

| Chapter 7: Statutory Boards | | |
|---|--------------------------------|---------------|
| Document | Report Reference | Page |
| Cabinet Memorandum No 103/2019: Revocation of Membership of Statutory Boards under the Premier's Office (27 March 2019) | Paragraph 7.1 footnote 2 | 1 – 6 |
| Attorney General's Submissions regarding the meaning of sections 66 and 67 of the Constitution Order 2007 (13 September 2021) | Paragraph 7.1 footnote 2 | See Chapter 4 |
| Carolyn O'Neal Morton Second Affidavit (2 July 2021) | Table 10 footnote 4 | 7 – 27 |
| Carolyn O'Neal Morton Third Affidavit (5 September 2021) | Table 10 footnote 4 | 28 – 40 |
| Ronald Smith-Berkeley First Affidavit (19 June 2021) | Table 10 footnote 4 | 41 – 47 |
| Jeremiah Frett Second Affidavit (2 July 2021) | Table 10 footnote 7 | 48 – 66 |
| Jeremiah Frett Fifth Affidavit (26 August 2021) | Table 10 footnote 7 | 67 – 74 |
| Tasha Bertie Second Affidavit (18 June 2021) | Table 10 footnote 9 | 75 – 84 |
| Tasha Bertie Third Affidavit (6 September 2021) | Table 10 footnote 9 | 85 – 92 |
| Joseph Smith Abbott First Affidavit (29 June 2021) | Table 10 footnote 10 | 93 – 109 |
| Joseph Smith Abbott Second Affidavit (30 July 2021) | Table 10 footnote 10 | 110 – 121 |
| Dr Marcia Potter Second Affidavit (25 June 2021) | Table 10 footnote 11 | 122 – 135 |
| Tasha Bertie Response to Warning Letter No 1 (4 September 2021) | Paragraph 7.7 footnote 19(i) | 136 – 138 |
| Hon Carvin Malone Response to Warning Letter No 1 (31 August 2021) | Paragraph 7.7 footnote 19(ii) | 139 – 146 |
| Joseph Smith Abbott Response to Warning Letter No 1 (4 September 2021) | Paragraph 7.7 footnote 19(iii) | 147 – 150 |
| Hon Vincent Wheatley Response to Warning Letter No 1 (31 August 2021) | Paragraph 7.7 footnote 19(iv) | 151 – 156 |
| Dr Carolyn O'Neal Morton Response to Warning Letter No.1 (4 September 2021) | Paragraph 7.7 footnote 19(v) | 157 – 165 |
| Hon Andrew Fahie Premier and Minister of Finance Response to Warning Letter No 1 (31 August 2021) | Paragraph 7.7 footnote 19(vi) | 166 – 196 |
| Cabinet Response to Warning Letter No.1 (5 September 2021) | Paragraph 7.7 footnote 19(vi) | 197 – 226 |
| Recruitment and Selection Procedures Manual – Membership of Statutory Boards (Undated) | Paragraph 7.17 footnote 37 | 227 – 233 |

| | | |
|--|-----------------------------|---------------|
| Elected Ministers' Closing Submissions (22 November 2021) | Paragraph 7.23 footnote 41 | See Chapter 5 |
| Internal Audit Department Final Report: Wickham's Cay Development Authority (March 2014) (including Management Response of Ministry of Communications and Works (26 June 2014) | Paragraph 7.28 footnote 46 | 234 – 271 |
| Wickham's Cay Development Authority Ordinance, Cap 281 (exhibited to Ronald Smith-Berkeley First Affidavit dated 19 June 2021) | Paragraph 7.29 footnote 48 | 272 – 276 |
| Auditor General's Report on Port Development Project (31 January 2013) | Paragraph 7.31 footnote 54 | 277 – 289 |
| Public Accounts Committee Final Report Cruise Ship Port Development Project and Appendices (13 June 2014) | Paragraph 7.31 footnote 55 | 290 – 325 |
| Public Accounts Committee Interim Report (9 April 2014) | Paragraph 7.31 footnote 55 | 326 – 332 |
| Ports Authority Board Minutes (8 March 2012) | Paragraph 7.33 footnote 62 | 333 – 340 |
| Ports Authority Board Minutes (12 April 2012) | Paragraph 7.34 footnote 64 | 341 – 346 |
| Ports Authority Board Minutes (14 June 2012) | Paragraph 7.34 footnote 66 | 347 – 359 |
| Minute of evidence of Gregory Adams, former acting Chairman of the Ports Authority (15 January 2014) | Paragraph 7.34 footnote 66 | 360 – 385 |
| Expedited Extract of Cabinet decision on Cabinet Memorandum No 191/2012: Public-Private Partnership Agreements between Tortola Port Partners Limited, the Government of the Virgin Islands and the British Virgin Islands Port Authority for the Development of Cruise Pier and adjoining Pier Park (20 July 2012) | Paragraph 7.35 footnote 67 | 386 – 387 |
| Hon Mark Vanterpool Response to COI Warning Letter No 1 (23 September 2021) | Paragraph 7.36 footnote 68 | 388 – 395 |
| Minute of evidence of Arlene Smith-Thompson, former Acting Permanent Secretary MCW (29 January 2014) | Paragraph 7.38 footnote 83 | 396 – 447 |
| Legal Submission to the COI on behalf of The Honourable Mark Vanterpool (24 September 2021) | Paragraph 7.54 footnote 122 | 448 – 450 |
| Expedited Extract of Cabinet decision on Cabinet Memorandum No 103/2019 (27 March 2019) | Paragraph 7.71 footnote 136 | 451 – 456 |
| Cabinet Memorandum No 115/2019: Revocation of Appointments of Board Members – British Virgin Islands Electricity Corporation (25 March 2019) | Paragraph 7.76 footnote 140 | 457 – 463 |
| Minutes of Cabinet Meeting No 2 of 2019 | Paragraph 7.78 footnote 141 | 464 – 465 |
| Memorandum Attorney General to Permanent Secretary Premier's Office: Appointment of New | Paragraph 7.89 footnote 171 | 466 |

| | | |
|--|------------------------------|-----------|
| Board Members to the BVI Ports Authority Board (13 May 2019) | | |
| Cabinet Memorandum No 154/2019: Appointment of New Board Members to the BVI Ports Authority Board (6 May 2019) | Paragraph 7.90 footnote 172 | 467 – 471 |
| BVI Government's response to COI Request for Information No 2 (Composition of the Climate Change Trust Fund Board) | Paragraph 7.98 footnote 182 | 472 – 473 |
| Premier's letter to Chairman, Edward Childs (5 April 2019) | Paragraph 7.99 footnote 183 | 474 |
| Cabinet Memorandum No 122/2019: Revocation of the Appointments of the Membership of the Virgin Islands Climate Change Trust Fund Board (23 April 2019) | Paragraph 7.103 footnote 189 | 475 – 479 |
| Minutes of Cabinet Meeting No 5 of 2019 | Paragraph 7.105 footnote 191 | 480 – 481 |
| Cabinet Memorandum No 155/2019: Amendment to the Virgin Islands Climate Change Trust Fund Act 2015 (3 May 2019) | Paragraph 7.106 footnote 194 | 482 – 486 |
| Memorandum Attorney General to Permanent Secretary Premier's Office: Virgin Islands Climate Change Trust Fund Act 2015 (9 May 2019) | Paragraph 7.107 footnote 196 | 487 – 490 |
| Cabinet Meeting No 9 of 2019 | Paragraph 7.108 footnote 199 | 491 – 516 |
| Letter IRU to COI (16 September 2021) | Paragraph 7.124 footnote 225 | 517 |
| Auditor General's Report on the accounts of the Virgin Islands for the year ending 31 December 2016 (21 March 2019) | Paragraph 7.135 footnote 233 | 518 – 548 |
| Robin Gaul Position Statement (4 June 2021) | Paragraph 7.136 footnote 237 | 549 – 583 |
| State Owned Enterprises and Statutory Bodies Monitoring Framework Paper (disclosed to the COI in the Exhibit to Jeremiah Frett Second Affidavit) (1 June 2016) | Paragraph 7.142 footnote 244 | 584 – 597 |
| Draft Cabinet paper: Central Government Oversight of Statutory Bodies No /2014 (undated) (disclosed to the COI in the Exhibit to Jeremiah Frett Second Affidavit) | Paragraph 7.142 footnote 245 | 598 – 601 |
| Draft Cabinet paper: Central Government Oversight of Statutory Bodies and State Owned Enterprises No. /2014 (undated) (disclosed to the COI in the Exhibit to Jeremiah Frett Second Affidavit) | Paragraph 7.143 footnote 246 | 602 – 605 |
| Public Sector Transformation Framework | Paragraph 7.143 footnote 248 | 606 – 655 |

Revocation of Membership of Statutory Boards under the Premier's Office

Signed

· 19 March 2019 · PO · Mrs. Elvia Smith-Maduro · Memo No. 103/2019

Background Information

1) Under the law, statutory bodies of the Virgin Islands are quasigovernment organizations but that get their powers, service rules, authority by an act of parliament or state legislatures. They are generally established to perform specific functions which a government considers effectively performed outside a traditional departmental executive structure. They fulfill the requirement for operational independence from the government however, funding arrangements are dependent on the annual appropriations processes in most instances for those statutory bodies who receive their annual budget allocation by way of a subvention from Government.

2) 2. As a result of the recently concluded general elections there was a change in the government administration and a reshuffling of portfolio subjects across ministries. The list of statutory bodies under the Premier's Office portfolio includes the following;

- Planning Authority Board
- Physical Planning Appeals Tribunal
- BVI Tourist Board
- Board of Immigration
- BVI Airports Authority
- BVI Ports Authority

- **Telecommunications Regulatory Commission**
- Building Authority
- Prospect Reef Management Company
- Maritime Advisory Board
- Climate Change Trust Fund Board

3) Membership of each statutory board is approved by Cabinet and instruments of appointments signed by the respective Ministers or the Governor.

4) 3. With each new Government Administration it is common practice that some or all current board membership is dissolved and new members appointed to the respective boards. The manifesto of the new government administration calls for innovative, forward and progressive ideas, initiatives and action from each government ministry, department and agency during this recovery period. For those initiatives that must be implemented through a statutory body the same principles for innovative, forward and progressive initiatives and action will be required.

