

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

COMMISSION OF INQUIRY RULES (“COI RULES”)

General

1. These rules may be cited as the “Commission of Inquiry Rules” or “the COI Rules” and are made pursuant to section 9 of the Commissions of Inquiry Act 1880 (cap 237).
2. The Commissioner may at any time amend, vary or dispense with the need for compliance with these Rules if he considers such necessary for the fair and effective conduct and management of the COI.
3. The Commissioner may issue such protocols, directions and Orders as he considers necessary for the effective conduct and management of the COI.
4. Participants, witnesses and their Counsel are deemed to undertake to adhere to these Rules.
5. The Commissioner may deal with a breach of these Rules or any act which undermines the effective conduct and management of the COI as he sees fit. That may include revoking or restricting the ability of participants or Counsel to take part in the COI.

Interpretation

6. In these Rules –
 - (a) “the Act” means the Commissions of Inquiry Act 1880 (cap 237);

- (b) “COI” means the Commission of Inquiry appointed under section 2 of the Act and pursuant to an instrument of appointment dated 19 January 2021 to establish whether there is information that corruption, abuse of office or other serious dishonesty in relation to officials, whether statutory, elected or public may have taken place in recent years, and if so, what conditions allowed this to happen and whether they may still exist; and, if appropriate, to make independent recommendations with a view to improving the standards of governance and the operation of the agencies of law enforcement and justice;
- (c) “the Commissioner” means Sir Gary Hickinbottom appointed as sole Commissioner under section 2 of the Act;
- (d) “COI Counsel” means counsel appointed by the Attorney General of the British Virgin Islands in accordance with section 13 of the Act, including any co-counsel so appointed;
- (e) “COI Secretary” means the secretary appointed by the Governor in accordance with section 6 of the Act;
- (f) “COI Solicitor” means a solicitor appointed by the Commissioner to assist in his COI;
- (g) “COI Team” means those persons authorised or appointed to assist the Commissioner in the COI;
- (h) “Counsel” means a barrister or solicitor with rights of audience in the British Virgin Islands authorised by the Commissioner to appear before him on behalf of a participant or witness or any other person authorised by the Commissioner to appear before him;

- (i) “designated email address” means the published email address of the COI Secretary (steven.chandler@bvi.public-inquiry.uk);
- (j) “document” means anything in which information of any description is recorded or stored; and “copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;
- (k) “the Governor” means the Governor of the British Virgin Islands as appointed under section 35 of The Virgin Islands Constitution Order 2007 (as amended);
- (l) “notified email address” means in the case of a person, the email address notified to the COI, in writing, as the address to be used for email communication.
- (m) “notified postal address” means in the case of any person other than the Commissioner, the postal address notified to the COI, in writing, as the address to be used for postal communication.
- (n) “participant” means a person designated as such under Rule 13 of these Rules.
- (o) “person” includes an individual, body corporate or unincorporate, a government department, a state agency or any other entity;
- (p) “private” means a COI hearing at which neither the media nor the public are permitted to be present;
- (q) “Record of Inquiry” means all documents given to or created by the COI;
- (r) “Request” means a written communication from the COI to a person

seeking voluntary disclosure to it of documents and or information;

- (s) “relevant” means anything which touches upon or concerns the subject matter of the COI or that may directly or indirectly lead to other information that touches upon or concerns the subject matter of the COI;
- (t) “Terms of Reference” means the Terms of Reference for the COI as set out in the Instrument of Appointment dated 19 January 2021;
- (u) “witness” is a person from whom the Commissioner intends to take written and/or oral evidence.

7. A requirement under these Rules that a document is given or sent to any person by the COI is deemed effective by the document being –

- (a) delivered in person;
- (b) left at the person’s notified postal address;
- (c) sent to the person’s notified postal address by first class post; or
- (d) sent by email to the person’s notified email address.

Applications

8. Save as set out elsewhere in these Rules or unless the Commissioner directs otherwise, any application to the COI should be made in writing, addressed to the Commissioner and sent to the COI Secretary at the designated email address.

