a MINDEF official who was later convicted of criminal breach of trust.²²⁴

59 Although the AuG seems to make pronouncements on constitutional and statutory breaches, they carry no legal effect as judicial power of interpreting law is vested in the Judiciary.²²⁵ A clear example would be the case of *Jeyaretnam Kenneth Andrew v Attorney-General*²²⁶ (“*Jeyaretnam*”), where the appellant asked for leave to quash the Government’s decision to grant a loan to the International Monetary Fund (“IMF”) based on a constitutional breach.²²⁷ The appellant cited the FY 2011/2012 AGO report, which described Art 144 as “requir[ing] the President’s concurrence for the granting of certain loans and guarantees”.²²⁸ The courts, however, concluded that Art 144 “only ... applied to the giving of a guarantee or the raising of a loan but not the giving of a loan”.²²⁹ While it distinguished the lapse in the AuG’s report from the IMF loan²³⁰ and said the AuG’s opinion on the promissory note in question was “not relevant” for the appellant’s case,²³¹ its interpretation of the scope of Art 144 for the granting of loans is markedly different from the AuG’s.

222 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148C. See, eg, Auditor-General’s Office, *Report of the Auditor-General for the Financial Year 1999/2000* (2000).

223 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 144. See, eg, Auditor-General’s Office, *Report of the Auditor-General for the Financial Year 2011/12* (2012) at paras 33–36.

224 Auditor-General’s Office, *Report of the Auditor-General for the Financial Year 1999/2000* (2000) at paras 67–68.

225 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Arts 4 and 93.

226 [2014] 1 SLR 345 (CA); on appeal from *Jeyaretnam Kenneth Andrew v Attorney-General* [2013] 1 SLR 619 (HC).

227 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 144:
No guarantee or loan shall be given or raised by the Government –
(a) except under the authority of any resolution of Parliament with which the President concurs ...

228 Auditor-General’s Office, *Report of the Auditor-General for the Financial Year 2011/12* (2012) at paras 33–36: The Auditor-General’s Office found that the Ministry of Finance did not comply with Art 144 when it issued a promissory note to the International Development Association without obtaining the Elected President’s concurrence. See also Appendix A below for details.

229 *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [7].

230 *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [7]: The court held that a promissory note would create a liability, while a loan by the Government remained an asset. The latter had no risk of drawing down on reserves.

231 *Jeyaretnam Kenneth Andrew v Attorney-General* [2013] 1 SLR 619 at [35].

60 However, there is still much weight in the AuG's opinion as it is often supported by the AG's interpretation.²³² His findings and recommendations also have strong force in practice; they are taken "seriously" by relevant agencies and their top management.²³³ In almost every breach or finding noted, the entity concerned would take prompt corrective action, ranging from a transfer or reallocation of funds, seeking proper approval or tightening internal controls to legal or disciplinary action.²³⁴ Often, government bodies may even be compelled to explain their lapses, which further promotes transparency and public accountability.²³⁵ Therefore, it is interesting that the AuG produces the effect of exercising legal limits on executive power although he is not a regulator.

61 It can also be argued that the AuG plays a more effective role than the Judiciary in imposing legal limits on financial power although his pronouncements have no legal effect. This can be attributed to the inspective role he plays in the course of his audit, compared to the reactive role judges play. The AuG is, in fact, at the frontline of ensuring legal compliance concerning financial provisions, since judges would not consider them until an applicant comes to them to complain of a breach.²³⁶ The barrier of legal costs, for instance, often precludes such applications. In a 1997 controversy over Singapore's \$5bn loan offer to Indonesia, the WP alleged that the move contravened Art 144(2) of the Constitution and its Secretary-General, J B Jeyaretnam, sought to refer the matter to court, provided the State would bear the costs.²³⁷ His offer was, however, rejected by the Government; thus, the case could not be brought to court to determine whether the loan offer was constitutional.²³⁸ This is where the AuG can play a role in helping ordinary people investigate alleged breaches, especially since whistleblowing is welcomed.²³⁹

232 Audit Act (Cap 17, 1999 Rev Ed) s 6(1)(f): The Auditor-General may obtain the Attorney-General's advice on any question of law.

233 *Singapore Parliamentary Debates, Official Report* (4 August 2014) "Addressing Lapses in the AuG's Report for FY2013/14" vol 92 (Tharman Shanmugaratnam, Deputy Prime Minister and Minister for Finance).