5) 4. The manifesto of the new government administration places heavy emphasis on youth involvement in every aspect of the development of the Territory. As such the intention is also to appoint a youth representative on each statutory board and committee. In addition, recommendations will be forthcoming for a new policy to amend the membership terms of each board to not extend beyond the term of the sitting Administration that appointed the board.

6) 5. As such Cabinet's approval is being sought to revoke the membership of the current statutory boards under the Premier's Office portfolio to allow for the right mix of new innovative and progressive minded members to be appointed

that would include representation of youths on each board. A list of the current membership of each statutory board under the Premier's Office portfolio is attached at **Appendix A**.

Purpose

7) To dissolve current board membership and appoint new board members

Cross-Ministry Consultation

8) The Attorney General, the Financial Secretary, Ministry of Natural Resources and the Ministry of Transportation, Works and Utilities have been invited to comment on the paper.

Financial Implications

9) I have noted the comments of the Attorney General when he stated, "I have not had the opportunity to review the removal provisions of ALL the Boards (statutory corporation or otherwise)." To this end, it is critically important that Cabinet satisfies itself that even in the cases of the BVI Ports Authority and BVI Electricity Boards wherein there is express provision for the removal of Statutory Board members and as cautioned by the Attorney General, the discretionary powers of Cabinet must be exercised reasonably.

10) In light of the above, before Cabinet takes the decision to remove any Board Director of a Statutory Board, Cabinet must satisfy itself that it not only has the power to do so as per the respective statutes establishing the Boards but that in removing the Directors amass that this will not easily be construed by any arbiter as acting/behaving unreasonable. To act otherwise in these circumstances may expose Government to claims of unreasonable dismissals which in turn could result in huge financial liabilities being attached to Government.

Legal Implications

11) May I note further that there is no provision for revoking the appointment of members of the Tourist Board ,But that is cured by section 20 of the Interpretation Act (Cap. 136) which authorises an appointing authority to remove an appointee at its discretion.This of course entails compliance with the rule of law requirement I had previously made reference to.

Communication Strategy

12) Ministry to send written communication to each board member advising of dissolving of their membership pending Cabinet's approval

Conclusion

13) Existing board membership to be dissolved and new members to be appointed.

Decision Sought

Cabinet is invited to:

1. approve the revocation of the board membership of the following Boards under the Premier's Office portfolio with immediate effect;
 - BVI Tourist Board leave on ex-officio
 - BVI Ports Authority
2. approve the membership on any board should not go beyond the term of the sitting Administration
3. agree to an expedited extract of the decision made by Cabinet

1. new government has come in with a new mandate and as a result it is decided to reassess the membership of all boards in a manner that they see will allow the mandate given by the people to be expedited in transparent and accountable manner
2. in so doing in the case of BVITB all ex-officio Members will remain, all other members will be removed and some having the opportunity to return along with some new members .
3. justifiable reasons that each member will be removed and the new composition will be fully assisted and brought back to Cabinet and if fall within the gamut will be reassessed in keeping with this Administration's mandate Chairman advised revocation and
4. Malone given the national mandate on economic pillars that an assessment that it was justifiable reasons; as apart of the narrative that give the full national importance to the economy these two particular boards
5. DP agrees with the premise that Boards should not exceed the tenure of an Administration and it proves challenging; it could expose to certain level of risk but weighing the potential for this Boards to interfere with our mandate willing to be exposed to that risk as Member of Cabinet; not good that appointments; incorrect actions of the past could have a real impact on how things are going forward. it is reasonable to say we have a mandate from the people but their association with the former party Administration, they did the same; while not explicit it was apparent ; commitment to the mandate must be paramount
6. Rymer agrees and supports sentiments and Vincent's terms should not exceed
7. would like to see in Code of Conduct that caretaker period.

8. removal and revocation powers
9. AG must always have a
10. Chairman voiced concerns believe that we should break with conv
11. has wide discretion powers which should be ;used with principle of administration and not without justifiable reasons and risks undermining our commitment to good administration and good governance
12. Thank governor for noting his concern and definition of justifiable differs from ours.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Andrew A. Fahie
Premier
27 March 2019

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

SECOND AFFIDAVIT OF DR CAROLYN O'NEAL MORTON

I, Dr Carolyn O'Neal Morton of Cutlass Tower, Road Town, Permanent Secretary of the Premier's Office,
MAKE OATH and **SAY** as follows:

Introduction

1. I am the Permanent Secretary of the Premier's Office. I have served in this capacity since March, 2020 and I make this Affidavit from facts within my own knowledge that are true or are without my own direct knowledge but are true to the best of my knowledge, information and belief, the sources of which are identified.
2. I make this Affidavit on behalf of Hon Andrew Fahie as a result of the letter sent to him on 4 June 2021 by Ms Rhea Harrikissoon, Solicitor to the Commission of Inquiry (the 'COI') (the 'Request') in relation to the Statutory Bodies ('**Statutory Bodies / Body / Bodies**'), and in particular to the boards of those Statutory Bodies (the '**Boards**'), which come under the control of the Premier's Office.
3. At the outset, I should further say that in this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it unless I do so expressly.
4. I shall refer in this Affidavit to the exhibit marked 'COM-2', which is a paginated bundle of documents.

Statutory Bodies

5. The following Statutory Bodies fall under the responsibility of the Premier's Office:

| Statutory Body | Date Statutory Body came under the control of the Premier's Office |
|-------------------------------------|---|
| BVI Ports Authority | March 2019 |
| BVI Tourist Board | 1 st July, 1969 |
| BVI Electricity Corporation | 3 rd September, 2019 |
| BVI Recovery And Development Agency | 12 th April, 2018 |
| BVI Airports Authority | March 2019 |

Legislation

6. The following legislation relates to the Statutory Bodies:

| Legislation | Date legislation came into force | Exhibited at following pages of Exhibit COM-2 |
|---|----------------------------------|---|
| BVI Ports Authority | | |
| British Virgin Islands Ports Authority Act, 1990 (Act No. 12 of 1990) | 1995 | 1 - 61 |
| BVI Tourist Board | | |
| Tourist Board Ordinance, 1969 | 1 July 1969 | 62 - 74 |
| BVI Electricity Corporation | | |
| British Virgin Islands Electricity Corporation Ordinance, 1978 (Act No. 7 of 1978) | 31 st December 1978 | 75 - 95 |
| British Virgin Islands Electricity Corporation (Amendment) Act, 1987 (Act No. 23 of 1987) | | 75 - 95 |
| British Virgin Islands Electricity Corporation (Amendment) Act, 1989 (Act No. 15 of 1989) | | 75 - 95 |
| British Virgin Islands Electricity Corporation (Amendment) Act, 2015 (Act No. 9 of 2015) | 1 st May 2015 | 96 - 112 |
| British Virgin Islands Electricity Corporation (Renewable Energy) Regulations, 2018 | 1 st November 2018 | 113 - 135 |
| BVI Recovery And Development Agency | | |
| Recovery and Development Agency Act, 2018 (Act No. 1 of 2018) | 12 April 2018 | 136 - 155 |
| BVI Airports Authority | | |
| Airports Act, 2003 (Act No. 16 of 2003) | 15 th April, 2004 | 156 - 174 |

The Boards

7. I set out below information relating to the different subjects as set out in the Request.

Advertising

8. Based on each individual Board legislation, there is no requirement in the legislations of the Boards to advertise Board positions.

Interviews

9. An interview process has recently been adopted as a policy decision by the Premier to conduct an interview process for the Boards falling under his portfolio.
10. An interview process was conducted for the members of the recently appointed RDA Board. The interview panel included the Premier, Governor, the Deputy Premier, Leader of the Opposition, and the Permanent Secretary, Premier's Office.
11. Interviews were conducted after the Premier consulted and agreed the list of candidates with the Governor and the Leader of the Opposition.

References / Due diligence

12. References are not sought. Candidates are required to submit their CVs or resumes.

Appointment Criteria

13. The legislation that governs each individual Board guides the appointment of members.
14. Each Board has specific legislation that guides the appointment of members. The Premier's Office does not assign roles, the legislations dictates such.

Good Character / Fit and proper person

15. Applicants' resumes/CVs are used to review each prospective applicant to consider if they are of good characters and fit for the role.

Convictions

16. Convictions and spent convictions are taken into account when appointing members to Boards.

Final Approval

17. The Cabinet of the Virgin Islands make the final approval for any appointment. A decision paper is sent to Cabinet for final approval.

Notification of Success

18. Candidates are notified of their success in writing and by way of an Instrument of Appointment.

Publication of appointment

19. All Cabinet decisions approving appointments are published. Some Boards require appointments to be gazetted.

Remuneration

20. Monthly remuneration for members is fixed and approved by Cabinet of the Virgin Islands. Payments are done by the individual Boards.

Changes to selection process

21. The Hon. Premier has taken a policy decision to advertise vacancies that become available in the Boards that fall under his portfolio.

