



## Auditor General's Report on Government's Financing of BVI Airways' Direct Flights to Miami



### **Special Report of the Auditor General**

This report has been prepared under section 20 of the Audit Act 2003 which prescribes that:

- 20. (1)** The Auditor General may at any time prepare and submit a special report to the Governor if she is satisfied that there is a matter that should be brought to the attention of the Governor.
- (2)** The Governor shall, within three months of the receipt of the special report, cause the report to be laid before the Legislative Council.
- (3)** The Auditor General shall at the same time as submitting the special report to the Governor submit a copy of the special report to the Minister and the Financial Secretary.



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## Executive Summary

- E-1. Late in 2013 the BVI Government's long standing legal counsel in Washington DC, Lester Hyman, introduced Bruce Bradley, a Washington DC based real estate developer to the Premier. Mr Bradley was seeking financing and support from the Premier to establish a direct commercial air service between the BVI and Miami within a year using BAe Avro Jets.
- E-2. On 5 June 2014 the Government signed a Memorandum of Understanding with Bradley's company Castleton Holdings LLC to allow for an exploratory period to examine the viability of the venture.
- E-3. Following the exploratory period, the proposal was rejected by the BVI Government in December 2014 as the financial risks were considered too high and the success of the project deemed uncertain in the absence of interline arrangements.
- E-4. Discussions on the proposal were revived in January 2015 on the prompting of Lester Hyman who insisted that the parties meet with a view towards ironing out the differences and finalizing an agreement.
- E-5. The Government engaged the accounting firm BDO in January 2015 to perform an independent financial review of the airlift proposal. BDO advised that the provisions in the MOU that required the Government to assume the financial risk of the project while guaranteeing the other parties significant returns needed to be renegotiated to more appropriately apportion risk and reward. The suggestions made in the BDO report to achieve this were not adopted.
- E-6. Castleton partnered with the owners of the newly acquired BVI Airways to assist with the implementation of their proposal. An agreement was reached between the Government and the other parties in August 2015 that involved Government support of \$7.0 million with a similar financial investment from the other parties.
- E-7. The venture was approved by Cabinet on 23 September 2015 for a maximum Government financing of \$7.0 million to be distributed evenly over three years. The Cabinet decision was premised on information that the Castleton Holdings LLC would also be investing in excess of \$6.0 million into the project.
- E-8. A Framework Agreement was signed as of 7 December 2015 between the Government, Castleton Holdings, Colchester Aviation, and BV Airways dba BVI Airways to establish a direct commercial airlink between the BVI and Miami with flights commencing by 31 October 2016.
- E-9. The Agreement included a performance provision that the final \$2.0 million of the Government's advance would be paid to the other parties only after the successful launching of commercial air service to Miami.
- E-10. The Government failed to secure evidence that the operator parties were financially able to provide the additional financing needed for the success of the venture and to incorporate provisions in the Framework Agreement to require and quantify the operator parties' proposed investment.



- E-11. The Government made full cash payment of the guaranteed amounts of \$7.0 million to the operator parties in advance of the approved schedule and before launching of the contractual flight operations. An additional sum of \$200,000 requested by the operator parties was also paid out by the Government. The early payments were attributed to the banks reluctance to provide letter of credit needed to support the venture.
- E-12. Flights to Miami were contractually scheduled to commence by October 2016. This was subsequently extended by eight months (to June 2017).
- E-13. Approval was obtained from the UK and US regulatory authorities for the commercial flights after a protracted period that lasted over a year and a half. Despite receiving the approvals the airline failed to commence flights either regionally or, as planned, internationally into Miami International Airport.
- E-14. The Government's oversight arrangements led to unapproved changes to the Agreement that went unchecked.
- E-15. BVI Airways sought more financing of \$5.0 million - \$10.0 million from the Government in various proposals from January – October 2017. These were not accepted by the Government.
- E-16. BVI Airways suspended its operations and laid off its staff on 18 July 2017 citing financing issues.
- E-17. The Agreement was terminated by the Government at the end of November 2017 after the operator parties failed to recommence activity and deliver under the contract.



## Objective and Scope

1. The audit covered the activity related to the BVI Government's financing of BVI Airways' et al proposal to introduce direct commercial flights between the Terrance B Lettsome International Airport and Miami International Airport as approved by Cabinet on 23 September 2015.

### Objective

2. The purpose of the audit is to provide independent information and advice on whether public procedures were followed in the adoption and execution of this project and to determine the reasons for failure of the project.

### Scope

3. The audit included an examination of files obtained from the Premier's Office and the Ministry of Finance. Review of key agreements and reports including the Memorandum of Understanding, Framework Agreement, Supplementary Agreements (Side letters), Sixel Report, Falco Report, BDO Avro Project Analysis Report and BVI Airways Application to the USA Department of Transportation. Examination of documents and information provided by other Government departments and the BVI Airport Authority. Verification of payment activity through the Government's Treasury System. Interviews with personnel at two Ministries previously mentioned and an interview with the Government's nominated Director to BVI Airways Board. The audit also included due diligence searches of the relevant companies and individuals involved in this venture.

### Restriction of Scope

4. Requests for interviews with the former Chairman of the Tourist Board, Russell Harrigan and the Chairman of BVI Airways Board Scott Weisman were not successful. Contact was made with Bruce Bradley of Castleton Holding who entertained a brief telephone interview that was interrupted by a poor service connection. Mr Bradley did not respond to our emailed interview questionnaire.

## Background

5. Reliable air access is essential to the Territory's Tourism and Financial Services sectors. This became a challenge when in 2013 American Airlines affiliated American Eagle ended its 27-year run in the Caribbean thus severing an important BVI gateway via San Juan to the international market.

6. The impact was significant as American Eagle during its almost three decades it had expanded from a 19-seat aircraft in September 1986 to eventually upgrading to a 64-seat ATR 72 plane with flights into Tortola operating six to seven times per day.

7. In the period that followed, several carriers, including Cape Air, Seaborne and other smaller operators, sought to fill the void. These however lacked the reach, connections and economy offered by American Airlines and its affiliates. Travelers often opted to take the longer less convenient route of ferrying to St Thomas for onward flight connections. This impacted the tourism product and the Territory saw a decline of tourist arrivals.

8. In an effort to address the issue the Government decided to expand the airport runway on Beef Island to accommodate larger aircraft from international destinations. Studies were commenced to examine how this could be achieved and consultations ensued on possibilities for financing such a project. The projected time frame for completion of the runway extension was three years from commencement of construction works.



## PART 1 - The Proposal

9. *The Government was approached with an unsolicited proposal from private investors to solve the Territory's airlift problems by establishing a non-stop commercial air service between the BVI and Miami within a year.*

10. In November 2013, Lester Hyman, who had at that point served as the BVI Government's US Legal counsel and lobbyist in Washington DC for 26 years, introduced Bruce Bradley (a prospecting investor and realtor) to the then Premier, Dr. Orlando Smith. Bradley was seeking the Government's backing and financial support to develop and provide a commercial airline offering direct air service between the BVI and Miami using the British Aerospace Avro RJ 85 Jet. The parties claimed discovery of the BAE Avro jet that was designed to take off and land safely on shorter runways carrying up to 85 passengers. Bradley would later partner with Jerry Willoughby of BVI Airways and Scott Weisman of Colchester Aviation (together referred to as the operator parties) to advance this proposal.

11. For the Government, the proposal presented a potential opportunity for an interim solution while the Airport runway extension was being addressed.

12. Both sides agreed to enter into a Memorandum of Understanding as an expression of good faith and intent, to allow for exploratory steps to be pursued in advance of the execution of any binding agreement.

### **Memorandum of Understanding**

13. *A Memorandum of Understanding was adopted to allow the parties to examine the viability of the venture.*

14. A Memorandum of Understanding (MOU) was signed on 5 June 2014 between the BVI Government and Bruce Bradley of Castleton Holdings.

15. The document stipulated that Castleton would:

- i. Develop the proposed air service;
- ii. Provide experienced pilots, flight attendants and ground personnel; and
- iii. Obtain all the necessary licenses to operate the flights (with the full support of Government).

16. The Government's obligations under the MOU were to:

- i. Provide financial support in the form of a revenue guarantee, letter of credit or other financial accommodation which would cover all operating costs including amortization of capital investment over the contract period plus 20% per annum return.
- ii. Provide operating concessions in the form of counter space at the Beef Island Airport, abatement of landing fees, advertising, and assistance with attaining regulatory requirements;
- iii. Provide exclusive rights to pursue the project for a 12 month period; and
- iv. Enter into a minimum 3 year contract to be extended for an additional 5 years if mutually agreed and if profitable.





17. The MOU also required Castleton to commission a feasibility study and marketing plan for the project from Sixel Consulting Group Inc. The parties were to jointly commission a pavement condition study on the Terrence B Lettsome Airport runway and apron to assess whether the existing pavement condition could safely accommodate the AVRO RJ85 aircraft. The cost of both studies was to be shared equally by the Government and Castleton.

18. The MOU, in addition, required Castleton to submit forthwith its internal operational cost model and immediately make available to the Government its operating partner to talk through the particulars.

### **Feasibility Study**

19. Sixel Consulting Group Inc, a data analytics and air services development consulting firm, was sourced by Castleton to perform the feasibility study prior to signing the MOU. The firm was engaged jointly in July 2014 by the operator parties and the BVI Government to allay the latter's concerns of reporting bias. The 46 page report "*Beef Island Airport Market Analysis – Avro Program to MIA SJU Report*" (Sixel Report) was submitted in September 2014. It concluded that:

- i. The Avro Program offers a low cost and execution risk solution to provide direct air service between Florida and Beef Island, capable of launch within a year.*
- ii. The Avro program would provide the BVI a significant opportunity to increase its penetration of the lower half billion dollar annual air travel market in its local Caribbean region, of which the BVI currently has only a 5% share.*
- iii. By providing direct access to the largest hub airport in the region, Miami International Airport, the Avro Program may stimulate BVI air passenger traffic from new markets. (Eg. South and Central Florida could emerge as BVI's top originating market within a short time after the commencement of the Avro program.*
- iv. It is estimated that a 36 (month) initial operating term for the Avro Program may produce \$2.6 million in net cash flow. If a 60 month term were selected as the initial operating period, the Avro Program may produce more than 4 times the initial net cash flow of the first 3 years. A 60 month term may also help spur development activity in the BVI by providing developers and their personnel improved access for planning and construction, as well as giving them confidence that visitors would have easy access to the new properties. In addition a 60 month term may help to facilitate the negotiation of interline agreements between the Avro operator and major carriers at the connecting airports.*

### **Pavement Condition Study**

20. The Pavement Condition Study on the existing Beef Island tarmac (runway and apron) was commissioned by the Airport Authority with Falko Regional Aircraft Ltd to assess whether the runway could safely accommodate the Avro requirements. The study concluded that "Airfield surface and pavement loading limitations were assumed adequate for the proposed operations."