9. Unless the Commissioner directs otherwise any application should be made

upon 7 days' notice.

10. The Commissioner may require that the application be supported by affidavit evidence.
11. The Commissioner will determine the application on the basis of the written application alone unless he considers an oral hearing necessary for the fair and just determination of the application.

Hearings

12. (1) The COI will hold its sittings at any location and at such times as specified by the Commissioner.
- (2) The Commissioner may, whether on application or not, make such directions as he considers necessary for the efficient management and conduct of any hearing of the COI including but not limited to:
 - (a) that a hearing may take place in person or by means of audio or video link;
 - (b) that the following may attend a hearing remotely either by audio or video link;
 - (i) the Commissioner himself
 - (ii) COI Counsel
 - (iii) a witness
 - (iv) a participant
 - (v) Counsel representing a participant or witness.

- (c) that the whole or part of any evidence or submission presented at a hearing should not be published;
 - (d) that the name or any other particulars likely to lead to the identification of a witness or any person participating in the COI (with the exception of Counsel) should not be published.
- (3) All hearings shall be deemed to take place in the British Virgin Islands irrespective of where the hearing in fact takes place and whether the Commissioner and/or others attend remotely.
 - (4) At the Commissioner's direction, a hearing of the COI may be held wholly or partly in private.

Participants

- 13. (1) COI Counsel is permitted to participate in the entirety of the COI.
- (2) Where upon application the Commissioner is satisfied that the conduct of a person forms part of the subject matter of the COI or that a person is implicated or concerned with the subject matter of the COI then that person shall be entitled to participate in the COI through Counsel.
- (3) Where upon application the Commissioner is satisfied that it is desirable that a person should participate in the COI, then that person shall be entitled to participate in the COI through Counsel.
- (4) In determining participant status for the purposes of these Rules, the Commissioner shall have regard to all the circumstances, including:
 - (a) whether the person has or may have a direct and substantial interest

in an important aspect of the COI;

- (b) whether the person played, or may have played, a direct and substantial role in an important aspect of the COI;
 - (c) whether the person may be the subject of criticism; and
 - (d) whether the person's participation in the COI may otherwise assist the Commissioner in fulfilling his Terms of Reference.
- (5) An application to be a participant must be made in the manner and form prescribed in the relevant protocol.
- (6) Where participants have joint or similar interests, they are encouraged to be represented by a single Counsel.
- (7) The Commissioner will determine the nature and extent to which a participant and/or Counsel representing that participant can take part in the COI. Such determination may include but is not limited to the extent to which any participant needs to be provided with documents in order to participate in the COI.
- (8) The Commissioner may in his discretion modify or revoke the ability of a participant to take part in the COI.
- (9) A person ceases to be a participant on:
- (a) being notified in writing by the Commissioner; or
 - (b) at the end of the COI.

Evidence

14. The Commissioner may:
 - (1) receive any evidence that he considers may assist in fulfilling the COI's Terms of Reference, whether or not the evidence would be admissible in a court of law;
 - (2) take evidence on oath or affirmation;
 - (3) permit a witness to give evidence by any means, including in writing or by electronic means and require the witness to verify the evidence by oath or affirmation.
15. Upon the Request of the Commissioner, a person, whether granted participant status or not, shall produce true copies of all documents in their possession or control having any relevance to the subject matter of the request and an inventory listing the said documents and signed by the person producing them. Upon the Request of the Commissioner, such persons shall also provide originals of relevant documents in their possession or control for inspection.
16. The Commissioner may require the production of documents pursuant to a summons issued under the Act.
17. All documents received by the COI will be treated as confidential, unless and until the Commissioner directs otherwise. This does not prevent the Commissioner from producing a document or a part a document or a gist of the same to a potential witness as part of the Commissioner's investigation nor does it limit the Commissioner from disclosing documents, parts of documents or a gist of the same to a participant as necessary. Nothing in this paragraph will compromise the confidentiality of any documents or information given to the

COI on the basis of an express understanding or agreement of confidence.