234 *Singapore Parliamentary Debates, Official Report* (17 August 2015) "Ministries' Follow-Up Action from AuG Report" vol 93 at p 6 (Tharman Shanmugaratnam, Deputy Prime Minister and Minister for Finance).

235 See Appendix A below.

236 See, eg, *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345.

237 Kevin Y L Tan, *Constitutional Law in Singapore* (Kluwer Law International, 2011) at para 119.

238 Kevin Y L Tan, *Constitutional Law in Singapore* (Kluwer Law International, 2011) at para 120.

239 Auditor-General's Office website, "FAQs" <<http://www.ago.gov.sg/faq>> (accessed July 2016): "AGO welcomes feedback or complaints including whistle-blowing that relate to loss or potential loss of public funds ...".

62 Further, even in a case of complaint, the courts might see the issue as “entirely political and [to] be resolved as such”,²⁴⁰ precluding citizens’ interference. In *Jeyaretnam*, for instance, the appellant was denied *locus standi* as he lacked both public and private rights in the matter.²⁴¹ The AuG’s role as a warden would thus be helpful in assisting citizens to uphold socio-economic justice by ensuring that such financial provisions are not breached.

B. Secondary functions

63 The AuG also serves secondary functions which are not statutorily prescribed: raising political accountability and citizen awareness or participation. While the AGO enhances but does not enforce accountability, the AuG’s disclosures and findings undeniably provide political ammunition for MPs, both ruling and opposition. For instance, the AGO’s special audit on AHPETC and the AuG’s FY 2014/2015 report surfaced as significant issues for debate in parliamentary sittings and election rallies for 2015. Such information and political discourse would consequently have the potential to influence public opinion and inform voting decisions over the quality of the current government (and of the opposition). The AuG’s disclosures also help raise public awareness of policies and issues and citizen participation in politics. All of these avenues ultimately contribute to political constitutionalism²⁴² in some way or another, providing an additional check on government power alongside existing legal limits.

VI. The Auditor-General: Yet another innovation in Singapore’s constitutional autochthony

64 The fact that the AuG furthers both legal and political constitutionalism is a unique feature unseen in other constitutional institutions. While constitutions may comprise a mixture of both legal and political checks,²⁴³ it is rare to find a singular institution simultaneously embodying both forms of constitutionalism. More interestingly, the AuG, which was elevated to a constitutional office in 1991, can be conceived as yet another innovation in Singapore’s “constitutional renaissance” and autochthony since 1984.²⁴⁴ It accompanies other indigenous institutions like the EP, NMP and

240 *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [61].

241 *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [65].

242 John A G Griffith, “The Political Constitution” (1979) 42(1) MLR 1 at 16.

243 Stephen Gardbaum, *The New Commonwealth Model of Constitutionalism: Theory and Practice* (Cambridge University Press, 2013) at p 33.

244 Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012) at p 280.

Non-Constituency MP (“NCMP”) in departing from the British Westminster model of government for Singapore’s needs.

65 There are two key aspects of the 1991 constitutional innovation of the AuG, both of which depart from the British model. The first concerns the enlargement of the scope of the AuG’s role as a check on financial power. Unlike the British C&AG and other AuGs, which primarily perform watchdog and warden functions, the Singapore AuG plays the additional role of a watchman to the EP in safeguarding Singapore’s past reserves.²⁴⁵ This is attributable to the political, legal and economic realities facing Singapore.

66 While in the British model Parliament is conventionally a leading actor checking imprudent financial decisions, the supermajority composition of Singapore’s Parliament by the PAP presents a unique political challenge. It is in this context that the EP (and the AuG as a corollary) is fashioned “as a check against the powerful parliamentary executive” concerning financial powers over reserves.²⁴⁶ This is a significant development in Singapore’s constitutional history, given the Government’s historical eschewal of constitutional checks, including the Ombudsman and Council of State proposed by the Wee Commission.²⁴⁷

67 Nonetheless, the EP alone is an insufficient check; he may not have full expertise and experience on reserves and may not be notified of drawdowns by a rogue government. The AuG, having professional expertise and full access to accounts, thus assists the EP in fiscal guardianship. He can be conceived as a complementary financial check to the EP, albeit a deterrent and not detective one. This is glimpsed from the 1990 Select Committee report, which recommended the AuG’s watchman role as one of three “method[s] to discourage Government from incurring reckless debts”²⁴⁸ Such an approach is consonant with the Government’s pragmatic workings, since either a proactive detective AuG or EP may paralyse its daily operations.²⁴⁹ Further, the Government prides itself as comprising honourable men (*junzi*) to be trusted with latitude in governance instead of suspicion.²⁵⁰ Unsurprisingly, this

245 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148G.