### Proposal Rejected

21. *The discussions subsequent to the submission of the Sixel and Falco reports led to the Government's rejection of the project on grounds that the financial risks were too high and the absence of interline agreements rendered the success of the project uncertain.*

22. The Government's interest in the proposal was coupled with underlying concerns about the viability of the proposed operation and questions on key requirements, in particular, the cost to the Government and the ability of the operator parties to secure interline agreements with established airlines.

### Costs Projections

23. The operator parties' December 2013 proposal required financial assistance from the Government to:

- i. Cover the operating costs of the venture
- ii. Pay a 20% annual return on the operating party's investment capital.

24. Profits over and above the foregoing would then be shared with the BVI Government receiving 50%.

25. The initial proposal estimated that 80% seat occupancy was needed for the venture to be profitable. It projected that at 90% seat occupancy there would be an annual profit of \$4.2 million. However, 45% seat occupancy would result in an annual loss of \$2.7 million. The parties were seeking a Government guarantee based on 80% occupancy rate.

26. The Sixel Feasibility Study projected that the venture would generate a total profit for the three year period of \$2.6 million. This comprised of a loss of \$3.6 million in the first year's operation with profits of \$2.97 million and \$3.25 million in years two and three respectively.

27. This projection did not take into consideration the initial costs required for startup of the operation which the proposing parties estimated at \$6.0 million. This meant that the Government's subsidy in the first year could approach \$10.0 million.

**Year 1 Estimates**

Startup cost Estimate	\$6.0 million
Operating Loss	<u>\$3.6 million</u>
Total before 20% ROI	<u>\$9.6 million</u>

28. A \$9.6 million investment in the first year meant that the projected profits in the second and third years would not be sufficient for the Government to recover its advance. Especially as the operator parties were insisting that priority would be given to a guaranteed 20% return on their investment.

29. Concerns about the reliability of the information on which the projections were based (seating percentages and growth rates) led to skepticism on the part of the Government parties and emphasized



the importance of having interline agreements in place which could be key to achieving the projected growth rates and for the overall success of the project.

### **Interline Agreements**

30. Interline arrangements with major/established airlines were considered essential as they could bolster the growth of the proposed air service, by building on the clientele and promotion activities of participating airlines. They could also improve affordability and allow for seamless coordination of passenger and baggage transfers for connecting passengers in Miami.

31. The operator parties provided no guarantee or basis for confidence that they could negotiate such. The Sixel study suggested that a 5 year contract between the parties would enhance the operation's ability to negotiate interline agreements. The Government was however unconvinced that the operation could achieve the growth and load shares projected for the initial three year term without interline arrangements and that this would lead to the need for continued Government subsidy during the term of the contract and in subsequent years to keep the airline running.

### **Rejection**

32. With the persistent uncertainty on the above key issues the Government was unwilling to commit to a potential ongoing liability. In correspondence dated 14 December 2014, the Premier rejected the proposal to become involved in the venture citing concerns about the cost commitment and skepticism with the growth assumptions put forth in the proposal.

### **Proposal Revived**

33. *The proposal was revived on the prompting of the operator parties who navigated the negotiation towards an agreement.*

34. Following the Government's rejection of the proposal in December 2014, the Premier was contacted by the Government's US legal counsel and lobbyist, Lester Hyman, in an emotive missive which sought to arrange an urgent meeting in January 2015. Mr Hyman suggested that this would allow the parties to meet in isolation with a view to ironing out the issues of interline arrangements and capping the Government's financial exposure so that the parties could "enter into a definitive agreement contemplated by the MOU within two weeks" towards launching the service.

35. The Government then engaged the local accounting firm BDO in January 2015 to assess the merits of the BVI/Miami airlift proposal. The BDO study concluded that the proposal outlined in the MOU was inequitable, because it required the Government to bear the costs and risks while the operator parties were guaranteed the returns. The report advised that the operational concerns needed to be addressed and the financial terms renegotiated to more appropriately apportion risk and reward.

36. On 26 August 2015 the Government and operator parties arrived at a basic position for an agreement. This included a maximum Government investment amount and a provision for interline agreements. Based on the outcomes of the meeting a decision paper was submitted to Cabinet for



approval of the project. The terms included:

- i. The Government would support BVI Airways in providing direct flight between BVI and Miami for a 3 year period;
  - ii. This support would take the form of a maximum Government financial input of \$7.0 million to be distributed in even annual installments.
  - iii. An agreement between the parties that would include a fail-safe mechanism to allow the parties to terminate the agreement after two years;
  - iv. Full disclosure of financials by BVI Airways, the contents of which would not be subject to public disclosure;
  - v. The Government would have a seat on the BVI Airways Board;
  - vi. The agreement would be contingent on the completion of interline agreements with major air carriers operating via Miami International Airport;
  - vii. At least 10% of the shares in the new venture would be made available for local investors;
  - viii. The financial model would be further vigorously scrutinized by the Ministry of Finance and Consultants to verify the anticipated payouts by the Government;
  - ix. The Attorney General Chambers would vet the Agreement prior to it being signed;
37. The information provided for Cabinet's consideration also stated that Castleton, the company owned by Bruce Bradley, would be investing in excess of \$6.0 million into the venture.
38. The conditions in i – ix above were approved by Cabinet on 23 September 2015 paving the way for an agreement between the parties.
39. The BDO financial assessment report that recommended changes for a more equitable arrangement was not included among the papers presented to Cabinet.

### **The Framework Agreement**

40. A Framework Agreement between the parties was signed on the 7 December 2015 to commence the project. This adopted the terms of the MOU and included:

#### **Timeline and Termination Provisions**

- i. The Framework Agreement to take effect from 7 December 2015 to 3 years after commencement of passenger air services.
- ii. BVI Airways was to use its commercially reasonable efforts to launch and operate a commercial air service by 31 October 2016 between EIS and MIA using two BAe AVRO



- RJ85 or similar aircraft capable of carrying up to eighty-five passengers and providing three flights a week.
- iii. The operator Parties may terminate immediately without prior notice if the Government fails to provide a Letter of credit for \$7.0 million or if the letter of credit provided expires or becomes unenforceable or invalid. Where termination occurs the Government will be responsible for and indemnify and hold operator parties harmless from all reasonable costs and expenses in connection with the termination.
  - iv. The Government may terminate early if no interline agreement after 6 months of flying; losses of more than three million dollars after 24 months or there is a breach of a material obligation.
  - v. The Government may terminate with 30 days prior written notice if the service is not commenced by 31 December 2016.
  - vi. The Government grants BVI Airways the right to operate for so long as they desire to operate.

### **Implementation Provisions**

- vii. BVI Airways to pursue certification by promptly submitting applications to the relevant US, UK and BVI agencies. This effort would be supported by the Government.
- viii. BVI Airways to pursue Interline Agreements with international and/or domestic air carriers servicing MIA;
- ix. BVI Airways to have sole discretion to determine flight Schedules, airfares, aircraft selection, staffing, and airport services including (without limitation) counter space, office space and check in support;
- x. BVI Airways to appoint a Government representative on the Board of Directors;
- xi. The Government to appoint a special liaison to ensure timely responses and resolution of issues;
- xii. The Government to facilitate approvals and provide assistance with respect to counter space and facilities, landing rights and permits etc.

### **Financing Provisions**

- xiii. The Government to reimburse BVI Airways for startup costs and operating losses during the initial three years of operations up to a total of \$7.0 million in accordance with the payment schedule.
- xiv. The Government to guarantee to BVI Airways, an annual return on investment of at least 20%.
- xv. The Government to abate Airport Authority fees charges or levies including landing fees, navigation charges, storages fees, fuel taxes and surcharges, and make improvement to airport facilities and services.
- xvi. The Government to be repaid from operating profits after the company's reserves are established, operating deficit reduced and the operating parties are paid 20% return on investment.



xvii. The Government only entitled to receive reimbursement of guaranteed amount.

xviii. BVI Airways to issue ten percent of the securities for the venture to investors located in the BVI.

41. Notably, the initial proposal for the Government to share in the profits was not included. Instead the Government's only return on the investment would be repayment of the guaranteed amount which was contingent on available funds after other provisions were satisfied.



**PART 2 – Implementation**

42. The Government made full payments of the guaranteed \$7.0 million to the operator parties in advance of the scheduled dates outlined in the Framework Agreement and before launching of the operations. The airline obtained the required permissions to service flights between the BVI and Miami but no commencement of service was announced and there was no launching of flight schedules or offering of reservations.

**Government Financing**

43. Challenges encountered by the Government in securing the letter of credit led to the early advance of the guaranteed sum.

44. The Framework Agreement stipulated that the Government was to establish an irrevocable, transferrable letter of credit for \$7.0 million by 19 January 2016 to guarantee that the operator parties could draw the amounts on the scheduled dates. This was to be valid for three years.

45. The first payment of \$500,000 was made nine days ahead of schedule to the operator parties on 22 January 2016, but despite efforts the Government was unable to secure the required letter of credit. The then Financial Secretary in his instructions for payment to the Accountant General attributed this failure to “stringent regulatory requirements in the banking industry that were resulting in large scale “derisking” activities in the Caribbean and a reluctance by the banks to take on sovereign debt.” As a result, obtaining a letter of credit would be possible, but costly.