Re-appointments

22. At the expiration of appointments persons are invited to indicate in writing if they wish to continue to serve.

Composition & roles on the Boards

23. Set out below is a table of the composition of the Boards over the past 5 years:

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|-----------------------------|-----------------|--|--|--|------------------------------------|--|
| BVI Ports Authority | | | | | | |
| Mr. Keith Flax | Member | 16 May 2020 / 2 years | Still Serving | N/A | First appointment | \$22,050.00 |
| Mr. Kelvin Hodge | Chairman | 13 May 2020 / 3 years | Still Serving | N/A | First appointment | \$19,800.00 |
| Ms. Roxane Sylvester | Deputy Chairman | 16 May 2019 / 3 years | Still Serving | N/A | First appointment | \$37,050.00 |
| Mr. Vincent Wattley | Member | 16 May 2019 / 3 years | Still Serving | N/A | First appointment | \$22,050.00 |
| Mrs. Tamarei Wheatley-Hodge | Member | 16 May 2019 / 2 years | 15 May 2021 | N/A | First appointment | \$20,450.00 |
| Mr. Damien Lettsome | Member | 16 May 2019 / 2 years | 15 May 2021 | N/A | First appointment | \$20,450.00 |
| Mr. Nathaniel Isaac | Chairman | 16 May 2019 / 3 years | 3 May 2020 / | N/A | First | \$20,700.00 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|-------------------------|--|--|--|--|------------------------------------|--|
| | | years | resigned | | appointment | |
| Mrs. Patsy Lake | Member | 16 May 2019 / 3 years | 11 May 2020 / resigned | N/A | First appointment | \$10,640.78 |
| Mr. Jeremiah Frett | Member (ex-officio) | 16 May 2019 / 2 years | Still Serving | N/A | First appointment | \$0 |
| Mrs. Elvia Smith-Maduro | Member (ex-officio) | 16 May 2019 / 2 years | Still Serving | N/A | | \$0 |
| Mr John Samuel | Acting Managing Director Ex-Officio Member | 3 January 2020 for 3 months | Resigned March 2020 | N/A | First appointment | \$ 2,700.00 |
| Mr Dean Fahie | Acting Managing Director Ex-Officio Member | 1 June 2020 for two months | Tenure as managing Director expired | N/A | First appointment | \$1,800.00 |
| Oleanvine Maynard | Acting Managing Ex-officio Member | | Still Serving | N/A | First appointment | \$16,200.00 |
| Mr. Trefor Grant | Chairman | 1 September 2018 / 3 years | 30 December 2018 / resigned | N/A | Re-appointment 1 September 2016 | \$ 43,776.00 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|--------------------------|-----------------|--|--|--|---|--|
| Mr. Lenius Julius Lendor | Member | 3 September 2018 / 2 years | 27 March 2019 / appointment revoked by Cabinet | N/A | First appointment | \$3,600.00 |
| Ms. Linnell M Abbott | Member | 25 July 2018 / 3 years | 27 March 2019 / appointment revoked by Cabinet | N/A | Re-appointment First Appointment 25 January 2016 | \$26,766.65 |
| Mr. Kevin S Fahie | Deputy Chairman | 25 July 2018 / 3 years | 27 March 2019 / appointment revoked by Cabinet | N/A | Re-appointment First Appointment 25 January 2016 for 2 ½ years | \$27,540.51 |
| Mr. Walford Farrington | Member | 16 January 2018 / 2 years 6 months | 27 March 2019 / appointment revoked by | N/A | Re-appointment | \$41,650.00 For the period 2014 to 2019 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many candidates were considered at the time of the first appointment | First Appointment / Re- appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|---------------------------------|------------------------|---|--|--|--|--|
| | | | Cabinet | | | |
| Mr. Bevis Sylvester | Member (ex-officio) | 2 nd July, 2019 | Still Serving | N/A | First appointment | \$20,700.00 |
| Mr. Clive McCoy | Member (ex-officio) | 2 July 2019 | Still Serving | N/A | First appointment | \$0.00 |
| Mrs. Kenisha Sprauve | Member (ex-officio) | 2 July 2019 | Still Serving | N/A | First appointment | \$19,800.00 |
| Mr. Clive Smith | Member (ex-officio) | 2 July 2019 | Still Serving | N/A | First appointment | \$0.00 |
| Mrs. Jennifer Potter-Questelles | Chairman | 16th January, 2016, 3 years | 31 August 2018 / resigned | N/A | First appointment | \$54,950.00 For the period 2014 to 2018 |
| BVI Tourist Board | | | | | | |
| Mrs. Kenisha Sprauve | Chairman | 1 August 2019 / 3 years | Still Serving | | First Appointment | \$41,900.00 |
| Ms. Gloria Fahie | Member | 1 August 2019 / 3 years | Still Serving | | First Appointment | \$19,297.20 |
| Ms. Arleen Parsons | Member | 1 August 2019 / 3 years | Still Serving | N/A | First Appointment | \$19,800.00 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|----------------------------|--------|--|---|--|------------------------------------|--|
| Mrs. Keshia Davis-Barnes | Member | 1 August 2019 / 3 years | Still Serving | N/A | First Appointment | \$22,533.46 |
| Mr. Dereck E Marshal | Member | 1 August 2019 / 3 years | Still Serving | N/A | First Appointment | \$18,300.00 |
| Mr. Kelvin Christopher | Member | 1 August 2019 / 3 years | Still Serving | N/A | First Appointment | \$18,300.00 |
| Mr. Leroy Moses | Member | 1 August 2019 / 3 years | Still Serving | N/A | First Appointment | \$14,400.00 |
| Mr. John Samuel | Member | 1 August 2019 / 3 years | 21 st September, 2020 Appointed as Director of VISR | N/A | First Appointment | \$12,600.00 |
| Mrs. Julia Dawson-Marshall | Member | 1 August 2019 / 3 years | N/A | N/A | Re-appointment | \$26,700.00 |
| Ms. Sasha Shimora Hodge | Member | 1 August 2019 / 3 years | N/A | N/A | First Appointment | \$20,400.00 |
| Mr. Bevis Sylvester | Member | 1 August 2019 / 3 years | Still Serving | N/A | First Appointment | \$24,000.00 |
| Mr. Nathaniel Isaac | Member | 1 August 2019 / 3 years | 3 May 2020 / resigned | N/A | First Appointment | \$19,800.00 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|------------------------------|---------------------|--|--|--|------------------------------------|--|
| Mr. Jeremiah Frett | Member (ex-officio) | 1 August 2019 / 3 years | Still Serving | N/A | First Appointment | \$0 |
| Mrs. Elvia Smith-Maduro | Member (ex-officio) | 1 August 2019 / 3 years | Still Serving | N/A | Re-appointment | \$0 |
| Mrs. Sharon Flax-Brutus | Member (ex-officio) | 1 August 2019/15 May 2020 | Completed Employment with BVI Tourist Board on May 20, 2020 | N/A | Re-appointment | \$0 |
| Mr. Rhodni Skelton | Member (ex-officio) | 16 May 2020 /14 August 2020 | Still Serving | N/A | First Appointment | \$0 |
| Mr. Clive McCoy | Member (ex-officio) | August 2020 - present | Still Serving | N/A | First Appointment | \$0 |
| Mrs. Deborah Reynolds-O'Neal | Member | 1 January 2019 / 1 year | 5th April, 2019, Appointment revoked | N/A | First Appointment | \$0 |
| Mr. Russell Harrigan | Chairman | 1st March, 2016, 4 years | 5th April, 2019, Appointment revoked | N/A | Re-appointment | \$106,397.82 |
| Mr. Julien Johnson | Member | 1st March, 2016, 4 years | 5th April, 2019, Appointment revoked | N/A | Re-appointment | \$10,009.50 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|-----------------------|--------|--|--|--|------------------------------------|--|
| Mr. Clyde Lettsome | Member | 1st March, 2016, 4 years | 5th April, 2019, Appointment revoked | N/A | Re-appointment | \$6,555.00 |
| Mr. Denniston Fraser | Member | 1st March, 2016, 4 years | 5th April, 2019, Appointment revoked | N/A | Re-appointment | \$5,100.00 |
| Mr. Romney Penn | Member | 1st March, 2016, 4 years | 5th April, 2019, Appointment revoked | N/A | Re-appointment | \$5,400.00 |
| Mr. Sendrick Chinnery | Member | 1st March, 2016, 4 years | 5th April, 2019, Appointment revoked | N/A | Re-appointment | \$3,000.00 |
| Mr. Mike Rowe | Member | 1st March, 2016, 4 years | 5th April, 2019, Appointment revoked | N/A | Re-appointment | \$4,950.00 |
| Ms. Tanya Whistler | Member | 1st March, 2016, 4 years | 5th April, 2019, Appointment revoked | N/A | Re-appointment | \$5,000.00 |
| Mr. Melvin Vanterpool | Member | 1st July, 2019, 3 years | 5th April, 2019, Appointment revoked | N/A | First Appointment | \$1,260.00 |
| Ms. Delma Maduro | Member | 12th October, | 5th April, 2019, | N/A | Re- | \$7,350.00 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|------------------------------------|---------------------|--|--|--|------------------------------------|--|
| Mr. Robert Henry | Member | 2015, 4 years 1st March, 2016, 4 years | Appointment revoked 5th April, 2019, Appointment revoked | N/A | Re-appointment | \$7,500.00 |
| BVI Electricity Corporation | | | | | | |
| Ms. Violet de Castro | Member | 25 May 2020 / 3 years | -Still Serving | N/A | First Appointment | \$8,622.00 |
| Mrs Rosemarie Flax | Chairman | 15 November 2019 / 3 years | -Still Serving | N/A | First Appointment | \$23,134.00 |
| Mr. Wayne Robinson | Vice Chairman | 15 November 2019 / 3 years | -Still Serving | N/A | Re-Appointment | \$17,212.00 |
| Ms. Pearl Smith | Member | 15 November 2019 / 2 years | -Still Serving | N/A | Re-Appointment | \$13,186.00 |
| Mr. Hymen Husein | Member | 15 November 2019 / 3 years | -Still Serving | N/A | First Appointment | \$12,955.00 |
| Mr. Jasen Fahie | Member | 15 November 2019 / 2 years | -Still Serving | N/A | First Appointment | \$12,955.00 |
| Mr. Leroy Abraham, General Manager | Member (ex-officio) | 15 November 2019 | -Still Serving | N/A | Re-appointment | \$0 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|----------------------------|-------------------|--|--|--|------------------------------------|--|
| Mr. Kedrick Malone | Ex-Officio Member | | 11-Mar-20 | N/A | First Appointment | \$0.00 |
| Dr. Carolyn O'Neal- Morton | Ex-Officio Member | 12-Mar-20 | Still Serving | N/A | First Appointment | \$0.00 |
| Mr. Ellsworth T Flax | Member | 1 March 2012 / 2 years | 22 April 2019 / appointment revoked by Cabinet | N/A | Re-Appointment | \$60,200.00 |
| Mr. Sean J Palmer | Member | 1 December 2013 / 2 years | 22 April 2019 / appointment revoked by Cabinet | N/A | Re-Appointment | \$45,500.00 |
| Mrs. Lucia Lettsome | Member | 1 December 2013 / 2.5 years | 22 April 2019 / appointment revoked by Cabinet | N/A | Re-Appointment | \$45,500.00 |
| Ms. Pearl Smith | Member | 1 September 2008 / 3 years | 22 April 2019 / appointment revoked by Cabinet | N/A | Re-Appointment | \$103,690.00 |
| Mr. Ira Oliver Sketon | Member | 1 September 2008 / 4 years | November 22, 2019 - Deceased | N/A | Re-Appointment | \$90,500.00 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|--|---------------------|--|--|--|------------------------------------|--|
| Mr. Ron Potter | Chairman | 1 December 2013/ 3 years | 22 April 2019 / appointment revoked by Cabinet | N/A | Re-Appointment | \$81,250.00 |
| BVI Recovery And Development Agency | | | | | | |
| Mr. Ronnie W. Skelton | Chairman | 1 May 2021 / 3 years | -Still Serving | N/A | First Appointment | \$0 |
| Mr. Jerry Samuel | Deputy Chairman | 1 May 2021 / 3 years | -Still Serving | N/A | First Appointment | \$0 |
| Mr. Shea Alexander | Member | 1 May 2021 / 3 years | -Still Serving | N/A | First Appointment | \$0 |
| Mr. Marquese Maduro | Member | 1 May 2021 / 3 years | -Still Serving | N/A | First Appointment | \$0 |
| Attorney/ Mr. Michael Fay | Member | 1 May 2021 / 3 years | -Still Serving | N/A | First Appointment | \$0 |
| Mr. John Cline | Member | 1 May 2021 / 3 years | -Still Serving | N/A | First Appointment | \$0 |
| Mr. Anthony McMaster | Ag. CEO, ex-officio | 4 February 2019 | Still Serving | N/A | Re-Appointment | \$0 |
| Mrs. Geraldine Ritter-Freeman | Member | 1 May 2021 | Still Serving | N/A | First | \$0 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|-----------------------|--------------------------|--|--|--|------------------------------------|--|
| Ms. Shane J. Rhymer | Member | 23 January 2019 | 30 April 2021 / appointment expired | N/A | First Appointment | \$20,160.00 |
| Mr. David Hancock | Member | 15 June 2018 | 14 June 2021 / appointment expired | N/A | First Appointment | \$0 |
| Ms. Monica La Bennett | Member | 15 June 2018 | 31 May 2019, Resigned | N/A | First Appointment | \$0 |
| Dr. Robert Mathavious | Chairman | 1 May 2018 / 3 years | 30 April 2021 / Resigned | N/A | First Appointment | \$18,000.00 |
| Pastor Gregory George | Member | 1 May 2018 / 3 years | 30 April 2021 / appointment expired | N/A | First Appointment | \$27,360.00 |
| Ms. Maria Mays | Member | 1 May 2018 / 3 years | 30 April 2021 / appointment expired | N/A | First Appointment | \$0 |
| Ms. Sharie de Castro | Member | 18 April 2018 / 3 years | 25 February 2019, Resigned | N/A | First Appointment | \$5,600.00 |
| Mr. Clarence Faulkner | Member (Acting Chairman) | 1 May 2018 / 3 years | 30 April 2021 / appointment | N/A | First Appointment | \$27,360.00 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|-------------------------------|----------|--|--|--|------------------------------------|--|
| Mr. Clyde Lettsome | Member | 1 May 2018 / 3 years | 30 April 2021 / appointment expired | N/A | First Appointment | \$27,360.00 |
| Mr. Paul Bayly | CEO | 1 August 2018 | 20 March 2020, Resigned | N/A | First Appointment | \$0 |
| BVI Airports Authority | | | | | | |
| Mr. Nathaniel Isaac | Member | July 1, 2020 – 2 years | Still Serving | N/A | First Appointment | \$13,600.00 |
| Mr. Bevis Sylvester | Chairman | May 24, 2019 – 3 years | Still Serving | N/A | First Appointment | \$24,041.69 |
| Mr. Hipolito Diego Penn | Member | May 24, 2019 2 years | 23 rd May, 2021 | N/A | First Appointment | \$15,386.69 |
| Mrs. Patsy Lake | Member | May 24, 2019 – May 23, 2022 | Still Serving | N/A | First Appointment | \$18,271.69 |
| Mr. Marlon Choucouteou Sr. | Member | 30 May 2019 / [please include expected length of time] | Still Serving | N/A | First Appointment | \$15,386.69 |
| Mr. Theodore Burke | Member | May 24, 2019 – | 23rd May, 2021 | N/A | First | \$15,386.69 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|--|---------------------|--|--|--|------------------------------------|--|
| Mr. Raul Sprauve | Member | May 23, 2021 | 23 rd May, 2021 | N/A | Appointment | \$15,386.69 |
| Mr. Kelvin Hodge | Member | May 24, 2019 – 3 years | Still Serving | N/A | First Appointment | \$15,386.69 |
| Mrs. Judy-Ann Aldona Smith | Member | May 24, 2019 – 2 years | 23 rd May, 2021 | N/A | First Appointment | \$15,386.69 |
| Mr. Clive McCoy (Director of Tourism) | Member (Ex-Officio) | 20 August, 2020 | Still Serving | N/A | First Appointment | \$0.00 |
| Mr. Clive Smith (Ag. Managing Director) | Member (ex-officio) | 13 th August, 2019 | Still Serving | N/A | | \$0.00 |
| Mr. Jeremiah Frett (Financial Secretary) | Member (ex-officio) | 1 st January, 2021 | Still Serving | N/A | First Appointment | \$0.00 |
| Dr. Carolyn O'Neal Morton (Permanent Secretary/Premier's Office) | Member (ex-officio) | 12 th March, 2020 | Still Standing | N/A | First Appointment | \$0.00 |
| Mr. Glenn Harrigan | Chairman | 1 February 2018 / 4 years | Submitted voluntary resignation on April 11, 2019 | N/A | Re-appointment | \$94,800.00 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many candidates were considered at the time of the appointment | First Appointment / Re- appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|--------------------|--------------------|---|--|---|--|--|
| Mr. Clyde Lettsome | Member | 1 February 2018 / 4 years | Submitted voluntary resignation on April 11, 2019 | N/A | Re- appointment | \$41,750.00 |
| Mr. Ephraim Penn | Member | 1 February 2018 / 2 years | Submitted voluntary resignation on April 11, 2019 | N/A | Re- appointment | \$22,250.00 |
| Mr. Michael Thomas | Member | 1 February 2018 / 2 years | Submitted voluntary resignation on April 11, 2019 | N/A | Re- appointment | \$41,750.00 |
| Mr. Roy Sebastian | Member | 1 February 2018 / 2 years | Submitted voluntary resignation on April 11, 2019 | N/A | Re- appointment | \$41,750.00 |
| Mr Harvey Herbert | Member | 1 February 2017 / 3 years | Submitted voluntary resignation on April 11, 2019 | N/A | Re- appointment | \$68,500.00 |
| Mr. Coy Levons | Executive Director | 1 February 2017 / 3 years | Resigned from organization on 11 th April, 2019 | N/A | Re- appointment | \$0.00 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|-----------------------|---------------------------------|--|--|--|------------------------------------|--|
| Mrs. Debra Romney | Member | 1 February 2017 / 3 years | Submitted voluntary resignation on April 11, 2019 | N/A | Re-appointment | \$15,250.00 |
| Denniston S. Fraser | Executive Director (ex officio) | August 15, 2005 | Retired from Organization on June 13, 2019 | N/A | Re-appointment | \$0.00 |
| Sharon Flax-Brutus | Director of Tourism, Ex-Officio | January 1, 2013 | Completed Employment with BVI Tourist Board on May 20, 2020 | N/A | Re-appointment | \$0.00 |
| Ronald Smith-Berkeley | Ex-Officio | February 1, 2017 | Changed Ministry May 2019 | N/A | First Appointment | \$0.00 |