246 Thio Li-ann, *A Treatise on Singapore Constitutional Law* (Academy Publishing, 2012) at p 280.

247 *Report of the Constitutional Commission* (1966) chs III and IV.

248 *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill No 23/90)* (Parl 9 of 1990, 18 December 1990) at para 64.

249 *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill No 23/90)* (Parl 9 of 1990, 18 December 1990) at para 64.

250 Government of Singapore, *White Paper on Shared Values* (Cmd 1, 1991) at para 41.

Confucianist value has diffused into the fashioning of constitutional financial controls. Only a few top officers “expected to be of high integrity”, including the AuG, are obliged to report potential drawdown transactions to the EP as the select committee (“Select Committee”) hoped to “keep ... omissions to a minimum”.²⁵¹

68 Legal and economic realities also undergird the constitutional innovation of the AuG. With extensive proposed amendments to constitutional financial procedures requiring the EP’s consent or veto, the AuG’s pre-existing statutory watchman and warden functions were indirectly widened in scope. Recognising that “auditors are essential to ensure compliance with the new [financial] procedures”, the Select Committee thus recommended that the position of the AuG be spelt out in the Constitution,²⁵² thus elevating it to a constitutional office in 1991. This is a landmark constitutional development as it kick-started an era of greater financial checks and mechanisms in Singapore’s Constitution, including the AuG, the Accountant-General and the CPA. In subsequent decades, even till present, the Government frequently amended constitutional financial procedures to fine-tune safeguards and management of reserves, preparing for a profligate government scenario while catering to economic needs and rising expenditure. Evidently, the incorporation of reserves and financial checks in the Constitution underscores their importance for Singapore’s survival and sustainability; Singapore’s finances are perhaps as deserving of protection as rights and values. Simultaneously, these financial provisions espouse Confucianist values of frugality and fiscal prudence for intergenerational equity, given Singapore’s abundant wealth amassed from decades of budget surpluses and investments.²⁵³

69 A second innovative aspect concerns the intricately fashioned independence of the AuG. The Select Committee recommended that his office be spelt out in the Constitution, “incorporating provisions similar to those in the pre-1963 Constitution”.²⁵⁴ Notably, the Committee selected the pre-1963 position, *viz*, the Singapore (Constitution) Order in Council 1958, which had elevated the AuG’s predecessor – the

251 *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill No 23/90)* (Parl 9 of 1990, 18 December 1990) at para 70.

252 *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill No 23/90)* (Parl 9 of 1990, 18 December 1990) at para 74.

253 Tilak Abeyasinghe & Ananda Jayawickrama, “Singapore’s Recurrent Budget Surplus: The Role of Conservative Growth Forecasts” (2008) 19 *Journal of Asian Economics* 117 at 117.

254 *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill No 23/90)* (Parl 9 of 1990, 18 December 1990) at para 74.

Director for Audit (“the Director”) – to a constitutional level, stipulating his tenure, powers and duties.²⁵⁵ In the post-merger 1963 State Constitution and post-independence constitutions, the Director’s office was no longer constitutional.²⁵⁶ What was special about the 1958 position was the strong signal of independence from government influence. Then-colonial Finance Secretary Hart noted that as the Director’s position “will increase in importance”; it should “no longer be a department of Government”, and ought to be “completely independent ... and free from political influence”.²⁵⁷ It is therefore telling that the 1990 Select Committee was intending to fashion the AuG as a highly independent constitutional office.

70 Supporting this is the fact that in the Constitution, the AuG is intentionally not categorised under the three branches of government and was the only financial check the Committee recommended to be spelt out clearly in the Constitution.²⁵⁸ This followed representations on the need for independent checks. Walter Woon, for instance, drew analogies between checks on government and external auditors in the Companies Act,²⁵⁹ and noted the extent the law goes to ensure auditors’ independence from company management.²⁶⁰ Indeed, the AuG serves like an “external auditor” to the Government, and its constitutional position therefore has to be independent from all three branches. This departs from the traditional British model where the C&AG is an agent of Parliament, giving the Singapore AuG much confidence and muscle to exercise his authority as a financial check, particularly in the context of a strong dominant party government and numerically weak opposition.