46. To compensate, the Government forwarded to BVI Airways the second allotment of \$2.4 million that was due on May 30 2016 two months early on 11 March 2016. This, according to the then Financial Secretary, was needed to allow the operator parties to lease the aircraft.

47. This payment was followed by others with the October 2016 and November 2016 amounts (together totaling \$2.1 million) wired out to BVI Airways on 5 May 2016, bringing the total remittances to the airline to \$5.0 million.

<b>Framework Agreement Payment Schedule</b>		
<b>Scheduled Payment Date</b>	<b>Amount</b>	<b>Actual Payment Date</b>
<b>January 31, 2016</b>	<b>500,000</b>	22 January 2016
May 30, 2016	2,400,000	11 March 2016
<b>October 30, 2016</b>	<b>1,250,000</b>	<b>5 May 2016</b>
November 30, 2016	850,000	5 May 2016
<b>May 30, 2017</b>	<b>1,200,000</b>	<b>15 July 2016*</b>
November 30, 2017	800,000	15 July 2016*
	<b>7,000,000</b>	

\* Payment sent to establish an escrow account on 15 July 2016. Signed over to the parties on 11 January 2017.

48. The Framework Agreement stipulated that the final \$2.0 million of the \$7.0 million was to be paid only after the BVI/Miami air service was successfully launched.



49. On 6 June 2016 the parties executed an addendum to the Framework Agreement to remedy the breach caused by the failure to obtain the letter of credit. This provided for the remaining \$2.0 million to be deposited into an escrow account for the benefit of the BVI Airways. The amount was to be paid out of the escrow account in May and December 2017 as indicated below.

<b>Addendum to Framework Agreement Escrow Payment Schedule</b>	
Date of Payment	Amount of Escrow Funds
May 30, 2017	US \$1,200,000
November 30, 2017	US \$ 800,000

50. The addendum also required the Government to make an “immediate payment” to the parties of an additional \$200,000, allegedly to compensate for costs associated with the delays resulting from the letter of credit failure. Contrary to rules on Government spending, the parties provided no supporting information or evidence to substantiate their claim for the additional funds. The \$200,000 was paid to BVI Airways on 26 August 2016 on the faith of their unsupported claim.

51. The \$2.0 million was wired out to establish the escrow on 15 July 2016 and the \$200,000 paid to the operator parties a month later on 26 August 2016.

52. The effect of the addendum was to “fully and unconditionally waive the default” on the letter of credit requirement. The addendum also extended the flight commencement date by eight months.

**Unauthorised Release of Escrow Funds**

53. The escrow agreement under which the \$2.0 million was held stipulated that \$1.2 million was to be paid on 30 May 2017 and \$800,000 on 30 November 2017 to Colchester Aviation LLC (a major shareholder in BVI Airways). No requirement for performance (commencement of flights) was included.

54. The then Financial Secretary terminated the escrow arrangement and authorized release of the funds to the operator parties on 11 January 2017. This occurred before the stipulated payment dates and before the airline had received any authorization to fly from the US or UK authorities. No authorization from Cabinet was obtained for this early release.

**Protracted Approval Process**

55. *The approval process with the UK and US regulatory authorities for flights between the BVI and Miami lasted for more than a year and a half.*

56. The operator parties initially intended to use the BAe Avro RJ 85 aircraft configured for dual class seating of 12 first class seats and 74 coach seats for its operations.





57. They later opted to acquire two marginally larger BAe Avro RJ 100 jets (with the same seating configuration) from Tronosjet of Prince Edward Island, Canada. Both aircraft were slightly over two decades old and had recently been retired from Swiss Air's fleet.

58. BVI Airways registered the first aircraft (VP-LOS) with Air Safety Support International (ASSI), the UK based regulator, on 8 September 2016 and the second (VP-LWW) a month later on 21 October. Both underwent valuations and the resulting reports dated 3 December 2016 assessed the planes as well kept with "like new" interiors and estimated their market value at \$4.9 million each. The actual purchase price, which is believed to be significantly less, was not released by the operatory parties.

59. The approval process with ASSI commenced before the planes were acquired with the submission of operational and safety manuals and processes in early 2016. After the aircrafts were acquired, VP-LOS underwent proving runs in November with ASSI but due to incomplete operating documents and incomplete procedures, it was not awarded the required Airworthiness Certificate until January 2017. Thus the first approval hurdle was completed 13 months after signing the Framework Agreement.

60. ASSI approval was significant as it meant that the airline could commence flight operations within the Caribbean region. It also allowed the airline to move forward with its application for flight approval to the US.

61. The airline's application to the US Department of Transportation (DOT) was submitted on 27 February 2017 but encountered additional obstacles when two airlines (VI Airlink and InterCaribbean Airways Ltd) opposed the application before the DOT on 3 March 2017. The opposing airlines alleged that BVI Airways had failed to serve them notice of the DOT application and that the Government's partnering with the airline created a conflict of interests.

62. The Premier responded to the complaint in correspondence to the DOT in support of the BVI Airways' application on 8 March 2017. The airline received DOT's approval on 28 April 2017. The entire DOT approval process took two months. There are no indications that there were issues with respect to the USA Federal Aviation Administration (FAA) and the Department of Homeland Security (DHS) applications which were received in June and July 2017 following the DOT's approval.

63. In its entirety the licensing process taken from the date of signing of the Framework Agreement in December 2015 lasted 19 months. Falling slightly outside the extended deadline for commencement of flights. The approvals made way for the commencement of scheduled flight operations to the US.

### **Non-Commencement of Flights to Miami**

64. *Flights to Miami were contractually scheduled to commence by October 2016. The date was subsequently extended by eight months (to June 2017). Aside from regular announcements and promises of services, no steps were taken to commence flights either regionally or, as planned, internationally into the US after the approval process was complete.*

65. In April 2016 BVI Airways submitted a list of its eight member management team to the BVI Government and steps were taken to expedite processing of the work permits and immigration



exemptions from the relevant departments. Over the course of seven months from October 2016 to May 2017 the airline's staff in the BVI was expanded by seventeen members. This included four captains, three first officers, eight cabin crew, one maintenance staff and one operation controller. The records indicated that the airline also invested in a reservations system and a flight management database.

66. Two and a half months after receiving ASSI approval the airline undertook its inaugural flight with VP-LWW on 13 April 2017 as a charter to transport the BVI National Athletics Team to Curacao for the CARIFTA Games.

67. Five days later on 18 April, after returning the athletes from Curacao, BVI Airways commenced a leasing arrangement with aircraft VP-LWW and crew to Haiti's Air Sunshine on an ACMI (Aircraft, Crew, Maintenance and Insurance) contract to service flights between Haiti and Cuba.

68. BVI Airways never resumed its prior routes between the BVI, Dominica and St Martin that were operated from 2010 to 2014 under previous management. Its other aircraft (VP-LOS) remained at Tronosjet in Summerside, Canada undergoing maintenance while the available cash resources continued to be depleted.

69. On 13 June 2017 Miami-Dade's Aviation Director Emilio T. González, announced that BVI Airways would be commencing its BVI to Miami route on 22 July 2017 with two weekly round-trip flights on Saturday and Sundays. The announcement was a significant milestone towards the airline meeting its contractual obligations. It was immediately countered in the press by BVI Airways CEO Willoughby who asserted that the Miami airport director had "jumped the gun" with the announcement.

70. Four weeks after the Miami Airport's announcement, BVI Airways suspended operations citing lack of funding as the primary cause for the closure. Despite the Government's financial and other support, the venture failed to provide any form of scheduled air service for the BVI during the year and a half it existed.

### **Absence of Private Financing**

71. *The Government failed to secure evidence that the operator parties were financially able to provide the additional financing that would be needed for the success of the venture and to incorporate provisions in the Agreement that would require the operator parties to financially support the venture.*

### **Prospector's Investment**

72. The Government's decision to proceed with the venture was based in part on information submitted to Cabinet in September 2015 that Bruce Bradley's Castleton Holdings would be investing in excess of \$6.0 million into the venture.

73. The MOU's of June 2014 and October 2015 and the Framework Agreement which were all crafted by the operator parties focused in significant detail on the Government's financial input but



failed to incorporate any provisions to quantify or guarantee the operator parties' financial commitment to the venture.

74. The Sixel study and initial startup costing indicated that during the first year the venture would need approximately \$9.6 million for operations. Of this, the Framework Agreement had committed the Government to an advance in the first year of \$5.0 million. This meant that the operator parties would need to secure \$4.6 million in the form of investment capital, loans or both to support the first year's operations. The agreement did not address how this would be achieved nor did it seek to hold the operator parties accountable for failing to satisfy this essential obligation.

75. Without any binding financial commitment from the operator parties, or penalties for failing to provide financing, the operations relied almost exclusively on the money provided by the Government.

76. In a brief telephone interview, Bradley indicated that the intention was to leverage the Government's letter of credit to obtain financing for the project. No further details were provided on why the parties chose to continue with the project in the absence of the letter of credit or how he had otherwise intended to obtain the additional funding needed to make the project viable.

#### **Local Participation**

77. The Government sought to ensure that BVI investors would be given the opportunity to participate in the new venture by including in the Framework Agreement a provision for at least 10% of the shares to be offered to investors located in the BVI (or as indicated by the Government). This could be achieved via shares in a new company which was to be set up to facilitate launching of the venture or directly in BVI Airways.

78. In July 2006, the operator parties incorporated a BVI limited company "Colchester Aviation Ltd" which was owned 50/50 by Jerry Willoughby and Scott Weisman. The role of this BVI company in the venture has not been made clear as neither it nor BVI Airways made any public offering of shares in the BVI during the course of the venture.

79. At the time the agreement was terminated, the \$6.0 million private investment anticipated from the operator parties never materialized, nor had the public offering to encourage BVI shareholders.

#### **Depleted Operational Funds (Pre-operational Financial Statements)**

80. *The expenditure reported in pre-operational financial statements submitted by the airline to the BVI Government are unsupported and inconsistent with other records rendering them unreliable.*

81. One set of financial statements were submitted by the operator parties for BVI Airways during the term of the venture. These were unaudited and for the 15 month pre-operational period from 1 January 2016 to 31 March 2017.