24. Copies of all documents (such as CVs and references) of the members of the Boards appointed in the last three years which were put before the person/persons who made the decision to appoint that member are exhibited at pages 174 - 325 of Exhibit 'COM-2'.

Declarations of interest

25. I am aware each Board does their own orientation process. The various Board Secretaries would provide each member with copies of the Boards Act or Ordinance and any other protocol documentation. It would differ across Boards as they each function differently.

Performance of board members

26. I am aware the Chairman of each Board manages the performance of the Board members.

Sworn by: Dr Carolyn O'Neal-Morton)

On 2 July 2021)

At Cutlass Towers, Road Town)

Dr Carolyn O'Neal-Morton

Before me

Notary/Commissioner of Oaths

Kelvin M. Dawson
Notary Public



Dr Carolyn O'Neal Morton
Second
2 July 2021
Exhibit 'COM-2'

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN
ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239)
(THE 'ACT')**

**SECOND AFFIDAVIT OF DR
CAROLYN O'NEAL MORTON**

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

THIRD AFFIDAVIT OF DR CAROLYN O'NEAL MORTON

I, Dr Carolyn O'Neal Morton of Cutlass Tower, Road Town, Permanent Secretary of the Premier's Office,
MAKE OATH and **SAY** as follows:

1. Introduction

- 1.1 I am the Permanent Secretary of the Premier's Office in the Government of the Virgin Islands. I have served in this capacity effective March 2020. The statements made in this Affidavit derive from information and documents reviewed during the course of my role as Permanent Secretary, and are true to the best of my knowledge, information and belief.
- 1.2 I make this Affidavit on behalf of Hon Andrew Fahie as a result of the letter sent to him on 4 June 2021 by Ms Rhea Harrikissoon, Solicitor to the Commission of Inquiry (the 'COI') (the 'Request') in relation to the Statutory Boards ('**Statutory Boards**'), which come under the control of the Premier's Office.
- 1.3 I make this Affidavit further to my Second Affidavit dated 2 July 2021, and the accompanying Exhibit COM-2.
- 1.4 I should further say that in this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it unless I do so expressly.
- 1.5 I shall refer in this Affidavit to the exhibit marked 'COM-3', which is a paginated bundle of documents.

2. Statutory Boards

- 2.1 The following Statutory Boards were referred to in my Second Affidavit:
- (a) BVI Ports Authority
 - (b) BVI Airports Authority Limited
 - (c) BVI Electricity Corporation
 - (d) BVI Tourist Board
 - (e) Recovery and Development Agency
- 2.2 In addition to those referred to in paragraph 2.1, the following Statutory Boards fall under the responsibility of the Premier's Office

| Statutory Board | Date Statutory Board came under the control of the Premier's Office |
|--|--|
| Telecommunications Regulatory Commission | 2019 |
| Prospect Reef | 2005 |

| | |
|---------------------------|------|
| Appeals Tribunal | 2004 |
| Building Authority | 2020 |
| Planning Authority | 2004 |
| Climate Change Trust Fund | 2020 |

- 2.3 The reason that I had not included the Statutory Boards listed at 2.2 in my Second Affidavit is because when my colleagues and I compiled the information to be provided by way of my Second Affidavit we inadvertently did not include those Statutory Boards. It was an unintentional oversight, which I am now seeking to rectify by way of this Affidavit.