VII. Reform

71 Although Singapore’s AuG is fairly independent and effective as a limit on financial power, there is still room for improvement by

255 Singapore (Constitutional) Order in Council 1958 (SI 1958 No 1956) Arts 101–103.

256 See Sabah, Sarawak and Singapore (State Constitutions) Order-in-Council 1963 (SI 1963 No 1493) and, *eg*, Constitution of the Republic of Singapore (1966 Rev Ed).

257 *Singapore Legislative Assembly Debates, Official Report* (11 June 1958) “Supplementary Provision (Sessional Paper No Cmd 14 of 1958)” vol 6 at col 388 (T M Hart, Financial Secretary).

258 Notice, *eg*, the Accountant-General, another financial check found in Art 148G of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) alongside the Auditor-General, is not spelt out in the Constitution concerning his powers, tenure, duties *etc*.

259 Cap 50, 1988 Rev Ed.

260 *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill No 23/90)* (Parl 9 of 1990, 18 December 1990) Paper No 26 at paras 215–216, *per* Walter Woon.

international standards. A four-pronged approach is proposed to enhance the independence and effectiveness of his functions.

A. *Strengthening independence protections*

72 The first thrust involves enhancing independence safeguards. Firstly, for the AuG appointment, the PM's real or perceived influence ought to be diminished. The most ideal situation would be for the AuG's appointment to be entirely free from the Executive's influence, such as empowering the EP to have the right of nomination, with parliamentary approval by a two-thirds majority.²⁶¹

73 Alternatively, the status quo can remain, but safeguards must be strengthened. One good practice might be to have an advisory committee for the Government comprising senior government members and members from accounting organisations²⁶² rather than advice from merely the PSC chairman. This arrangement also taps on industry expertise. Another possibility would be involving Parliament in an advisory role or scrutiny. In the UK, for instance, the PAC has to review and agree on the PM's nomination before he makes a motion in Parliament and the Queen's subsequent appointment.²⁶³ Nonetheless, this must be contingent on a reform of the PAC in Singapore to include more opposition members.²⁶⁴ The US, on the other hand, requires the President to appoint the Comptroller General with the advice and consent of the Senate.²⁶⁵

74 Secondly, security of tenure should be reinstated. Singapore's AuG is now appointed for fixed, renewable terms of six years,²⁶⁶ but it is strongly recommended that tenure until retirement be restored, such that the AuG receives the same treatment as the AG²⁶⁷ and the CJ.²⁶⁸ Malaysia is one such country which still retains tenure until retirement

261 International Organisation of Supreme Audit Institutions, *INTOSAI Guidelines and Good Practices Related to SAI Independence* (ISSAI 11, 2007) Principle 2, Good Practices 3 and 4.

262 International Organisation of Supreme Audit Institutions, *INTOSAI Guidelines and Good Practices Related to SAI Independence* (ISSAI 11, 2007) Principle 2, Good Practice 5.

263 Budget Responsibility and National Audit Act 2011 (c 4) (UK) s 11.

264 See para 80 below.

265 31 USC § 703(a)(1).

266 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 148F(5).

267 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 35(4).

268 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 98(1).

for her AuG.²⁶⁹ Alternatively, a “sufficiently long and fixed term” should be granted for the position.²⁷⁰ Singapore’s six-year term falls short of international standards.²⁷¹ In common law jurisdictions like UK,²⁷² Canada²⁷³ and Australia,²⁷⁴ a ten-year non-renewable term is the preferred option. Interestingly, the UK had abolished unlimited tenure for a non-renewable ten-year term only in 2009.²⁷⁵ The US Comptroller General, meanwhile, has a 15-year term.²⁷⁶