82. During the pre-operational period, BVI Airways undertook aircraft licensing and route authorization activity but did not engage in any commercial operations. The financial statements



showed that the company received zero income but incurred \$4.25 million in expenses of which \$3.07 million was allegedly paid in salaries and professional fees.

83. The airline retained an accountant in the BVI who submitted payroll information and financial statements to the Inland Revenue Department (IRD) for the years 2016 and 2017. A verification exercise performed on the salary amounts in the pre-operational statements against information BVI Airways reported to the BVI Inland Revenue Department indicated that the amounts in the pre-operational financial statements were either substantially overstated or the payroll taxes submitted to the Government were severely under-reported. A comparative of the payroll related information is shown in the table below and a summary of the reported staff payroll in Appendix 2 of this report.

<b>Expenditure Classification Jan 2016 – Mar 2017</b>	<b>Pre-operational Financial Statements</b>	<b>Verified Inland Revenue</b>	<b>Difference</b>
Flight crew payroll and associated costs including Travel & Training costs	573,131	76,000	497,131
Flight Operations Payroll	653,000	43,200	609,800
Payroll other than flight operations	986,985	-	986,985
Payroll Taxes & Other Direct Employee costs	112,429	4,258	108,171
Professional and Other Fees	747,061	n/a	n/a

84. Explanations and supporting records are required for the above variances and for the overall expenditure of \$4.25 million which, without more, appear excessive for the non-operational period.

85. In addition, despite the operator parties’ assertion that they invested over \$2 million into the venture, their pre-operational statements showed that aside from Government financing, BVI Airways did not receive any significant private investment or other loan financing. The opening Stockholders Equity of \$110,000 did not change during the course of the 15 month period. The “Due to Other Parties” account in the statement of \$7,551,609 appears to reflect the BVI Government’s \$7.2 million advance and indicates that BVI Airways may have received other private loans of \$351,609.

86. Both the presentation and the level of detail provided in the BVI Airways pre-operational statements are unsatisfactory and the discrepancies are sufficient to render those statements unreliable.

87. Similarly, a review of the summary statements provided for Colchester Aviation LLC indicated that the Colchester in 2016 received zero income, zero investments and recorded a loan balance of \$7.0 million at year end. During the year, Colchester spent \$3.3 million in undefined expenses and \$1.035 million on Transportation Equipment (later explained to be the aircraft).

88. Colchester’s statements indicated that at the end of 2016 the company had \$3.2 million in cash and held other minor assets totalling \$55,644. It also disclosed a negative shareholders’ equity of \$2.8 million which serves as a red flag of the company’s ability to repay its obligations.



89. The statements were in summary form and missing important details. Particularly with respect to the company's expenditures, identification of assets and supporting notes for both the Balance Sheet and Income Statement.

90. An audit must be performed by a firm of independent accountants for both companies in order to provide accurate information on their expenditure activity and afford assurance on how the Government's monies were applied.

### **Airport Infrastructural and Service Upgrade**

91. *In addition to Government's monetary advances additional costs were incurred to prepare the airport facilities for the larger model aircraft and expected passenger increases.*

92. To accommodate the anticipated service the BVI Airport Authority undertook various renovations and upgrades at its facilities. In correspondence dated 21 March 2017 the Director of the Airport Authority sought reimbursement of \$735,350 from the Government for the unbudgeted improvements it had undertaken to accommodate the venture. These included a new security machine, an air In-flight display system, two renovated counter spaces, renovation of office space at the terminal, air conditioning for the departures area and a covering for the arrivals area. The Authority also employed 10 additional fire officers and 10 additional security staff to ensure adequate coverage for the larger airlift.

93. The tarmac had already been deemed adequate to accommodate the aircraft but there were also planned works for repaving the apron to ensure adequate parking, especially during the peak season.

94. In keeping with the agreement, the Customs Department was instructed to ensure that fuel surcharges and import duties were not applied to BVI Airways operations.

95. The upgraded facilities were never put to use by the airline. The operator parties continued to insist on other changes by the Airport Authority, the Tourist Board and Government departments, including, but not limited to, replacing the leadership of the Airport Authority, Customs, Immigration and the Tourist Board to accommodate their small (yet to be launched) private venture.

### **Government Oversight Imbalance**

96. *There were inadequate Government checks and balances in the oversight of the venture leading to unilateral decisions being made on significant matters.*

97. To ensure that the requirements of the Framework Agreement were given some measure of priority, the Financial Secretary served as the Government's contact for the project after talks were resumed in January 2015 and was subsequently assigned to the role of the Government's official liaison for the project. This allowed the operator parties to have ongoing high level access and support from within the Government but created foreseeable issues.



98. The assignment of the Financial Secretary to facilitate the venture eliminated an important check that should exist between project execution and project financing. This created a conflict whereby the Financial Secretary's obligation to ensure the successful launching of the project may have obscured his public duty as primary custodian of Government's finances. The acute level of scrutiny that should have been applied to the financial and other issues of risk presented by the operator parties was replaced with insistent action to accommodate their requests.

99. After the initial failure to obtain a letter of credit, the proposed Government financing should have undergone further scrutiny. Instead, that failure was followed by early payment of \$4.8 million to the operator parties, the release of the escrow payment of \$2.0 million without Cabinet authorization in January 2017, and active pursuit of a public loan guarantee and compensation payments requested by the operating parties. These were decisions made by the Financial Secretary as project liaison rather than public custodian.

100. Throughout the venture there were periodic objections from the Attorney General who vetted the legal documents (all of which originated from the operating parties) and the Accountant General who was tasked with making the payments. Significantly, several of the amendments made to the draft agreements by the Attorney General that were intended to protect Government's interests and import balance and certainty into the agreements were reversed by the operator parties and subsequently not adopted.

101. The Government's nominee on the Board of Directors was Ryan Geluk. Geluk was nominated as director in March 2016 and reported that he attended one meeting (together with the Financial Secretary Neil Smith and Chairman of the Tourist Board, Russell Harrigan) which was held in Miami in September 2016. The airline at that time was still seeking approval from the regulatory authorities and appeared to be having difficulties with ASSI's delayed processing of the manuals and documents submitted. Apart from the Miami meeting the director reported that he was not provided with information regarding the airline's operations and the only set of financial statements received were unaudited and for the 15 months pre-operational period from commencement of the venture to 31 March 2017.



### **PART 3 – Government Compliance and Due Diligence**

102. *The implications and suggestions made in the Studies commissioned to assess the viability of the venture were generally disregarded.*

#### **Feasibility Study**

103. The Protocols for Effective Financial Management (the Protocols) require that all projects be suitably appraised. This should include a business case and a “robust cost benefit analysis.”

104. A business case would normally show an examination of the problem and assessment of the alternatives examined to address the same. The jointly commissioned Sixel study was the Government's response to this requirement. The study however focused only on one solution (BVI Airways) and did not examine or explore alternatives.

105. The study provided useful data for consideration of the venture but the Government in agreeing to a joint assessment failed to secure for itself an analysis that would focus on the Government's options which would include alternatives such as negotiating with established airlines, improving the ferry access, developing the existing BVI carriers or putting the issue to tender.

106. Notwithstanding, the results of the Sixel analysis indicated that the anticipated return generated by the venture would not be sufficient for the Government to recover its investment over the proposed three year period. The study instead suggested that a five year period would yield better results but did not consider the effects of the pending airport expansion and the impact this would have on the venture, with the opening up to larger competitive aircraft with access to multiple destinations and interline arrangements.

107. The analysis also appeared optimistic in its break even projections which were based on the airline operating 3 ½ flights a day, 365 days a year, operating 60% - 80% full, without interline arrangements. The projection of three daily flights did not match reality when in 2017 the airline applied to the Miami International Airport for permission to operate two weekly round trip flights to take place on the weekends.

108. The Sixel study was useful in providing comparative regional data and analysis, but in serving both sides it did not satisfy the Government's need for an independent examination that should have been pursued for a venture requiring significant public investment.

#### **Financial Assessment**

109. The Government also commissioned a financial analysis from the firm of independent accountants BDO which was received dated 9 January 2015. The points made in the BDO report included:

- a. The 20% interest rate contemplated under the MOU to be “far too aggressive given the lack of risk being borne by Castleton” BDO recommended an interest rate between 5%-8%.



- b. The Government should not proceed unless interline agreements are completed.
- c. The Government would be taking on a significant liability risk by signing a revenue guarantee contract with parties that apparently lacked relevant operational experience; and
- d. The age of the aircrafts would likely lead to greater maintenance costs. More modern aircrafts should be considered even though they may be more expensive to lease.

110. None of the above recommendations made by BDO was adopted.

**Tendering**

111. Both the Protocols and the Public Finance Management Regulations require that projects undergo a tendering process. However, there was no invitation for competitive submissions nor was there any comprehensive examination of alternatives such as cost of improving the ferry system or pursuing an established airline to undertake the route. This venture was unsolicited and unplanned.

**Excesses of Authority**

112. *There were a number of significant instances of non-compliance throughout the project.*

**Unauthorised Changes to Payment Schedule**

113. The Cabinet decision authorized maximum financial support of \$7.0 million for the venture to be distributed in even annual installments over the three year period. This would involve an advance of \$2.3 million each year in 2016, 2017 and 2018.

114. The payment schedule included in the Framework Agreement failed to comply with Cabinet's requirements by scheduling advances of five million dollars in 2016 and two million dollars in 2017 as indicated below.

<b>Annual Payment Schedule</b>		
<b>Year</b>	<b>Approved By Cabinet</b>	<b>Per Framework Agreement</b>
<b>2016</b>	2,300,000	5,000,000
<b>2017</b>	2,300,000	2,000,000
<b>2018</b>	2,300,000	-

**Disregard of Cabinet's Interline Requirement**

115. Another significant variation to Cabinet's stipulation was seen with the requirements for interline arrangements. Cabinet required that the agreement be contingent on the completion of interline arrangements with major airlines, which meant that these were to be arranged before signing of an agreement. This was disregarded as the Framework Agreement was signed before any interline arrangements had been reached. Instead the Framework Agreement included a requirement that the interline arrangements should be in place within 6 months of flying.