3. Legislation

- 3.1 The following legislation relates to the Statutory Boards referred to in paragraph 2.2 above:

| Statutory Board | Date legislation came into force | Exhibited at following pages of Exhibit COM-3 |
|---|----------------------------------|---|
| Telecommunications Regulatory Commission | | |
| Telecommunications Act, 2006 | 24 October 2006 | 1-74 |
| Prospect Reef | | |
| Prospect Reef Management Act, 2005 | 2005 | 75-82 |
| Appeals Tribunal | | |
| S. 65-72 Physical Planning Act No. 15, 2004 | 2004 | 149-157 |
| Building Authority | | |
| Building Ordinance Cap 234 | 7 December 1955 | 176-190 |
| Planning Authority | | |
| Physical Planning Act No. 15, 2004 | 2004 | 83-175 |
| Climate Change Trust Fund | | |
| Virgin Islands Climate Change Trust Fund Act 2015 | 2015 | 191-227 |

4. The Statutory Boards

Advertising

- 4.1 Based on the applicable legislation for each individual Statutory Board, there is no requirement to advertise Statutory Board positions. However, the Premier has taken a policy decision to advertise vacancies that become available on the Statutory Boards that fall under his portfolio.
- (a) The decision to advertise positions for Statutory Boards was made on 1st June, 2021 via a Government of the Virgin Islands Press Release by the Acting Premier, Dr. the Honourable Natalio D. Wheatley (see page 228-229 of Exhibit COM-3).

- (b) There were five (5) advertisements placed since the announcement: BVI Ports Authority Board, BVI Airports Authority Board, VI Trade Commission, Gaming and Betting Control Commission and Prospect Reef Resort Board (see pages 232-239 of Exhibit COM-3).

Interviews

4.2 A policy decision by the Premier has recently been adopted to conduct an interview process for the Statutory Boards falling under his portfolio.

- (a) The decision to advertise positions for Statutory Boards was made on 1st June, 2021 via a Government of the Virgin Islands Press Release by the Acting Premier, Dr. the Honourable Natalio Wheatley (see page 228-229 of Exhibit COM-3).
- (b) The stages of the new interview process include the following:
 - (1) Cover Letter and Resumé/Curriculum Vitae received;
 - (2) Document submitted will be acknowledged ;
 - (3) Documents submitted will be reviewed and assessed by preliminary Committee to ensure that applicants meet the requirements/criteria of the requisite/advertised post;
 - (4) Applicants will be short-listed by a Committee that will include a cross-section of persons from the Private/Public Sector to review and conduct interviews;
 - (5) The Committee will make recommendations for the Premier's consideration; and
 - (6) Successful applicants will be notified accordingly.
- (ii) No Statutory Boards indicated in this affidavit have used the new interview outlined above.

References / due diligence

4.3 References are not sought. Candidates are required to submit their CVs at the application stage of the process.

Recommendations

4.4 The Permanent Secretary, Premier's Office with recommendations from the Committee is responsible for determining which candidates will be put forward.

Documents

4.5 The current application process requires applicants to submit a cover letter and Resumé/Curriculum Vitae to the Permanent Secretary, Premier's Office by the closing date indicated on the advert.

Final approval

4.6 The Cabinet of the Virgin Islands has the final approval for any appointment to a Statutory Board. A decision paper is prepared by the Permanent Secretary, Premier's Office and the said decision paper is taken to Cabinet for its approval by the Honourable Premier.

Convictions

4.7 Convictions and spent convictions are taken into account when appointing members to Statutory Boards.

Notification of success

- 4.8 Candidates are notified of their success in writing by the Permanent Secretary, Premier's Office and by way of an Instrument of Appointment. The Instrument of Appointment is prepared by the Attorney General Chambers by instruction of the Permanent Secretary, Premier's Office.

Publication of appointment

- 4.9 All Cabinet decisions approving appointments are published in the *Virgin Islands Official Gazette*.
- a) In accordance with the Cabinet of the Virgin Islands, Cabinet decisions will be published by the Cabinet Office following confirmation of the minutes and only a summary of the decisions will be published.
 - b) Some Statutory Boards require appointments to be gazetted. Given that all Statutory Board appointments are approved by Cabinet. All Board appointments are gazetted based on the information in item (a) above.

Remuneration

- 4.10 Monthly remuneration for members is fixed and approved by the Cabinet of the Virgin Islands. Remuneration payments are made by the individual Statutory Boards.

Changes to selection process

- 4.11 As stated above in paragraph 4.1, the Acting Premier, Dr. the Honourable Natalio D. Wheatley via a Press Release dated 1st June, 2021 made a policy decision to advertise vacancies that become available on the Statutory Boards that fall under his portfolio (see page 228-229 of Exhibit COM-3).

Re-appointments

- 4.12 At the expiration of their appointment, individuals are invited to indicate in writing to the Permanent Secretary, Premier's Office if they wish to continue to serve and will have to give advance notice, a minimum of one (1) month.

Appointment criteria

- 4.13 As detailed in paragraph 3 above, each Statutory Board has specific legislation that guides the appointment of members.
- (a) Telecommunications Regulatory Commission – Part II, Section 7
 - (b) Prospect Reef – Part II, Section 5
 - (c) Appeals Tribunal – Part VII, Schedule 4
 - (d) Building Authority – Chapter 234, Section 4
 - (e) Planning Authority – Part II, Section 6
 - (f) Climate Change Trust Fund – Part II, Section 12
 - (g) The Premier's Office does not assign roles, the legislation dictates such.
 - (i) Please see items 4.13 – 4.18 above for specific legislation that guides to appointment of members.

Good character / fit and proper person

- 4.14 Applicants' CVs are used to review each applicant to consider if they are of good character and a proper fit for the role. A selected Committee put together by the Permanent Secretary, Premier's Office will be responsible for reviewing and interviewing the applicants when that stage of the process arrives. I have made a search for relevant CVs and have exhibited those that I can find.
- 4.15 While the appointment requirements for all Statutory Boards are not fully ventilated or strongly articulated, advanced legislations such as, the Telecommunications Act and Trade Commission Act have specific requirements for Board members, which focus on member capacity and experience. When focusing on selection for Statutory Boards with older legislations, the Government takes these requirements into consideration, until the revisions in other legislations for Statutory Boards are revised.

5. Composition and roles on the Statutory Boards

5.1 Set out below is a table of the composition of the Statutory Boards over the past 5 years:

| Name | Role | Date Appointed / length of time expected to sit on Board | Date ceased to be a member of the Board and reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|---|----------------------------------|--|--|--|------------------------------------|--|
| Telecommunications Regulatory Commission | | | | | | |
| Vance Lewis | Chairman | 1 February 2020, 3 years | Still serving | N/A | First appointment | \$30,600.00 |
| Vincent Watley | Deputy Chairman | 1 February 2020, 3 years | Still serving | N/A | First appointment | \$25,500.00 |
| Bevis Sylvester | Commissioner | 20 February 2020, 2 years | Still serving | N/A | First appointment | \$17,000.00 |
| Joycelyn Murraine | Commissioner | 20 February 2020, 2 years | Still serving | N/A | First appointment | \$17,000.00 |
| C. Michael Thomas | Chairman and Commissioner | 13 February 2017, 2.5 years | Appointment expired | N/A | Re-appointment | \$30,000.00 |
| Delroy Williams | Member | 1 May 2017, 2 years | Appointment expired | N/A | Re-appointment | \$19,200.00 |
| Jerry Samuel | Member | 1 March 2017, 3 years | Resigned | N/A | Re-appointment | \$24,800.00 |
| Ian Smith | Commissioner and Deputy Chairman | 13 February 2015, 3 years | | N/A | First Appointment | \$800 per month |

| Vacant (Commissioner from outside Virgin Islands) | Member | Never appointed | Never appointed | N/A | N/A | \$800.00 per month |
|---|---------------------------------------|-------------------------|---------------------|-----|-------------------|--------------------|
| Prospect Reef | | | | | | |
| Mrs Tamara Maduro | Chairman | 1 June 2021, 2 years | Still serving | N/A | First appointment | \$0.00 |
| Mrs. Kenisha Sprauve | Director | 1 June, 2021, 2 years | Still serving | N/A | First appointment | \$0.00 |
| Mr. Lloyd Black | Non-Executive Director | 4 March 2020, 1 year | Appointment expired | N/A | First appointment | \$0.00 |
| Mr. Nathaniel Isaac | Executive Director, Managing Director | 1 June 2017, 2 years | Appointment expired | N/A | First appointment | \$0.00 |
| Ms. Trisha Evans | Director | 1 June 2017, 2 years | Appointment expired | N/A | First appointment | \$0.00 |
| Mrs. Delma Maduro | Chairperson | 1 February 2017, 1 year | Appointment expired | N/A | First appointment | \$0.00 |
| Mr. David Allen O'Neal | Executive Director | 1 February 2017, 1 year | Appointment expired | N/A | First appointment | \$0.00 |
| Mr Knal Thomas | Director | 1 February 2017, 1 year | Appointment expired | N/A | First appointment | \$0.00 |
| Mr. David Abednego | Director | 1 February 2017, 1 year | Appointment expired | N/A | First appointment | \$0.00 |
| Mr. Basil Smith | Director | 1 February 2017, 1 year | Appointment expired | N/A | First appointment | \$0.00 |
| Mrs. Kenisha Sprauve | Chairperson | 15 October 2019, 1 year | Appointment expired | N/A | First appointment | \$0.00 |
| Mr. Ray George | Director | 15 October 2019, 1 year | Appointment expired | N/A | First appointment | \$0.00 |