75 Thirdly, there should be a provision spelling out the AuG’s immunity against any legal proceedings. This could be modelled after the immunity afforded to the EP in the Singapore Constitution,²⁷⁷ indemnity in Australia²⁷⁸ or protection from prosecution or defamation in Canada.²⁷⁹ However, it is best that the immunity not be too narrow. The Canada provision, while useful to a certain extent, did not prevent Canada’s AuG from being sued for withholding her report after Parliament dissolved.²⁸⁰ Even in the event of a proceeding against the AuG, the courts should apply a strong presumption of constitutionality that he is acting in the public interest, unless proven otherwise.²⁸¹ In *Ramalingam Ravinthran v Attorney-General*,²⁸² the Court of Appeal affirmed in the context of the AG’s prosecutorial discretion that “acts of high officials of state should be accorded a presumption of legality and regularity, especially ... in the exercise of constitutional powers”²⁸³ This ought to be the case as well for the AuG, given his similar stature as a “high official of state” in the Constitution and his weighty constitutional powers and roles in public finance.

269 International Organisation of Supreme Audit Institutions website <<http://intosaitaudit.org/mandates/writeups/malaysia.htm>> (accessed July 2016); see also Art 105(3) of the Malaysian Federal Constitution (2010 Reprint).

270 International Organisation of Supreme Audit Institutions, *INTOSAI Guidelines and Good Practices Related to SAI Independence* (ISSAI 11, 2007) Principle 2, Guidelines.

271 *Singapore Parliamentary Debates, Official Report* (12 January 2001) “Constitution of the Republic of Singapore (Amendment) Bill” vol 72 at col 1329 (Richard Hu Tsu Tau, Minister for Finance).

272 Budget Responsibility and National Audit Act 2011 (c 4) (UK) ss 11(6) and 11(7).

273 Auditor General Act (RSC 1985, c A-17) (Canada) s 3(1.1).

274 Auditor-General Act (Cth) Sch 1, para 1.

275 Risk and Regulation Advisory Council, *The National Audit Office, the Public Accounts Committee and the Risk Landscape in UK Public Policy* (October 2009).

276 31 USC § 703(b).

277 Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) Art 22H.

278 Auditor-General Act (Cth) s 55: “(1) The Commonwealth must indemnify a person for any liability that the person incurs for an act or omission of the person in ... performing an Auditor-General function.”

279 Auditor General Act (RSC 1985, c A-17) (Canada) ss 18.2(1) and 18.2(2).

280 *Trotter v Canada (Auditor General)* 2011 FC 498.

281 *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 at [46]–[47].

282 [2012] 2 SLR 49.

283 *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 at [46].

B. *Reviewing the Audit Act*

76 The second thrust concerns Audit Act reform. While other common law countries have progressed with new, expanded statutes governing state audit and public finance, Singapore's Audit Act has not been updated much since independence. It therefore fails to capture many developments in the past 50 years.

77 Firstly, the privatisation of many public bodies and statutory authorities have led to the emergence of government-owned and government-linked companies. The Audit Act should therefore be revamped to provide the AuG with a mandate to audit these entities (even though not prescribed under any law), alongside removing the unnecessary requirements for an entity's request and approval from the Minister. Consequently, the scope of "public authority" and "body administering public funds" would have to be revised to take into consideration these entities. New Zealand has an entire schedule listing down classes of public entities,²⁸⁴ including names of state-owned enterprises,²⁸⁵ while Australia provides a broad discretionary mandate to audit any "Commonwealth entity", "Commonwealth company" or their subsidiaries.²⁸⁶ Alternatively, the status quo can remain but a discretion for the AuG to step in if the public interest requires could be provided for in the Act. The current discretion lies with the Minister to direct the AuG,²⁸⁷ but it is submitted the AuG should be empowered to step in without the Executive's influence if he feels that any public entity warrants his attention. He, now being a constitutionally independent office of high integrity, can be relied on to exercise good discretion in his duties.

78 Secondly, standard enabling provisions for audit have been incorporated in most SBs' governing acts. However, some of these statutes are dated; hence, the audit mandate of SBs should be under one umbrella legislation (Audit Act). Thirdly, the nature of audit in the Act is also outdated as it focuses mainly on traditional financial and administrative regularity. The Act should incorporate performance audits against excess, extravagance and inefficiency amounting to waste as part of the scope of audit in this new age of accountability beyond regularity. These performance audits are now enshrined in many state audit legislations and typically allow the AuG to examine the 3Es