### ***Disregard of Cabinet's Requirement for Further Financial Scrutiny***

116. Cabinet also required that the financial model for the venture be further vigorously scrutinized by the Ministry of Finance and Consultants to verify the anticipated payouts by the Government before the final Agreement was signed. No evidence of additional vetting or independent scrutiny to support the BVI Airways project was found in the information available.

### ***Early Release of Escrowed Funds***

117. A further excess of authority was seen with respect to the Framework Agreement and addendum for the Escrow Account when the \$2.0 million held in escrow was released to the operator parties in January 2017 before the authorized payment dates and before flight operations commenced. This was done without the approval of Cabinet.

### **Due Diligence**

118. *The Government pursued the arrangement with parties who had no prior experience in starting and operating a similar venture.*

### **Operator Parties**

119. *The parties spearheading the proposal in 2013 brought promises and a proposal but no experience in establishing or operating an airline.*

120. During the early stages when the venture was being considered, the then Governor expressed concern that the information submitted on the project was not sufficiently developed to allow for proper consideration. With respect to the operator parties, he opined that the Government in exercising due diligence must be satisfied that its business partner has the requisite professional/technical experience and record of sound business management to offer a reasonable prospect of providing services the project demands. This suggestion was unheeded.

121. Synopses of the relevant parties' backgrounds are below.

### ***Lester Hyman (U.S. Lawyer/Lobbyist)***

122. Lester Hyman was instrumental in bringing the parties together and for restarting the negotiations after the Government initially dismissed the proposal in December 2014. The correspondence indicates that he played a significant role in navigating the parties towards an agreement.

123. Hyman is a US lawyer who existed on the political fringe in Washington DC and has been involved in international affairs representing companies and countries as an experienced negotiator. He had been a paid legal advisor and lobbyist for the BVI Government on matters pertaining to tax and other BVI/USA relationship since the 1990's and on retainer of \$100,000 per year from 2006 to 2016. He was also a member of the HLSCC governing board.

124. Hyman's long standing relationship with the Government created high level access and an implicit level of trust. During the discussions Hyman aligned with the non-government parties and



negotiated on their behalf while using his familiarity with the senior government officials to influence the outcome. Despite his apparent alignment with the operator parties, Hyman is listed as a representative on the BVI Government's team in the draft report for the 26 August 2015 meeting in George Town DC where the parties solidified the terms for moving the project forward.

125. Hyman was later listed among the directors on the BVI Airways Board but assumed a less visible role after Government financing had been secured. Mr Hyman has no record of prior experience in the aviation industry.

126. In assuming dual roles in the BVI Airways venture Mr Hyman operated in conflict of interest as his fiduciary obligations to the BVI Government appeared to be superseded by his personal interests in the project.

***Bruce Bradley (Investor/Realtor)***

127. Bruce Bradley was introduced to the Government by Lester Hyman as an investor seeking Government backing and financial support to advance his idea of direct MIA/BVI flights. Bradley is the president and founder of Castleton Holdings, LLC a privately held real estate investment company, with over 25 years' experience in the commercial real estate but no prior experience in the aviation industry.

128. He was at that time the owner of the Capella Hotel in Washington DC which reports indicate Castleton bought in 2008 for \$18.3 million and put roughly \$32.0 million into the renovation before it was sold in April 2016 for \$65.0 million.

129. The September 2015 decision paper sent to Cabinet soliciting support and financing for the venture stated that Bradley's Castleton Holding would be investing up to \$6 million in the venture. However Bradley suggested that his intention was to use the Government's Letter of Credit to secure financing for the project. Suggesting that from the beginning there was no intention to inject personal resources. But rather to use the Government as the primary (and possibly sole) source.

130. Bradley became Vice Chairman of the BVI Airways Board and maintained an active interest in the development of the venture. Particularly in the later stages when he again attempted to influence the Premier into providing additional Government financial support for the project. Mr Bradley, like Hyman, has no prior experience in the aviation industry.

***Jerry Willoughby (Aviation Practitioner)***

131. In 2015 while early negotiations were ongoing, Bruce Bradley partnered with Jerry Willoughby whose company (Colchester Aviation LLC) had recently acquired BVI Airways from former owner Luke Smith. At that time BVI Airways was grounded as it had lost its air operating certificate after failing to upgrade its equipment as required by ASSI. The airline was also experiencing financial difficulties and had been successfully sued by the BVI Airport Authority for outstanding fees of \$174,224.

132. Willoughby's 35 years of experience in various aviation related roles lent some legitimacy to the proposal as his CV listed him as having served as a pilot in the military and as a check captain for Delta.



133. He had also served as Director of Flight Operations for the beleaguered Baltia Airlines Inc, and used this association to bring in two of his former colleagues from Baltia to assist in the launching of the BVI/Miami air service. Pauline Jones who became Executive Vice President of BVI Airways and Joseph Pampalone, who was brought in as Director of Safety. The parties were instrumental in assisting with the ASSI and DOT approvals but as with Baltia, fell short of securing a viable commercial airline service.

134. Willoughby was named President, CEO and Director of BVI Airways. His interactions with the BVI Government were however minimal.

**Scott Weisman (Lawyer/Investment Banker)**

135. Scott Weisman was the fourth party to the Framework Agreement. Weisman, like Willoughby, was a partner in Colchester Aviation, LLC. His background is that of a lawyer with 30 years of experience in financial services, legal and investment banking. He is the founder of Etico Capital, a self-described "employee-owned merchant bank targeting business with high growth potential and offering unique solutions to accelerate growth, rapidly increase enterprise value and shorten liquidity horizons."

136. Weisman served as the Chairman of BVI airways during the course of the venture. The Government's advance of \$7.2 million was transferred in accordance with his instructions. He however repeatedly refused to provide details of how the funds were applied and rejected the Government's efforts to obtain information about the related operator companies which all appear to have been under his control. This raised concerns about the financial management of the operations and the prudence (or absence thereof) with which the Government monies were applied.

137. After the signing of the Framework Agreement, Weisman was the primary contact and most visible of the operator parties. Demands on the Government for more concessions and financing were made primarily by Weisman, as were accusations and allegations when those demands were not met. Despite the prominent role assumed by Mr Weisman, his CV lists no former experience in commercial aviation.

**BVI/MIA Operations – British Caribbean Airways**

138. *The parties failed to learn from the previous airline that had attempted the same venture almost two decades prior.*

139. During the initial presentation of the project to the Government and throughout the term of the venture, the operator parties insisted that the information be treated as privileged because the "special Jets" which were being proposed were proprietary information discovered by Bradley and not to be shared. Both sides promoted the venture as being the "first ever" direct flights between the BVI and Miami.

140. Despite Bradley's claim of discovery, the Miami/ BVI route was one that existed in 1986. It was launched by the BVI based British Caribbean Airways without any government funding. The route was operated with a new BAe-146 jetliner - British Aerospace precursor to the Avro RJ. The service began in the summer of 1986 to offer direct flights to Miami but subsequently scheduled a fueling stop in the



Turks and Caicos Islands. Flights were discontinued later that year, shortly after American Airlines commenced operations in the region.

141. No mention was made of this earlier operation. This meant that a potential opportunity to learn from the challenges that prevented the previous venture from successful operations and to develop possible safeguards to avoid the same fate was lost.



## PART 4 – Contentions

142. During initial negotiations the operator parties engaged in emotive and urgent communications with the Government to secure support for their project. Towards the end, the operator parties' tone shifted to accusatory and uncooperative even as they solicited additional public financing from the Government. The accusations and contentions arose around issues related to the airport development, exclusivity, financing and confidentiality.

### Airport Development

143. The airport runway expansion project was known to the operator parties from the inception of their negotiations.

144. The 2014 proposal from Bradley and Hyman for direct Miami flights occurred in the midst of the procurement process for the development of an extended runway on Beef Island. At that time the Government had already identified three prequalified contractors and had engaged procurement experts, engineers, legal advisers and financial advisers to assist in moving the project forward.

145. The operator parties negotiated with this knowledge by referring to the development in their correspondence and email exchanges as part of their pitch to get the Government to accept their proposal. Bradley in an email to the Premier dated 30 September 2014 stated that his Miami/BVI airlift venture would "serve as a bridge to expanding the Beef Island Airport "as it would "validate market demand for direct service and provide comfort to other carriers considering direct service, not to mention third parties willing to finance the several hundred million dollars required to expand Beef Island Airport."

146. Adopting the same phrase, Hyman in January 2015 correspondence to the Premier asserted that "Both parties agree that direct air service to Tortola will provide a significant economic boost to the BVI tourism and economic growth as well as acting as a bridge to the airport expansion." This view was shared by the Government and the project was endorsed as a measure to allow for continued air service while the airport development was being pursued.

147. The operator parties were also privy to the fact that the Government intended to have the airport expansion started and completed within the next three years. A report of the meeting held on 26 August 2015 in Georgetown DC, with the Government representatives and Operator Parties noted opening discussions that included information that the runway project was anticipated to take between twenty to thirty months to complete.

148. As negotiations progressed for the direct flights between Miami and BVI, so did the activity for the airport expansion and development.

149. In December 2016, after a protracted procurement process, the Government selected China Communications Construction Company as the preferred bidder for the airport expansion and commenced negotiations with the contractors for the construction contract. An announcement was made to the public on 27 December 2016 of this significant milestone.



150. Notwithstanding their prior knowledge of the development, and active use of this information to promote their venture, the operator parties reacted to the announcement with accusations and demands for additional concessions and financial compensation. They would later blame the Government's December 2016 announcement of the airport contractors for their failure to acquire private financing and by extension the failure of the venture.

### **Exclusivity**

151. From the beginning the subject of exclusivity was continuously raised by the operator parties and repeatedly rejected by the Government which viewed the suggestion as impractical and unsustainable. Exclusivity would mean tying the airport management to one operator on that route after undergoing a costly airport development.

152. The issue of exclusivity arose during the pre-contractual discussions and contributed to a delay in the finalization of the MOA with Bradley eventually accepting that it would not be included. It arose again in October 2015 when the operator parties included a clause in the draft Framework Agreement that would give their operations exclusivity for a period of three years. This was contrary to what had been agreed and was rejected by the Government.