| | | | | | | |
|---------------------------------------|------------------------------|---|---------------------|-----|-------------------|----------------------|
| Mr. John Samuel | Director | 15 October 2019, 1 year | Appointment expired | N/A | First appointment | \$0.00 |
| Mrs. Tamara Maduro | Director | 15 October 2019, 1 year | Appointment expired | N/A | First appointment | \$0.00 |
| Permanent Secretary, Premier's Office | Ex-officio | N/A | N/A | N/A | N/A | \$0.00 |
| Financial Secretary | Ex-officio | N/A | N/A | N/A | N/A | \$0.00 |
| Appeals Tribunal | | | | | | |
| Dr Marvin Flax | Chairman (previously Member) | 1 May 2017, 4 years (member) 1 March 2020, 1 year (Chairman) | Appointment expired | N/A | Re-appointment | \$7,200.00 |
| Mr. Bennet Smith | Member (previously Chairman) | 1 May 2017, 4 years (Chairman) 1 March 2020, 1 year (Member) | Appointment expired | N/A | First appointment | \$3,600.00 |
| Mrs. Marva Titley- Smith | Member | 1 May 2017, 4 years | Appointment expired | N/A | Re-appointment | \$3,600.00 |
| Ms. Kamika Forbes | Member | 1 May 2017, 4 years | Appointment expired | N/A | Re-appointment | \$3,000.00 |
| Mr. Jerome Frett | Member | 1 May 2017, 4 years | Appointment expired | N/A | First appointment | \$3,000.00 |
| Building Authority | | | | | | |
| Mr. Dion Stoutt | Chairman | 1 October 2018, 2.5 years 1 January 2021, 2.5 years | Still Serving | N/A | Re-appointment | \$1,200.00 per month |

| | | | | | | |
|---|-----------------|---------------------------|---------------------|-----|-------------------|--------------------|
| Mr. Antonio Quammie | Member | 1 January 2020, 3 years | Still Serving | N/A | First appointment | \$900.00 per month |
| Mr. Ashton Baronville | Member | 1 July 2018, 3 years | Appointment expired | N/A | Re-appointment | \$900.00 per month |
| Mr. Thor Downing | Member | 1 January 2018, 2 years | Appointment | N/A | Re-appointment | \$900.00 per month |
| Vacant (Commissioner from outside the Virgin Islands) | Member | Never Appointed | Never appointed | N/A | N/A | \$800.00 per month |
| Planning Authority | | | | | | |
| Mr. Charles Cooper | Chairman | 1 July 2019, 3 years | Still Serving | N/A | First appointment | \$6,500.00 |
| Mr. Lucien Thomas | Member | 1 July 2019, 2 years | Still Serving | N/A | First appointment | \$3,000.00 |
| Mr. Edward Freeman | Member | 1 July 2019, 3 years | Still Serving | N/A | First appointment | \$2,400.00 |
| Mr. Keith Malone | Member | 1 July 2019, 3 years | Still Serving | N/A | First appointment | \$3,900.00 |
| Mr. Clifton Thomas | Member | 1 July 2019, 2 years | Still Serving | N/A | First appointment | \$1,500.00 |
| Mr. Elvis Harrigan | Member | 1 September 2019, 2 years | Still Serving | N/A | First appointment | \$3,600.00 |
| Mr. Kelvin Liburd | Member | 1 February 2019, 1 year | Appointment expired | N/A | First appointment | \$0 |
| Mr. Edward deCastro | Deputy Chairman | 2 June 2018, 1 year | Appointment expired | N/A | Re-appointment | \$4,000.00 |
| Mr. Louis Potter | Chairman | 2 June 2018, 1 year | Appointment expired | N/A | Re-appointment | \$3,000.00 |
| Mr. Reynold Davies | Member | 2 June 2018, 1 year | Appointment expired | N/A | Re-appointment | \$2,400.00 |

| | | | | | | |
|--|-----------------|-----------------------|---------------------|-----|-------------------|----------|
| Mr. Romney Penn | Member | 2 June 2018, 1 year | Appointment expired | N/A | Re-appointment | \$0 |
| Mr. Elton Sprauve | Member | 2 June 2018, 1 year | Appointment expired | N/A | Re-appointment | \$600.00 |
| Mr. Derrick Variack | Member | 2 June 2018, 1 year | Appointment expired | N/A | Re-appointment | \$900.00 |
| Chief Planner | Ex-officio | N/A | N/A | N/A | N/A | N/A |
| Director of Public Works | Ex-officio | N/A | N/A | N/A | N/A | N/A |
| Director of Disaster Management | Ex-officio | N/A | N/A | N/A | N/A | N/A |
| Chief Conservation and Fisheries Officer | Ex-officio | N/A | N/A | N/A | N/A | N/A |
| Climate Change Trust Fund | | | | | | |
| Mr. Edward Childs | Chairman | 15 June 2017, 3 years | Appointment expired | 27 | First appointment | \$0 |
| Mr. John Klein | Deputy Chairman | 15 June 2017, 3 years | Appointment expired | 27 | First appointment | \$0 |
| Ms. Shelly Bend | Member | 15 June 2017, 3 years | Appointment expired | 27 | First appointment | \$0 |
| Dr. Shannon Gore | Member | 15 June 2017, 3 years | Appointment expired | 27 | First appointment | \$0 |
| Mr. Ronnie Lettsome | Member | 15 June 2017, 3 years | Appointment expired | 27 | First appointment | \$0 |
| Dr. Katherine Smith | Member | 15 June 2017, 3 years | Appointment expired | 27 | First appointment | \$0 |

| | | | | | | |
|--|---|-----------------------|---------------------|-----|-------------------|-----|
| Mr. Glenroy Forbes (Financial Secretary) | Member | 15 June 2017, 3 years | Appointment expired | N/A | First appointment | \$0 |
| Mr. Ronald Smith-Berkeley (PS, MNRL) | Ex-officio member | 15 June 2017, 3 years | Appointment expired | N/A | First appointment | N/A |
| Chief Executive Officer, VICCTF | Not in place as operations structure was not in place | N/A | N/A | N/A | N/A | N/A |

5.2 Copies of all documents (such as CVs and references) of the members of the Statutory Boards appointed in the last 3 years which were put before the person/persons who made the decision to appoint that member are exhibited at pages 240-402 of Exhibit COM-3.

6. **Declarations of interest**

6.1 I am aware each Statutory Board does their own orientation process. The respective Statutory Board Secretaries will provide each member with copies of the Boards Act or Ordinance any other protocol documentation. The applicable documentation differed across the Statutory Boards, as they each function differently.

7. **Performance of board members**

7.1 As far as I am aware the Chairman of each Board manages the performance of the Board members.

Affirmed

Sworn-by: Dr Carolyn O'Neal Morton)

On 5 September 2021)

Road Town, Tortola)

Dr Carolyn O'Neal Morton

Before me

Notary/Commissioner of Oaths

Lisa Penn-Hettson



Dr Carolyn O'Neal Morton
Third
5 September 2021
Exhibit 'COM-3'

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN
ISLANDS COMMISSION OF INQUIRY 2021**
**AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE
'ACT')**

**THIRD AFFIDAVIT OF DR CAROLYN O'NEAL
MORTON**

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

FIRST AFFIDAVIT OF RONALD SMITH-BERKELEY

I, Ronald Smith-Berkeley, Manuel Reef Marina, Sea Cows Bay, Tortola, BVI, Permanent Secretary, **MAKE OATH and SAY** as follows:

Introduction

1. I am the Permanent Secretary of the Ministry of Transportation, Works and Utilities (the '**Ministry**'). I have served in this capacity since 6 September 2019 and I make this Affidavit from facts within my own knowledge and are true or are without my own direct knowledge but are true to the best of my knowledge, information and belief, the sources of which are identified.
2. I make this Affidavit on behalf of the Hon. Kye M. Rymer as a result of the letter sent to him on 4 June 2021 by Ms Rhea Harrikissoon, Solicitor to the Commission of Inquiry (the '**COI**') (the '**Request**') in relation to the Statutory Bodies ('**Statutory Bodies**'), and in particular to the boards of those Statutory Bodies (the '**Boards**'), which come under the control of the Ministry.
3. At the outset, I should further say that in this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it unless I do so expressly.
4. I shall refer in this Affidavit to the exhibit marked '**RSB-1**', which is a paginated bundle of documents.

Statutory Bodies

5. The following Statutory Bodies fall under the responsibility of the Ministry:

| Statutory Body | Date Statutory Body came under the control of the Ministry |
|---|--|
| BVI Electricity Corporation | 1 March 2019 to 3 September 2019 |
| Taxi and Livery Commission (Transport and Traffic) | 1 March 2019 to present |
| Telecommunications Regulatory Commission (including Broadcasting Media) | The Ministry has not administered this Statutory Board since 3 September 2019 when it was first assigned to the Minister. Instead, the Premier's Office has assumed full administration since 3 September 2019. This Ministry's last dealings was in relation to the composition of the former Board, of which the last appointment to expire would have occurred on 28 February 2020. See table at 17(c). |

| | |
|-------------------------------------|---|
| Wickham's Cay Development Authority | 10 May 2021 to present <i>In practice, this Body has been managed by the Ministry well before it was assigned on 10 May 2021.</i> |
| Building Authority | The Minister ceased administering this Board when the Government's Transformation plan effected a move of the Building Authority from the Ministry to the Premier's Office in 2020. |

Legislation

6. The following legislation relates to the Statutory Bodies (as appropriate):

| Legislation | Date legislation came into force | Exhibit 'RSB-1' pages |
|--|----------------------------------|-----------------------|
| British Virgin Islands Electricity Corporation | | |
| British Virgin Islands Electricity Corporation Ordinance (primary statute) | 22 May 1979 | 1-21 |
| Transport and Traffic (Taxi and Livery Commission) | | |
| Road Traffic Act, Cap. 218 (primary statute) | 4 July 1988 | 22-52 |
| Road Traffic (Taxi-Cab Commission) Regulations, 1997 [SI 24 of 1997] (secondary statute) | 17 July 1997 | 53-59 |
| Road Traffic (Taxi-Cab Commission) (Amendment) Regulations, 2009 [SI 28 of 2009] (secondary statute) | 30 July 2009 | 60-70 |
| Road Traffic (Taxi and Livery Commission) (Amendment) Regulations, 2013 [SI 19 of 2013] (secondary statute) | 11 April 2013 | 71-73 |
| Telecommunications Regulatory Commission | | |
| Telecommunications Act, 2006, Cap. (primary statute) | 24 October 2006 | 74-149 |
| Wickham's Cay Development Authority | | |
| Wickham's Cay Development Authority Ordinance, Cap. 281 (primary statute) | 14 March 1975 | 150-153 |
| Building Authority | | |
| Buildings Ordinance, Cap. 234 | 7 December 1955 | 154-168 |

The Boards

7. In relation to the current process by which potential candidates for board membership are identified and selected, I make the following comments:

a. Advertising

- i. There is no requirement to advertise vacant positions on the Board;

b. Interview

- i. There is no requirement for candidates applying for positions on a Board to be interviewed;

c. Due diligence

- i. Prospective members of the Board are asked to swear before a notary or commission of oaths a declaration ('**Declaration**') setting out that he/she is not a Public Officer; he/she is not an Elected Member of the House of Assembly; he/she has never been declared insolvent or bankrupt under any law in any country and have not been discharged; and he/she has not made any composition with their creditors for which he/she has not paid his/her debts in full. Copies of the Declarations are exhibited at pages 169-182 of Exhibit 'RSB-1';

d. References

- i. Prospective members of the Board are asked to provide their resume to the Ministry (pages 183-205);

e. Final appointment decision

- i. The final decision to appoint a person to a Board lies with Cabinet;

f. Candidate selection

- i. The Minister determines which candidates for positions on the Board are presented to Cabinet for final consideration;

g. Documents to be put before Cabinet

- i. When asked to consider candidates for appointment to a Board, the Ministry prepares a Cabinet Paper, which is presented to Cabinet together with the candidate's resume and Declaration completed by the candidate (pages 212-225);

h. Promulgation and publishing of decision of appointment to Board.