284 Public Audit Act (2001 No 10) (New Zealand) Sch 1 (Classes of Public Entities).

285 State-Owned Enterprises Act (1986 No 124) (New Zealand) Sch 1 (State Enterprises).

286 Auditor-General Act (Cth) ss 11 and 17.

287 Audit Act (Cap 17, 1999 Rev Ed) s 4(4).

(effectiveness, efficiency and economy) of public entities.²⁸⁸ Interestingly, Canada has a fourth E (environment); it also evaluates effects on sustainable development.²⁸⁹

C. *Enhancing the Auditor-General's Office capabilities*

79 The third thrust deals with audit capacity. A pertinent challenge exists in manpower limitations of the AGO, hinted by the AuG himself in some years.²⁹⁰ As a result, selective audits of government funds and statutory boards are done rotationally, only once in five to seven years,²⁹¹ and the AuG often has to delegate financial statements audit to commercial auditors,²⁹² especially SBs and TCs. AGO has to beef up its human capital through recruitment or training so as to widen and deepen its own purview over public entities.

D. *Reforming the Public Accounts Committee*

80 The fourth thrust pertains to scope of disclosure surrounding security and defence transactions. It is recommended that the AuG present to the PAC instead of Parliament for such matters. However, Singapore's PAC has to first be reformed to include more opposition MPs. In most jurisdictions, the PAC helps Parliament oversee government activities through scrutiny of accounts and the 3Es of policies,²⁹³ and following up on the AuG's reports.²⁹⁴ The size of the PAC differs across countries but distribution of PAC seats is often proportionate to parliamentary composition.²⁹⁵ In Singapore, as Parliament is dominated by the PAP, the current eight-member PAC

288 See, eg, s 18 of the English Budget Responsibility and National Audit Act 2011 (c 4); s 16 of the New Zealand Public Audit Act (2001 No 10); and s 17 of the Australian Auditor-General Act.

289 Auditor General Act (RSC 1985, c A-17) (Canada) s 7(2)(e).

290 See, eg, Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2010/11* (2011) at p 5 ("if resources permit") and Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2011/12* (2012) at p 3 ("limited manpower resources").

291 Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2014/15* (2015) at pp 10 and 19.

292 Auditor-General's Office, *Report of the Auditor-General for the Financial Year 2011/12* (2012) at p 3.

293 Mark Elliot & Robert Thomas, *Public Law* (Oxford University Press, 2011) at p 402.

294 *Fourth Report of the Public Accounts Committee* (Parl 2 of 2015, 4 February 2015).

295 Riccardo Pelizzo & Rick Stapenhurst, "Public Accounts Committees" Research Collection, Singapore Management University School of Social Sciences (Paper 81, 2006).

comprises all PAP MPs except one opposition NCMP from the WP.²⁹⁶ While this is an improvement over previous PAC compositions of only PAP MPs, it is still unhealthy to have such a low opposition representation in the PAC. Public finance scrutiny should involve the opposition to a greater degree, like other jurisdictions where the PAC is truly bipartisan and its chairman is often an opposition member to counterbalance majoritarian power.²⁹⁷ Further, opposition members have been invited to sit on other standing committees and should be more involved in public finance matters.²⁹⁸

VIII. Conclusion

81 The AuG is a truly unique creature in Singapore constitutional law. He is extra-political and extra-judicial in his institutional position but simultaneously seems effective in imposing political and legal limits on state financial power. He thus performs a critical role in advancing both legal and political constitutionalism, producing a dual constitutionalism effect unseen in other constitutional institutions.

82 This phenomenon is observed in the constitutional office of the AuG chiefly because of the underlying fundamental tension in his role. Normanton identifies the “ambivalent motives” of the state auditor, where on the one hand he is aware of the potential of confrontation with the Executive through reporting lapses, but on the other he knows he has to be a “co-worker” to the Executive in order for the Executive to take positive action on issues arising from audit.²⁹⁹ However, ambivalent motives aside, what is truly producing the dual constitutionalist effect are the seemingly ambivalent messages of the AuG’s work in limiting governmental power within Singapore’s constitutionalist system. Finding and reporting lapses, for instance, ensures public accounts are proper and in accordance with financial provisions and procedures, but they also influence public perception and opinion against the Government.

83 As a whole, the AuG can be said to be yet another constitutional innovation in Singapore’s constitutional autochthony. The Singapore AuG’s duties are relatively different from his counterparts worldwide,

296 They are: Jessica Tan (Chairman), Ang Hin Kee, Ang Wei Neng, Liang Eng Hwa, Lim Wee Kiak, Tin Pei Ling, Zainal Sapari and Leon Perera. Perera is the only opposition member in the Public Accounts Committee.