153. Despite the foregoing, the absence of exclusivity was not deemed a sufficient deterrent by the operator parties who continued to aggressively pursue the Government and the project, by seeking public financing and concessions to advance their business. On the same day that the Government signed the Framework Agreement the operator parties submitted an amendment (side letter) to the agreement that would give themselves exclusive rights for a six year period. This was subsequently pared down to exclusivity for the three year term of the Agreement and a provision that any concessions offered to competitors in the following five year period would also be offered to BVI Airways.

154. In addition to exclusivity, the operator parties attempted to eliminate possible competition by seeking a commitment from the Government that the airport runway would not be expanded. They proposed a postponement of the development in a January 2017 side letter that they proffered in which they sought additional financial support and in other email and correspondence following the Government's January 2017 announcement that contractors had been selected for the development. The side letter and other related proposals were deemed inconsistent with the territory's development plans and were not adopted.

### **Solicitation of Additional Government Financing**

155. By July 2016 the Government had remitted to the operator parties the full amount (\$7.0 million) required under the Framework Agreement plus an additional \$200,000. Nonetheless, by February 2017, the operator parties had again approached the Government for further financial support. This request failed to garner sufficient support amongst legislators who were averse to investing more public funds into an operation that had yet to deliver.



156. Despite this, the operator parties seemed unable to accept the Government's position that no further public financing would be provided and incapable or unwilling to devise other means of supporting their company's operations.

157. Throughout 2017 there was a stream of unsolicited proposals from the operator parties for additional public financial support and for compensation for perceived losses.

158. The operator parties alleged that the planned runway expansion served as a disincentive to their prospective investors and used this as a basis for seeking additional public financial assistance in February 2017 in the form of a loan guarantee for \$10 million, and compensation for lost revenues. This was rejected by the Government.

159. This was followed with a proposal on 12 April 2017 for the Government to provide a line of credit (loan) of an additional \$8 million – \$10 million secured by the BAe Avro RJ jets.

160. Then on 28 June 2017 they presented a proposal for the Government to provide a loan guarantee of \$8 million for Colchester to borrow from an unnamed lender.

161. This was followed on 5 July 2017, with a proposal for a revolving credit (Government loan) of \$6.5 million with the two aircraft held as collateral.

162. Then on 5 September 2017, with a proposal for senior secured debt of \$3 million "with equity kicker" and an agreement not to extend the airport for 3 years.

163. In addition to the proposals, the Government was subjected to an unsolicited stream of emails from the operator parties who sought to pressure the Government into providing more public funding. These included:

- i. 25 April 2017 from Weisman – providing that the Government covers our costs for the next 30 days we are prepared to work with you to find interim and long term solutions.
- ii. 8 May 2017 from Weisman – the Government should make a short term payment of \$350,000 to us while loan (line of credit) details are being worked out;
- iii. 15 May 2017 from Bradley – Now is a good time for the Government to buy a significant stake in the venture, offer belongers vouchers for the first year and postpone the airport expansion;
- iv. 6 July 2017 from Bradley – We have a lender for \$7.65 million and need the Government to guarantee. In the next 7-10 days either we find acceptable terms together and reach an agreement or we will be forced to lay off local staff and pursue other options on the table. The balance will then be determined by the US legal system.



- v. 5 September 2017 from Weisman – We are in discussions with several potential investors to provide capital. They have all requested various levels of support from the Government.
- vi. 23 October 2017 from Bradley – there is one last lender/investor who is willing to fund us but it will require some form of guarantee from the BVI Government in order to proceed.

164. The then Financial Secretary on 19 June 2017 suggested to BVI Airways' Chairman, Weisman, that the Government might be amenable to providing a minimum revenue guarantee of an additional \$3 million to cover unsold seats if BVI Airways were to commence and fund flight operations between the BVI and Miami for 30-90 days. In exchange the Government would then request preferred shares equal to the representative value of \$10.2 million. Weisman responded that he did not see the suggestion as a basis for a viable solution. He instead suggested that the Government provide a line of credit (loan) with a number of other appendages. The proposal for a seat guarantee was not carried forward.

165. Ultimately, none of the financing proposals suggested by the operator parties met with the approval of the Government which was reluctant to go beyond the agreed \$7.2 million already advanced.

### **Government Information Requests (Clause 10)**

166. The Framework Agreement imposed an obligation on BVI Airways to disclose financial and other information requested by the Government. Despite this, the Government's repeated requests for information and supporting documents pertaining to the aircraft ownership and the operator companies were met with general non-cooperation and resistance.

167. The negotiations for the MOU and Framework Agreement executed in 2015 for \$7 million were supported by Curriculum Vitae of the principals representing the operator parties without any personal or business financial or due diligence information or documentation to support their ability to perform and to finance their side of the agreement.

168. In 2017 as the operator parties exerted pressure on the Government for additional public financial support, concerted attempts were made by the Government to obtain information about the primary and underlying companies used in the operations. A due diligence exercise was commissioned by the Government and undertaken in April 2017 which primarily provided publicly available information.

169. Also in April 2017, the Premier made a direct request to the operator parties for due diligence information regarding the ownership and control of the companies and the aircraft. Chairman of BVI Airways Weisman responded by providing documents confirming the ASSI certification but ignored requests for evidence of ownership for the two aircraft, registers of beneficial owners and directors for the relevant companies and financial information for the company. See Appendix 3.





170. Similar correspondence was sent by the Financial Secretary on 17 May 2017 to the operator parties requesting information about the companies. This drew a response that was defiant and accusatory with flagrant refusals to provide much of the information and unsubstantiated claims that other such information had already been provided. See Appendix 4.

171. The BVI law firm of Conyers Dill and Pearman was engaged by the Government in 2017 to assist with resolving issues related to the financing and the general non-performance of the venture. The firm on 18 June 2017, requested the operator parties to provide details of their investments into the venture and information on how the Government's \$7.0 million was applied. This request was referred to by the Chairman, Weisman, to his colleagues as "more of the same crap" and Conyers was instead sent a non-disclosure agreement for Colchester. The request for information was repeated by Conyers in emails on 20 June, 22 June and 26 June. No information was provided by the operator parties on their alleged investment, and aside from the unaudited summary financial statements released for BVI Airways, no details provided on how the funds were applied.

172. The Framework Agreement required that BVI Airways submit quarterly financial statements. These would show the progression of activity for the airline and provide management information of the company's operations. The quarterly statements were never provided.

173. After the initial refusal, the operator parties on 22 May 2017 forwarded to the Government one set of financial statements (in summary form) for BVI Airways' pre-operational period from January 2016 to March 2017.

174. Financial Statements (in summary form) were also received for Colchester Aviation LLC for January – December 2017. The statements for both companies, BVI Airways and Colchester, were unaudited and unsupported.

175. Other information requested such as the current Registers of Directors and Beneficial Owners of the operator companies and the evidence of ownership of the aircraft was not forwarded.

### **Letter of Credit (Clause 5)**

176. The Government's early failure to secure a letter of credit for \$7.0 million was considered a material breach of the Framework Agreement. The effect of this default was to allow the operator parties the right to terminate the agreement. An option they chose not to exercise.

177. The then Financial Secretary informed the Premier of the default in correspondence dated 10 March 2016 and advised that of the several banks contacted, only one was willing to provide the Letter of Credit. This would be on terms that would need the approval of Cabinet and the House of Assembly. He further advised that BVI Airways had agreed to accept a transfer of the May 30 allotment of funds until the issue had been resolved.

178. This led to early transfer of the sums as discussed previously in this report and to the 7 June 2016 signing of an addendum to the agreement in which the operator parties "fully and unconditionally waived the default."



179. Despite signing the addendum and receiving the full \$7.2 million from the Government the operator parties continued to complain about the letter of credit breach in correspondence throughout the venture in a manner that suggested that the Government was still in default.

### **Confidentiality (Clause 13)**

180. The non-disclosure clause in the Framework Agreement required each of the parties to confirm and agree that **any information received from the other parties** (our emphasis) during the term of the venture with respect to (a) the disclosing party, (b) the terms of the agreement or (c) the project, would be treated as confidential and that the parties would exercise reasonable efforts not to disclose the information to any other person or entity without prior written consent of the disclosing party. The clause appeared to have been intended to protect personal, financial, proprietary or commercially sensitive information provided by the parties to the Government (and each other) to facilitate the venture.

181. Correspondence received from the BVI Airways Chairman, Weisman dated 22 May 2017 complained of Government's "ongoing and continuing breaches of the Framework Agreement" but did not detail the perceived infractions. Subsequent information from the operator parties alluded to the release of the Framework Agreement document in the press and the publication of a letter issued by the Premier to the US Department of Transportation in support of the venture as the alleged breaches of information shared.

182. The complete Framework Agreement was made public by the Premier in the House of Assembly on 25 January 2016. This was done in response to a question from the First District Representative who asked for "details of all agreements signed between BVI Airways and the Government of the BVI".

183. The Framework Agreement's release was not accompanied with any disclosures of information or documents received from the operator parties, and as such did not run in contravention of Clause 13.

184. Similarly, the letter written by the Premier to the United States Department of Transportation contained no disclosures of information, (confidential, proprietary or otherwise) received from the operator parties. The March 8, 2017 letter addressed the importance of direct air service for the BVI economy and expressed the BVI Government's support for licensing of the airline.

185. In neither instance was information provided by the operator parties to the Government for the venture publicised or otherwise comprised.

### **Termination**

186. For the period January 2017 to June 2017 while awaiting approvals from the US Authorities, relations between the Government and the operator parties deteriorated. This was due in large measure to the operator parties' insistence on further Government financial intervention. Their proposals for additional financial support were not adopted by the Government.



187. Matters came to a head in May 2017 when information reaching the Government alluded to plans by the operator parties to sell/or lease the planes that were acquired for the BVI/MIA flights. This led to the Premier issuing a "letter before action" to the operator parties dated 1 June 2017 reminding them of their obligations under the contract and advising that failure to adhere could lead to termination.