- i. The publication of the Instrument of Appointment of a person to a Board is signed by the Minister, Cabinet Secretary or Governor according to the requirements of the respective legislation (pages 226-252) and published in the *Virgin Islands Gazette* (253-272);

i. Notification

- i. A successful candidate is notified of their appointment by way of an appointment letter signed by the Permanent Secretary of the Ministry (pages 273-292) which is sent together with copies of the Instrument of Appointment and the *Gazette* Notice; and

j. Remuneration

- i. A successful candidate is remunerated by cheque after confirmed minutes of the Board meeting showing attendance of the member are confirmed.

Reappointment of Board members

8. The Process for the appointment of a new Board member does not differ to the process to re-appoint a Board member.

Process of identification, selection of potential appointees to the Board

9. The process for identification and selection of new Board members has not changed over the last five years.
10. The process for the re-appointment of Board members has not changed over the last five years.

Criteria for appointment to a Board

11. With respect to appointing the Chair and Members of a Board (there is no Vice Chairman or Deputy Chairman where prescribed by legislation), Cabinet as the appointing body relies on evidence (resume and declaration) as presented by the Ministry.
12. Ex-Officio members of a Board, for the time being, holder CEO positions such as PS/MTWU, Director of the Commission, Director of BVI Tourist Board, etc. Ex-Officio Board Members are not appointed by Instrument. Their appointment is automatic once he/she is the holder of positions such as PS/MTWU, Director of the Commission, and Director of BVI Tourist Board.
13. This criteria/process has not changed over the last 5 years.
14. As assessment of "good character" and/or "fit and proper person" are not pre-requisites to appointing the Chair and/or members to a Board.

Guidance on declarations of interest

15. No guidance, other than a copy of the Board's governing legislation is or has been given to Board members in relation to declarations of interest.

Performance and assessment

16. Only attendance at meetings of the Board are monitored and recorded in the minutes of the Board Meetings. If a Member's attendance becomes irregular, the Permanent Secretary would bring it to attention of the Chair, and if no improvement, the Minister would exercise his power to terminate that member.

Composition & roles on the Boards

17. Set out below are the details in respect of each Board for the last three (3) years:

a. BVI Electricity Corporation

| NAME | POSITION | PERIOD | DATE ON | DATE OFF | OTHER CANDIDATES | NEW/ RENEW | STATUS | PAY |
|--------------------|----------|-----------|------------|---------------|------------------|------------|---------|-----------|
| POTTER, RON | CHAIRMAN | 3 years | 1 Dec 2016 | 22 April 2019 | n/a | n/a | Revoked | \$1,200/m |
| SMITH, PEARL | MEMBER | 3 years | 1 Sep 2018 | 22 April 2019 | n/a | n/a | Revoked | \$700/m |
| FLAX, ELLSWORTH T. | MEMBER | 3.5 years | 1 Mar 2016 | 22 April 2019 | n/a | n/a | Revoked | \$700/m |

| | | | | | | | | |
|---------------------|--------|---------|------------|---------------|-----|-----|----------------|---------|
| SKELTON, IRA OLIVER | MEMBER | 3 years | 1 Sep 2017 | 23 Nov 2019 | n/a | n/a | Died in office | \$700/m |
| LETTSSOME, LUCIA | MEMBER | 1 year | 1 Dec 2018 | 22 April 2019 | n/a | n/a | Revoked | \$700/m |
| PALMER, SEAN | MEMBER | 1 year | 1 Jan 2019 | 22 April 2019 | n/a | n/a | Revoked | \$700/m |

b. Taxi and Livery Commission, Ministry of Transportation, Works and Utilities

| NAME | POSITION | PERIOD | DATE ON | DATE OFF | OTHERS | NEW/ RENEW | STATUS | PAY |
|-----------------------|----------|-----------|-------------|-------------|--------|---------------|------------------------|-----------|
| CHRISTOPHER, LORNA | Chair | 3 years | 1 Oct 2019 | 30 Sep 2022 | n/a | New | In place | \$1,000/M |
| WHEATLEY SR., KENRICO | Member | 1.5 year | 1 Oct 2019 | 31 Mar 2021 | n/a | New | Terminated 31 May 2020 | \$700/M |
| WHEATLEY SR., KENRICO | Member | 2 years | 1 Jun 2020 | 31 May 2022 | n/a | Reappointment | In place | \$700/M |
| CALLWOOD, GREGORY | Member | 2 years | 1 Oct 2019 | 30 Sep 2021 | n/a | New | In Place | \$700/M |
| SMITH, ARNOLD C. | Member | 3 years | 1 Jun 2020 | 13 May 2023 | n/a | New | In Place | \$700/M |
| FAHIE, DORCAS | Member | 3 years | 1 Feb 2017 | 31 Jan 2020 | n/a | Reappointment | Expiry of term | \$700/m |
| FLAX, SANFORD | Member | 2.5 years | 1 Feb 2017 | 31 Jul 2019 | n/a | Reappointment | Expiry of term | \$300/M |
| RASHEED, FARID | Member | 2 years | 1 Feb 2017 | 31 Jan 2019 | n/a | Reappointment | Expiry of term | \$300/M |
| CHRISTOPHER, TROY | Chair | 3 years | 18 Jan 2016 | 17 Jan 2019 | n/a | Reappointment | Expiry of term | \$500/M |

c. Telecommunications Regulatory Commission

| NAME | POSITION | PERIOD | DATE ON | DATE OFF | OTHERS | NEW/RENEW | STATUS | PAY |
|--|-----------------------------|---------|-------------|---------------|--------|---------------|----------|---------|
| <p>The Board has not been managed by this Ministry from 3 September 2019. The sitting Minister was appointed/assigned the Ministry's portfolio of subjects on 1 March 2019 following the General Elections in February 2019. At that time the Board was partially constituted, as Commissioner Ian Smith had resigned in 2016 and not been replaced. There was also a long standing vacancy for the Commissioner with Telecoms services background from outside of the Virgin Islands. As there was a Chairman and 2 Commissioners, the Board was functional and would have started to fully report to the Premier's Office after the General Elections in February 2019. The Telecoms Act makes provision for the "financial" aspect of the TRC to be reported directly to the Minister of Finance (who was, in this case, the Premier), and for the "operational" aspects of the TRC, including board composition, to be administered by Minister. This occurred until February 2019 when the Government was changed by the outcome of the General Elections.</p> <p>The list below details the membership when the Minister was assigned the Board.</p> | | | | | | | | |
| WILLIAMS, DELROY | Commissioner | 2 years | 1 May 2017 | 30 April 2019 | n/a | Reappointment | Unknown | \$800/M |
| SMITH, IAN | Deputy Chair & Commissioner | 3 years | 13 Feb 2015 | 31 Mar 2016 | n/a | New | Resigned | \$800/M |

| | | | | | | | | |
|------------------|--|-----------|-----------------|-----------------|-----|---------------|---------|-----------|
| SAMUEL, JERRY D. | Commissioner | 3 years | 1 March 2017 | 28 Feb 2020 | n/a | New | Unknown | \$800/M |
| THOMAS, MICHAEL | Chair & Commissioner | 2.5 years | 13 Feb 2017 | 12 Aug 2019 | n/a | Reappointment | Unknown | \$1,000/M |
| VACANT | Commissioner from outside the Virgin Islands | 0 years | Never appointed | Never appointed | n/a | n/a | n/a | \$800/M |

d. Wickham's Cay Development Authority

| NAME | POSITION | PERIOD | DATE ON | DATE OFF | OTHERS | NEW/RENEW | STATUS | PAY |
|---|----------|--------|---------|----------|--------|-----------|--------|-----|
| Board has been managed by this Ministry well before it was assigned on 10 May 2021. However, a Board does not exist as there is no legal provision requiring one. | | | | | | | | |
| n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a |

a. Building Authority

| NAME | POSITION | PERIOD | DATE ON | DATE OFF | OTHERS | NEW/RENEW | STATUS | PAY |
|--|--|-----------|-----------------|-----------------|--------|---------------|---------|-----------|
| The Minister (appointments signed by the Governor) ceased administering this Board when the Government's Transformation Plan effected a move of the Building Authority from the Ministry to the Premier's Office sometime in 2020. | | | | | | | | |
| STOUTT, DION | Chairman | 2.5 years | 1 Jan 2020 | 30 Jun 2022 | n/a | Reappointment | Unknown | \$1,200/M |
| QUAMMIE, ANTONIO | Member | 3 years | 1 Mar 2020 | 28 Feb 2023 | n/a | New | Unknown | \$900/M |
| BARONVILLE, ASHTON | Member | 2.5 years | 1 Jul 2018 | 30 Jun 2021 | n/a | Reappointment | Unknown | \$900/M |
| DOWNING, THOR | Member | 2 years | 1 Jan 2018 | 31 Dec 2020 | n/a | Reappointment | Unknown | \$900/M |
| VACANT | Commissioner from outside the Virgin Islands | 0 years | Never appointed | Never appointed | n/a | n/a | n/a | \$800/M |

- b. Copies of all documents (such as CVs and references) of the members of the Boards appointed in the last three years which were put before the person/persons who made the decision to appoint that member are exhibited at pages 169 to 211, and 226 to 305 of Exhibit 'RSB-1'.