18. (1) Participants, witnesses and their counsel or any other persons are deemed to undertake that any information and documents received by them from the COI will be kept confidentially and used solely for the purpose of this COI or, subject to permission from the Commissioner, any directly related proceedings. No other use is permitted.
- (2) That undertaking extends to the receipt of documents which may be the subject of an application that the document or parts of it be redacted.

Oral Evidence

19. The Commissioner may issue a summons requiring a person to give evidence to the COI.
20. The Commissioner may require that a witness provide a witness statement or affidavit in advance of giving oral evidence at a hearing of the Inquiry.
21. A witness may be called more than once to give evidence to the COI.
22. A witness will be required to give evidence on oath or affirmation.
23. Any member of the COI Team may administer the oath or affirmation.
24. A participant, in accordance with the rules herein concerning the making of applications (Rules 8-11), may apply to the COI for a direction that a witness be called or summonsed.
25. The Commissioner will determine which participants are entitled to be present when a witness gives evidence.

26. The Commissioner may permit a witness to have Counsel present when giving evidence to the Inquiry.
27.
 - (1) Subject to paragraphs (2) to (3), where a witness is giving oral evidence at a COI hearing only COI Counsel and the Commissioner may ask questions of that witness. Where Counsel for a participant or a witness considers that there are further questions to ask of that witness, they should, prior to any application under paragraphs (2) or (3), submit those questions to COI Counsel who will ask them if he considers it necessary to do so.
 - (2) Counsel for a participant must apply to the Commissioner for permission to ask questions of a witness giving oral evidence, including of the participant they represent.
 - (3) Counsel representing a witness who is not a participant, must apply to the Commissioner for permission to question that witness. Such questioning, if permitted, will follow on from questioning put by COI Counsel and Counsel for any participant.
 - (4) Any application under paragraphs (2) and (3) must be made as soon as practicable and must identify:
 - (a) the issues in respect of which a witness is to be questioned; and
 - (b) whether those issues are new, and if not, why questions should be permitted.
 - (5) The Commissioner may impose a time limit on questioning by Counsel or participants and will disallow questioning which he considers is not relevant to the subject matter of the COI.
 - (6) Any participant permitted to ask questions of a witness must provide to

the COI complete copies of any documents upon which they propose to rely or to refer to during the questioning of that witness. Questions will not be permitted if such documents are not provided in sufficient time for both the COI and, if necessary, the witness to give the document proper consideration.

- (7) The Commissioner and, with the permission of the Commissioner, COI Counsel may ask questions of any witness at any stage in the COI hearing.

Opening and Closing statements

28. (1) Subject only to paragraph (2), only COI Counsel may make an opening and/or closing statement to the COI at any COI hearing.
- (2) Counsel for a participant may with the permission of the Commissioner make a closing statement to the COI at the conclusion of the COI proceedings.
- (3) The Commissioner may impose time restrictions on the length of any statements referred to in paragraphs (1) and (2).
- (4) The Commissioner may give directions relating to the provision of written submissions or position statements by COI Counsel, participants or any other person.

Witness summons

29. (1) The Commissioner may issue a summons for the production of evidence or the answering of questions at a COI hearing.

- (2) Documents or responses received pursuant to a witness summons shall form part of the Record of Inquiry.

- (3) An application by a person that:
 - (a) he/she is unable to comply with the witness summons; or

 - (b) it is unreasonable in all the circumstances to require him to do soshall be submitted in writing to the Commissioner within 48 hours of service of a summons and will be determined by the Commissioner who may revoke or vary the summons as appropriate.

- (4) In deciding whether to revoke or vary a summons on the ground mentioned in paragraph (3) the Commissioner will have regard to all the circumstances including the public interest in the information in question being obtained by the COI, having regard to the likely importance of that information to the ability of the Commissioner to fulfil the Terms of Reference.

The Rt Hon Sir Gary Hickinbottom
Commissioner
13 April 2021
Amended 1 June 2021