188. At this time the airline's ACMI contract with Haiti's Sunrise Airways was drawing to an end and on 7 June 2017 the BVI Airways plane which was being used under this contract was reported to have been flown directly from Port au Prince, Haiti to Fort Lauderdale, Florida. The plane would later join its fleet-mate in Summerside Canada, on 26 August 2017. Neither aircraft was returned to the BVI.

189. The shutdown of the venture announced by the airline on 18 July 2017 occurred on the cusp of receiving final authorizations in June and July to commence its mandated flights into Miami.

190. On 31 October 2017, the Government issued notice to Bruce Bradley that failure to commence service by 30 November 2017 would render the Framework Agreement terminated. No services were commenced.

191. An investigation by the law firm of Martin Kenney & Co Solicitors (MKS) for the Government determined that the planes were resold to Tronosjet in Canada. One of the aircraft was subsequently acquired by Neptune Aviation in February 2018 and the other by Cobham Aviation Services in Australia in December 2018.

192. On 1 October 2018, the Government engaged Martin Kenny & Co Solicitors to undertake a cross border investigation with a view to obtaining evidence to facilitate recovery of \$7.2 million advanced to BVI Airways.

## **Conclusion**

### **Risk-Free Investment**

193. The manner in which the project was introduced and progressed suggests that the operator parties were attempting to take advantage of the Territory's existing airlift issues by providing a solution that would guarantee them above market returns without the financial risk. This conclusion is consistent with the observations made in the BDO report and is borne out by the fact that despite initial promises of \$5 million - \$6 million investment the summary pre-operational financial statements show very little investment input by the operator parties.

### **Anti-Competitive Requests**

194. The Framework Agreement was crafted by the operator parties and heavily favoured their interests. Despite this, they continued to expect and insist on additional preferential treatment from the Government in the form of continued financial support and concessions to secure their profitability, even if this meant compromising the interests of the Territory. This was demonstrated by their insistence that the Government should postpone the airport runway expansion and their repeated



requests for exclusivity to eliminate any possible competition that would impact their profitability. When their requests were not accommodated, the operator parties, having not invested any of their own resources, opted to abandon the venture.

195. The claim of financial difficulties by BVI Airways' principals appears to contradict the DOT's assessment of the financial information they submitted with their license application. The company would have had to demonstrate that it was financially capable of supporting the proposed operations in order to receive the license.

196. While profitability is the goal of every business, competition is required to promote efficiency and growth in any given industry.

#### **Application of Government Financing**

197. The operator parties were required by the terms of the Framework Agreement to submit quarterly financial statements. This did not occur. The one set of statements received by the Government for the pre-operational period appears to be inflated and misleading. If accurate, the submitted statements show disproportionate spending on salaries and professional fees and indicate a misrepresentation of the information submitted to the Inland Revenue Department. Notwithstanding, despite the Government's investment of \$7.2 million there is to date no accurate accounting of how the amounts were applied.

#### **Project Implementation Failings**

198. The Government erred in many respects in the implementation of this project. Some of these were in:

- i. Contracting an airlift agreement with parties who lacked relevant industry experience and operational contacts.
- ii. Agreeing to a "joint engagement" of technical experts to examine feasibility of the project instead of separately commissioning a full study to examine the possible options to address the airlift issues;
- iii. Failing to adopt the BDO advice which called for a more balanced financial arrangement;
- iv. Allowing the emotive and urgent pushing from the operator parties to dictate Government's involvement in the venture.
- v. Failing to adopt the amendments made by Attorney General in the draft agreements that would have afforded greater protection of the BVI Government's interest in the venture;
- vi. Failing to secure a written commitment from the operator parties of their financial input into the venture and to ensure that this obligation was incorporated into the terms of the Framework Agreement.
- vii. Effectively removing the performance requirement from the agreement that required BVI Airways to commence flights before receiving the final \$2.0 million Government advance.
- viii. Assigning the individual in charge of the Government's finances serve as the primary facilitator to implementation, there was no higher financial authority to question or prevent his decision make early and complete payments to BVI Airways, which were contrary to Cabinet authorizations.



## Failure to Fly

199. With the required authorisations and the necessary infrastructure in place BVI Airways was ready to fly. However the unreasonable expectations of the operator parties, and the refusal of the Government to agree to an increased financial commitment led to a stalemate between the parties. This resulted in the operator parties' decision to suspend the airline operations and later to the eventual failure of the venture.

## Recommendations

- i. The Government should take steps to pursue recovery of the amounts advanced. (We are aware that this process has already commenced.)
- ii. Variations to Cabinet Decisions should be approved by Cabinet unless otherwise stated. The assigned liaison should account for the disregard of Cabinet requirements with regards to the payment schedule and the early release of the escrowed payment of \$2.0 million.
- iii. The Government should always seek competitive options on major spending projects. This affords it the best opportunity to receive value for money on public expenditure.
- iv. Where the Government is seeking to place significant reliance on the outcome of any study, independent experts should be engaged with the specific mandate to address and advise on the Government's interests.
- v. Senior public managers are the Government's gatekeepers and should not assume roles that can create a conflict with their public fiduciary duties.
- vi. An independent audit is required to determine how the amounts advanced to the operator parties were applied during the almost two year period. The expenditure disclosed in the company's management accounts (submitted for the non-operational period) appears inconsistent with the level of operations. This review should be requested in the arbitration process that is currently being undertaken.
- vii. The former financial secretary who served as the Government's liaison on this project should be required to provide answers for his apparent excesses of authority beyond Cabinet's authorisations, including his release of \$2million dollars in January 2017 to the operator parties (PFMR 71) which may also amount to a breach of trust. Explanations are also needed for the absence of financial oversight and failure to insist on accountability from the operator parties with respect to how the Government's funds were applied. Especially as financial transparency was a specific requirement of the Framework Agreement.

Sonia M Webster  
Auditor General  
Office of the Auditor General  
Government of the Virgin Islands



Appendix 1

**Officers, Directors, and Key Personnel**

**I. The key management personnel of BVI Airways are as follows:**

Name: Jerry D. Willoughby  
Position: President and CEO  
Citizenship: USA  
Residence Address:  
Business Address: 181 Main Street, 2nd Floor, PO Box 2254, Road Town, Tortola, VG1110, BVI

Name: Pauline E. Jones  
Position: Executive Vice President  
Citizenship: UK  
Residence Address: 3100 NE 29th St, Apt 301, Fort Lauderdale, FL 33308  
Business Address: 181 Main Street, 2nd Floor, PO Box 2254, Road Town, Tortola, VG1110, BVI

Name: Scott M, DeLacy  
Position: Vice President of Operations  
Citizenship: USA  
Residence Address: 524 Macintosh Lane, Danville, IN 46122, USA  
Business Address: 181 Main Street, 2nd Floor, PO Box 2254, Road Town, Tortola, VG1110, BVI

Name: Bradley Goggin  
Position: Director of Flight Operations  
Citizenship: UK  
Residence Address: 25 Nanny Cay, Road Town, Tortola, Virgin Islands (BR) VG1110  
Business Address: 181 Main Street, 2nd Floor, PO Box 2254, Road Town, Tortola, VG1110, BVI

Name: Joseph Pampalone  
Position: Director of Safety & SOC  
Citizenship: USA  
Residence Address: 4010 Galt Ocean Drive, Apt 203, Fort Lauderdale, FL 33308  
Business Address: 181 Main Street, 2nd Floor, PO Box 2254, Road Town, Tortola, VG1110, BVI

Name: Terrence Mack  
Position: Director of Maintenance  
Citizenship: USA  
Residence Address: 4250 Galt Ocean Drive, Apt 3K, Fort Lauderdale, FL 33308  
Business Address: 181 Main Street, 2nd Floor, PO Box 2254, Road Town, Tortola, VG1110, BVI

Name: Glenn Fordyce  
Position: Chief Inspector/ QA  
Citizenship: Guyana  
Residence Address: 2510 Central Amelia's Ward, Mackenzie, Linden, Guyana  
Business Address: 181 Main Street, 2nd Floor, PO Box 2254, Road Town, Tortola, VG1110, BVI



Name: Roy Canter  
 Position: Director of Stations & Security  
 Citizenship: USA  
 Residence Address: 1150 NW 184th Place, Pembroke Pines, FL 33029  
 Business Address: 181 Main Street, 2nd Floor, PO Box 2254, Road Town, Tortola, VG1110, BVI

Name: Robert Castro  
 Position: Chief Financial Officer  
 Citizenship: USA  
 Residence Address:  
 Business Address: 181 Main Street, 2nd Floor, PO Box 2254, Road Town, Tortola, VG1110, BVI

Name: Deiter Stoker  
 Position: Compliance Manager  
 Citizenship: Germany  
 Residence Address: 205 Brookelear Lane, Fayetteville, GA, 30215  
 Business Address: 181 Main Street, 2nd Floor, PO Box 2254, Road Town, Tortola, VG1110, BVI

Source: BVI Airways Application to the US Department of Transportation for Foreign Air Carrier Permit and Exemption.

**II. Directors of BVI Airways are as follows:**

<u>Name</u>	<u>Title</u>	<u>Citizenship</u>
Jerry D. Willoughby	Director, President & CEO	USA
Scott A. Weisman	Chairman	USA
Bruce F. Bradley	Vice Chairman	USA
Pauline E. Jones	Director & Executive Vice President	UK/BVI Resident
Lester S. Hyman	Director	USA
Robert Cisella	Director	USA
Ryan Geluk	Director	UK/BVI Resident

Source: BVI Airways Application to the US Department of Transportation for Foreign Air Carrier Permit and Exemption.

**III. Beneficial Owners of BVI Airways are as follows:**

Full Legal Name of Beneficial Owner or Person with Control	Details of Ownership – Number and Percentage		Nationality
Bradley Goggin	10,200	20%	British
Pauline E. Jones	15,300	31%	British
Colchester Aviation, LLC	24,500	49%	United States

Source: BVI Airways Application to the US Department of Transportation for Foreign Air Carrier Permit and Exemption.