297 Riccardo Pelizzo & Rick Stapenhurst, “Public Accounts Committees” Research Collection, Singapore Management University School of Social Sciences (Paper 81, 2006).

298 Workers’ Party, Pritam Singh’s Rally Speech, Ubi Ave Rally (7 September 2015).

299 E L Normanton, *The Accountability and Audit of Governments* (Manchester University Press, 1966) at pp 404–405.

being a watchman over the nation's reserves and tackling compliance with complex financial procedures. He is also constitutionally independent from all three branches of government, an intricately balanced position unseen anywhere else. The Singapore AuG is therefore a worthy case study for constitutional law scholars and comparative researchers concerned about public finance accountability worldwide.

84 More interestingly, the AuG office seems to support the potential existence of a fourth branch of government in constitutional orders globally. This article suggests that a fourth branch collectively comprises institutions which may be appointed by a government but are largely independent of it and function as checks on specific spheres of its powers which necessitate greater monitoring and accountability. In other countries, these include national human rights institutions ("NHRIs"), the Ombudsman, electoral commissions and commissions for public appointments.³⁰⁰ Like the Singapore AuG, these institutions often face tension in their role and exhibit the dual constitutionalism effect in their functions. For instance, in Malaysia, its NHRI has been described as "schizophrenic" by one academic, as it is both a creature and watchdog of the State, protecting, investigating and reporting on human rights issues.³⁰¹ Interestingly and similar to the AuG, these institutions also manifest a unique form of providing accountability, beyond conventional answerability or coercive elements associated with Parliament or courts.³⁰² Reif calls it "co-operative control", where institutions like NHRIs or the Ombudsman use advice, persuasion and dialogue to obtain good governance outcomes and change behaviours.³⁰³ In Singapore, constitutional institutions such as the PSC, CPA and Presidential Council of Minority Rights may perhaps constitute part of this fourth branch of government. While independently these offices may vary in strength and efficacy, collectively they help promote constitutionalism in Singapore through "co-operative control".³⁰⁴

300 *Parliament's Watchdogs – At the Crossroads* (Oonagh Gay & Barry K Winetrobe eds) (Department of Political Science, University College London, 2008) at pp 17–28.

301 Thio Li-ann, "Panacea, Placebo or Pawn? The Teething Problems of the Human Rights Commission of Malaysia (Suhakam)" (2007–2008) 40(4) *Geo Wash Int'l L Rev* 1271.

302 Linda Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection" (2000) 13 *Harv Hum Rts J* 1.

303 Linda Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection" (2000) 13 *Harv Hum Rts J* 1.

304 Linda Reif, "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection" (2000) 13 *Harv Hum Rts J* 1.

85 With the increasing complexity of public finance management, greater societal expectations and the emergence of quasi-public bodies receiving public funds, there is room for the Singapore AuG's role to expand within and possibly beyond the traditional characterisations proffered in this article. His stature should also be raised and made on par with other heads of Singapore's organs of state.³⁰⁵ Much of this, however, hinges on political and legal developments or reform, alongside audit capacity improvements. Nonetheless, the AuG will be an excellent constitutional-cum-institutional check, so long as he continues to serve the public "without fear or favour", and with freedom and fervour.

APPENDIX A
Constitutional Breaches of Financial Provisions, 1991–2015³⁰⁶

No.	Report	Page/paragraph	Constitution provision breached	Ministry/description	Corrective action/response
1	FY 1997/1998	p 25, paras 99–100	Art 145	Ministry of Defence ("MINDEF"): placement of revenue from "Tengah Inn" into an unauthorised account instead of Consolidated Fund	After the matter was raised, MINDEF stopped collections and paid balance in account back to Consolidated Fund.
2	FY 1998/1999	pp 26–27, paras 91–94	Art 148	Ministry of Communications and Information Technology ("Mincom"): allowing savings from its development project to be used by MINDEF and charged to Mincom	Ministry of Finance ("MOF") advised reimbursement and Mincom later received reimbursement of \$22.17m from MINDEF.

305 This would include non-legal aspects of elevating the authority of the office, such as communication protocols, benchmarking of public service salary and rank grades, *inter alia*.

306 Compiled from Auditor-General's Office, Reports of the Auditor-General from Financial Years 1991/1992 to 2014/2015. The author would like to express his sincerest appreciation to Mr Abdul Hamid from the Auditor-General's Office and Prof Teo Chee Khiang for providing him with archives of old reports.

No.	Report	Page/ paragraph	Constitution provision breached	Ministry/description	Corrective action/response
3	FY 1998/ 1999	pp 28-29, paras 105-107	Arts 145 and 148	Ministry of Community Development (Social Development Unit ("SDU")): (a) fees collected from SDU members paid into a deposit account instead of Consolidated Fund (Art 145); and (b) account revenue used to meet SDU's expenditure for activities instead of seeking expenditure budget approval from Parliament via Supply Bill (Art 148).	Ministry of Community Development is reviewing the matter with MOF.
4	FY 1998/ 1999	pp 49-50, paras 217-219	Arts 145 and 148	Public Service Division: (a) course fees and other revenue collected paid into deposit accounts instead of Consolidated Fund (Art 145); and (b) part of revenue used to meet expenditure instead of seeking expenditure budget approval from Parliament via Supply Bill (Art 148).	Balance in deposit accounts amounting to \$6.68m was transferred back to Consolidated Fund.
5	FY 1999/ 2000	p 27, paras 108-110	Art 148C	Ministry of Finance: Elected President's ("EP's") concurrence not sought for advance of \$26.68m paid from Contingencies Fund to meet a ministry's expenditure	MOF explained that the error was an "oversight due to a lapse in procedure", wrote to inform EP on the incident and took steps to prevent future oversights.
6	FY 2000/ 2001	p 24, paras 75-77	Art 148	Ministry of Education: spent \$27.89m more than its authorised budget for manpower expenditure approved by Parliament	MOE explained how system controls and procedures were in place but not followed, and that it had taken steps to review internal controls.
7	FY 2001/ 2002	p 16, paras 70-72	Art 145	Singapore Police Force: wrongly paid unclaimed moneys into Police Fund instead of Consolidated Fund	Wrong credits of moneys amounting to \$118,029 were credited back to Consolidated Fund.

No.	Report	Page/ paragraph	Constitution provision breached	Ministry/description	Corrective action/response
8	FY 2001/ 2002	p 17, paras 73–76	Art 145	Singapore Police Force: wrongly paid canteen rentals into Police Central Welfare Fund instead of Consolidated Fund	Police stopped paying canteen rentals into the Police Central Welfare Fund and wrote to MOF for approval to retain all previous rental collections that had been spent on welfare.
9	FY 2003/ 2004	p 33, paras 59–60	Art 145	Ministry of Information, Communication and the Arts ("MICA") and Ministry of Manpower ("MOM"): paid fees for talks and seminars into deposit accounts instead of Consolidated Fund	MICA and MOM transferred deposit balances to the Consolidated Fund.
10	FY 2004/ 2005	p 13, paras 43–44	Art 148	Ministry of Trade and Industry ("MTI"): off-budget financing of expenditure for project by using divestment proceeds of investments; circumventing Parliament's control of expenditure	MTI accounted for divestment proceeds as government revenue and charged the \$130m spent on project to budget approved by Parliament for FY 2004/2005.
11	FY 2004/ 2005	p 14, paras 50–51	Art 145	Prime Minister's Office: government revenue from seminar not paid into Consolidated Fund	No corrective action was mentioned in report.
12	FY 2004/ 2005	p 29, para 60	Art 145	Ministry of National Development ("MND"): rental from Recreational Club not paid to Consolidated Fund	MND recovered rental revenue for April 1999 to July 2004 and credited rental from August 2004 to government revenue.
13	FY 2011/ 2012	p 16, paras 33–36	Art 144	MOF: EP's concurrence not obtained for Promissory Note issued	MOF explained for its administrative oversight and properly obtained the EP's concurrence and issued a new note. It also reviewed internal processes.

No.	Report	Page/ paragraph	Constitution provision breached	Ministry/description	Corrective action/response
14	FY 2011/ 2012	p 33, paras 96-100	Art 145	MND: accounting method selected resulted in revenue being used to fund part of expenditure on reclamation project instead of paying to Consolidated Fund and charging on Development Fund	MND assured no loss of public moneys and credited relevant revenue and expenditure (\$141.03m) to Consolidated and Development Funds respectively.