Appendix 2

**BVI Airways Salaries Jan 2016 to March 2017**

Date Employed Flight Crew	Name	Job Title	2016				2017			
			Jan- Sep	October	November	December	January	February	March	Total
17 Oct, 2016	Baird, Kenisha	Cabin Crew	-	1,000	2,000	2,000	2,000	2,000	2,000	11,000
17 Oct, 2016	Gordon, Cameron	Cabin Crew	-	1,000	2,000	2,000	2,000	2,000	2,000	11,000
17 Oct, 2016	Henry, Jahnuque	Cabin Crew	-	1,000	2,000	2,000	2,000	2,000	2,000	11,000
17 Oct, 2016	Joseph, Sahodra	Cabin Crew	-	1,000	2,000	2,000	2,000	2,000	2,000	11,000
01 Jan, 2017	Lenten, Sander	First Officer	-	-	-	-	5,000	5,000	5,000	15,000
01 Feb, 2017	Wills, Alex	Captain	-	-	-	-	-	8,500	8,500	17,000
01 Apr, 2017	Crockford, Michael	Captain	-	-	-	-	-	-	-	-
01 Apr, 2017	Drennan, Patrick	First Officer	-	-	-	-	-	-	-	-
01 Apr, 2017	Michard, Robinson	First Officer	-	-	-	-	-	-	-	-
01 Apr, 2017	O'Grady, John	Captain	-	-	-	-	-	-	-	-
01 Apr, 2017	Simmons, Shane	Captain	-	-	-	-	-	-	-	-
16 May, 2017	Gray, Shantel	Cabin Crew	-	-	-	-	-	-	-	-
16 May, 2017	Hopkins, Jada	Cabin Crew	-	-	-	-	-	-	-	-
16 May, 2017	Matthias, Shafana	Cabin Crew	-	-	-	-	-	-	-	-
16 May, 2017	Spruyt, Morane	Cabin Crew	-	-	-	-	-	-	-	-
<b>Flight Crew Payroll Totals</b>			-	4,000	8,000	8,000	13,000	21,500	21,500	76,000
<b>Flight Operations</b>										
01 Jan, 2017	Groggin, Brad	Director- Flight Operations	-	-	-	-	9,000	9,000	10,200	28,200
01 Jan, 2017	Hitzbleck, Maja	Operations Controller	-	-	-	-	5,000	5,000	5,000	15,000
<b>Flight Operations Payroll Totals</b>			-	-	-	-	14,000	14,000	15,200	43,200
<b>Maintenance</b>										
16 May, 2017	Fordyce, Glenn	Maintenance	-	-	-	-	-	-	-	-
<b>Maintenance Payroll Totals</b>			-	-	-	-	-	-	-	-
<b>All STAFF PAYROLL TOTAL</b>			-	4,000	8,000	8,000	27,000	35,500	36,700	119,200

PAYROLL TAXES	All Staff	2016				2017			
		Jan- Sep	October	November	December	January	February	March	Total
		-	180	540	945.60	-	480	2,112	4,257.60
<b>Total Payroll Taxes</b>		-	180	540	945.60	-	480	2,112	4,257.60





## Appendix 3

**Premier's Request for Information**

<b>Premier's Request for Information on 19 April 2017</b>	<b>Result</b>	<b>Response From Board Chairman Weisman</b>
1. Details (and proof) of the ownership of the two aircraft, both legal and beneficial, including full details of any mortgages already secured over the two aircraft;	NOT SUBMITTED	No response
2. Registers of directors and members, Memorandums & Articles of Association (or equivalent) and current good standing certificates of each company that is a party to the Framework Agreement and of each and any other company involved in the ownership of the two aircraft;	NOT SUBMITTED	No response
3. Valuation and/or acquisition price information in respect of each aircraft;	Appraisals Received	Documents forwarded
4. Full registration details of each aircraft;	Registration Certificate Received	Documents forwarded
5. The certificates of airworthiness for each aircraft;	Certificate Received	Documents forwarded
6. Financial details/report for BVI Airways and any company involved in the ownership of the two aircraft;	NOT SUBMITTED	No Response
7. Full information regarding the status of the applications for all relevant approvals in the USA;	NOT SUBMITTED	No Response
8. The current geographical location of each aircraft:	Information Received	VPLWW currently under a short-term ACMI sub-service arrangement operating between Haiti and Cuba. VPLOS currently undergoing extensive C check and engine upgrade expected to be completed in by middle to end of May.
9. Full details of any proposed lenders of the further funding sought; and	NOT SUBMITTED	No Response
10. To the extent available, details of the third aircraft, the purchase of which is contemplated.	NOT SUBMITTED	No Response



## Appendix 4

## Financial Secretary's Request for Information

Financial Secretary Request for Information 17 May 2017	Result	Text of Response From Board Chairman Weisman
1. Details (and proof) of the ownership of the two aircrafts already in BVI Airways' possession (the <i>Aircraft</i> ), both legal and beneficial, including full details of any mortgages already secured over the Aircraft;	NOT SUBMITTED	<p>“We have responded several times orally and in writing and provided documentation to you and the Premier. As you know the aircraft are registered on the BVI registry and you surely can access such information and documents from the registry.”</p> <p>(AUDIT NOTE: No documentation for ownership was provided previously. The BVI Airport Authority was contacted by us and they advised that no Aircraft Registry Exists in the BVI)</p>
2. Registers of directors and members, and Memoranda and Articles of Association for each of the Operator Parties, and each and any company involved in the ownership of the Aircraft (to include "Newco", if such company is in existence) (the <i>Relevant Companies</i> );	NOT SUBMITTED	“The Government never requested such information at the time we entered the Framework Agreement and such request is unreasonable and denied.”
3. An explanation of the role of BV Airways, Inc. of 3520 Embassy Drive, Suite 302, West Palm Beach, FL 33401;	Explanation Provided	“At one point BVI Airways used that address for notices – kindly provide some context for the question and the concern.”
4. Valuation and/or acquisition price information in respect of each of the Aircraft;	Valuation provided previously in response to the Premier's April 19 <sup>th</sup> request	“Previously Provided”
5. The latest management prepared financial statement for BVI Airways, prepared in accordance with international financial reporting standards or United States generally accepted accounting principles (as described in Clause 10);	Summary Statements for BVI Airways were forwarded on 22 May 2017.	“As previously indicated the information will be available once we are assured that the breaches of confidentiality will cease.”



<b>Financial Secretary Request for Information 17 May 2017</b>	<b>Result</b>	<b>Text of Response From Board Chairman Weisman</b>
6. Financial details/report for each of the other Relevant Companies;	PARTIALLY SUBMITTED  Summary Statements for Colchester Aviation LLC were forwarded for 2016	“Unreasonable and irrelevant and denied.”
7. The application submitted to the U.S. Department of Transportation ( <i>DOT</i> ), and the approval documents;	NOT SUBMITTED	“Previously supplied. As you know it is available on the United States – DOT website.”  (AUDIT NOTE: There is no evidence of this being supplied previously)
8. Full information regarding the status of the applications for all further approvals to commence Commercial Air Service to the United States.	NOT SUBMITTED	“With the breaches of confidentiality, we are not prepared to provide copies of the application and it would be a violation of US law to provide information regarding our process with the United States Department of Homeland Security and the TSA.”
9. The current geographical location of each of the Aircrafts.	Explanation Provided	“We have responded to this question several times orally and in writing - VPLOS is in “C” check and VP LWW is operating under an ACMI arrangement between Haiti and Cuba - you can track its movements on Flight Tracker.”



## Appendix 5

**Framework Agreement****Action Taken**

Action	By	Result
a. BVI Airways Services to launch and operate a commercial air service by 31 October 2016 between EIS and MIA using two BAe AVRO RJ85 or similar aircraft capable of carrying up to eighty-five passengers and providing three flights a week.	BVI Airways	Not Done
b. Certification of BVI Airways would be pursued by operator parties through promptly submitting applications to the relevant US, UK and BVI agencies. This effort would be supported as by the Government.	BVI Airways	Done
c. Interline Agreements with international and/or domestic air carriers servicing MIA would be pursued by BVI Airways;	BVI Airways	No Evidence
d. Flight Schedules would be determined solely by BVI Airways;	BVI Airways	No Flight Schedules publicised
e. The Government grants BVI Airways the right to operate for so long as they desire to operate;	BVI Government	Done
f. The Government will appoint a special liaison to ensure timely responses and resolution of issues;	BVI Government	Done
g. The Government to reimburse BVI Airways for startup costs during the initial three years of operations up to a total of Seven Million dollars.	BVI Government	Done
h. The Government may terminate the agreement with 30 days prior written notice if the service is not commenced by 31 December 2016.	BVI Government	Done
i. The Board of Directors to include a Government representative.	BVI Airways/BVI Govt	Done



Action	By	Result
j. Ten percent of the securities in the newco issued by BVI Airways to go to investors located in the BVI.	BVI Airways	No Evidence
k. The Government to be repaid from operating profits after the company's reserves are established, operating deficit reduced and 80% of the remaining sum retained by the operators.	BVI Airways	Not Done
l. Government only entitled to reimbursement of guaranteed amount.	BVI Airways	Operations ceased. No Reimbursement.
m. The agreement effective from 7 December 2015 to 3 years after commencement of passenger air services.	Government/ BVI Airways	Agreement Terminated end of November 2017
n. The Government may terminate early if no interline agreement after 6 months of flying; losses of more than \$3 million after 24 months or there is a breach of a material obligation.	Government	Terminated for breach of a material obligation.
o. The operator Parties entitled to terminate immediately without prior notice if the Letter of credit is not provided, expires or becomes unenforceable or invalid.	BVI Airways	Not Done - Agreement Amended
p. Where termination occurs the Government will be responsible for and indemnify and hold operator parties harmless from all reasonable costs and expenses in connection with the termination.	Government	Arbitration and legal action pending.
q. The Government to facilitate approvals and provide assistance with respect to counter space and facilities, landing rights and permits etc. To abate Airport Authority fees charges or levies including landing fees, navigation charges, storages fees, fuel taxes and surcharges, and make improvement to airport facilities and services.	Government	Done. Some actions delayed until flight commencement. Eg. increased customs and immigration staff