Sworn by: Ronald Smith-Berkeley


On 19 June 2021

Manuel Reef, Tortola, BVI

) Ronald Smith-Berkeley

Before me:

Notary/~~Commissioner of Oaths~~

 19.6.2021
Kelvin M. Dawson
Notary Public



**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

SECOND AFFIDAVIT OF JEREMIAH FRETT

I, Jeremiah Frett of Major Bay, Tortola, Financial Secretary, **MAKE OATH** and **SAY** as follows:

1. Introduction

- 1.1 I am the Acting Financial Secretary of the Ministry of Finance (the '**Ministry**') in the Government of the British Virgin Islands. I have served in this capacity effective 1 January 2021 and I make this Affidavit from facts within my own knowledge and are true or are without my own direct knowledge but are true to the best of my knowledge, information and belief, the sources of which are identified.
- 1.2 I make this Affidavit on behalf of the Hon Andrew A. Fahie (the '**Minister**') as a result of the letter sent to him on 4 June 2021 by Ms Rhea Harrikissoon, Solicitor to the Commission of Inquiry (the '**COI**') (the '**Request**') in relation to the Statutory Bodies ('**Statutory Bodies**'), and in particular to the boards of those Statutory Bodies (the '**Boards**'), which come under the control of the Ministry.
- 1.3 At the outset, I should further say that in this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it unless I do so expressly.
- 1.4 I shall refer in this Affidavit to the exhibit marked 'JF-4', which is a paginated bundle of documents.

2. Statutory Bodies

- 2.1 The following Statutory Bodies fall under the responsibility of the Ministry:

| Statutory Body | Date Statutory Body came under the control of the Ministry |
|---|--|
| FINANCIAL SERVICES COMMISSION | 27 th December 2001 |
| NATIONAL BANK OF THE VIRGIN ISLANDS | 1 st July 1974 |
| INTERNATIONAL TAX AUTHORITY | Established as a unit under the portfolio of the Ministry of Finance on 9 th July 2012; and Established as an Authority on 4 th September 2018 |
| BVI INTERNATIONAL ARBITRATION CENTRE | 3 rd January 2014 |

3. Legislation

3.1 The following legislation relates to the Statutory Bodies:

| Legislation | Date legislation came into force | Exhibited at following pages of Exhibit JF-4 |
|---|----------------------------------|--|
| Financial Services Commission | | |
| Financial Services Commission Act No. 12 of 2001 | 27 th December 2001 | 1 - 76 |
| Financial Services Commission (Amendment) Act No. 6 of 2004 | 27 th April 2004 | 77 - 84 |
| Financial Services Commission (Amendment) Act No. 19 of 2006 | 23 rd November 2006 | 85 - 130 |
| Financial Services Commission (Amendment) Act, No. 10 of 2011 | 13 th July 2011 | 131 - 137 |
| Financial Services Commission (Amendment) Act No 8 of 2016 | 3 rd May 2016 | 138 - 156 |
| National Bank Of The Virgin Islands | | |
| Development Bank of the Virgin Islands, CAP 100 | 1 st July 1974 | 157 - 171 |
| Development Bank of the Virgin Islands (Transfer of Assets and Liabilities) (Amendment) Act, 14 of 2017 | 12 th June 2017 | 172 - 174 |
| Bank and trust Companies Act, 1990 as amended | 15 th June 1991 | 175 - 205 |
| International Tax Authority | | |
| International Tax Authority Act, No. 7 of 2018 | 4 th September 2018 | 206 - 224 |
| BVI International Arbitration Centre | | |
| British Virgin Islands Arbitration Act 2013 No. 13 of 2013 | 3 rd January 2014 | 225 - 328 |
| S.I. No. 54 of 2014 - Proclamation - Arbitration Act, 2013 | | 329 |
| Arbitration (Amendment) Act, 2014 | | 330 - 333 |
| No. 6 of 2015- Arbitration (Amendment) Act, 2015 | 23 rd April 2015 | 334 - 336 |

4. Written Criteria

- 4.1 There is no written criteria for appointing a person to a Board. However, in 2014 I am informed by the Macro Fiscal Unit ('**Macro Fiscal Unit**') within the Ministry that technical assistance was sought from the Caribbean Regional Technical Assistance Center ('**CARTAC**') to strengthen the relationship between the BVI Government and its Statutory Bodies and State Owned Enterprises ('**SOEs**') by developing a framework to guide and support the oversight and monitoring of SOEs. During this exercise it was noted that there was no established criterion for determining suitable

candidates for Boards. In response to this, the Macro Fiscal Unit produced a policy paper entitled, "State Owned Enterprises and Statutory Bodies Monitoring Framework". A copy of this paper is exhibited at pages 337 - 350 of Exhibit 'JF-4'.

- 4.2 As part of the preparatory work for the establishment of the Framework mentioned in the paragraph above, the Macro Fiscal Unit administered a questionnaire in 2014 to all State Owned Enterprises ('SOEs') and Statutory Boards named "SOE Management Assessment Questionnaire". A copy of this questionnaire is exhibited at pages 351 - 366 of Exhibit 'JF-4'. There were two sections of this questionnaire that deal specifically with Boards –Section 5 Governing Board and the last section Operational Management. 13 of the 17 SOEs/SBs responded 2 from a pilot and 11 from the actual executed questionnaire. 4 SOEs/SBs did not respond. Exhibited at pages 367 - 369 of Exhibit 'JF-4' are the results from the questionnaires as received. The information on Boards as collected from the questionnaires is exhibited at pages 370 - 374 of Exhibit 'JF-4'.
- 4.3 I am informed by the Macro Fiscal Unit that its members were trained by CARTAC and it thereafter developed an Action Plan entitled, "Improving Statutory Bodies Performance and Accountability" which listed the objectives relative to improving the quality of the Boards. A copy of this Action plan is exhibited at pages 375 - 378 of Exhibit 'JF-4'.
- 4.4 A Cabinet paper was drafted seeking approval to implement the Action Plan, however, Cabinet's approval was never obtained in approving the Action Plan. A Cabinet paper was again drafted in 2016, however, once again it was tabled and never put before Cabinet for approval. Copies of these Cabinet papers are exhibited at pages 379 - 457 of Exhibit 'JF-4'.

5. The Boards

A. FINANCIAL SERVICES COMMISSION:

- 5.1 Pursuant to Section 5 (2) of the Financial Services Commission Act No. 12 of 2001 as amended (the 'FSC Act') the Managing Director of the Financial Services Commission is an ex officio Commissioner of the Financial Services Commission Board (the 'FSC Board'). In accordance with Section 5 (3) of the FSC Act, the Minister in consultation with the Leader of the Opposition shall recommend the nominees for Chairman and Deputy Chairman. All other nominations are at the discretion of the Minister. Consequently, there is no written or legal requirement that the post(s) be advertised and this has not been the practice.
- 5.2 Candidates for positions on the FSC Board are not interviewed. Nominations are made by the Minister and notification letters sent to the nominees requesting them to express their interest in serving on the FSC Board and to submit a copy of their Resume/CVs which are appendix to the Cabinet paper for approval.
- 5.3 The Ministry prepares a Cabinet paper with appendices such as nomination letters, nomination acceptance letters, Resume/CVs and any other supporting documents that may assist Cabinet in making an informed decision.
- 5.4 In accordance with Section 5 (4) of the FSC Act, Cabinet is tasked with determining whether the persons to be appointed are fit and proper and have the relevant knowledge, experience and expertise which could aid the Financial Services Commission in the performance of its functions. In considering candidates for the FSC Board both the Minister and Cabinet take convictions (spent and/or unspent) into account.
- 5.5 The assignment of roles is guided by the FSC Act as stipulated in Section 5 of the same and determined by the Minister's discretion.
- 5.6 Upon Cabinet's approval, in accordance with Section 5 (3) of the FSC Act, instruments of appointments are executed by the Minister which are prepared by Cabinet Office upon request by

the Ministry and each successful candidate is presented with a copy of their respective appointment instrument.

- 5.7 Appointments to the FSC Board are gazetted in the Official Gazette of the Virgin Islands.
- 5.8 The monthly stipends paid to FSC Board members are as follows:
- (a) Chairman - \$2,000 per month;
 - (b) Deputy Chairman - \$1,800 per month; and
 - (c) Members - \$1,500 per month
- 5.9 The only changes to the selection/appointment/re-appointment to the board over the past five years are those in accordance with the 2004, 2006, 2011 and 2016 amendments to the Act.
- 5.10 The process for appointments to the FSC Board does not differ for re-appointments to the FSC Board.

B. NATIONAL BANK OF THE VIRGIN ISLANDS:

- 5.11 In accordance with Section 7 of the Development Bank of the Virgin Islands, CAP 100 (the '**Nat Bank Act**') and Article 10 of the Memorandum of Association and Articles of Association ('**NBVI M&A**') of the National Bank of the Virgin Islands Limited ('**NBVI**'), recommendations for NBVI board members are made by the NBVI to the Minister for consideration and approval by Cabinet. Further, in accordance with Article 6.5 of the NBVI M&A, any Qualifying Shareholder (holding at least 30% of the Ordinary Shares of NBVI) has the right to nominate up to three (3) directors if the NBVI Board constitutes nine, or more and two (2) if the NBVI Board constitutes eight or less. Moreover, presently the two shareholders are BVI Government (67% Shares) and Social Security Board (33%). Further, the appointments to the Board upon receiving Cabinet's approval are subject to further approval by FSC as the regulator in accordance with Section 19 of the Bank and Trust companies Act, 1990 as amended.
- 5.12 There is no written or legal requirement that the post advertised and this has not been the practise.
- 5.13 Candidates for the NBVI Board are not interviewed. NBVI is informed by the Minister of Finance and Social Security Board as Qualifying Shareholders of their nominations which are submitted to the Ministry of Finance for the Cabinet paper to be prepared to put forward to Cabinet for approval. The recommendations are submitted to Cabinet accompanied by a Cabinet paper with appendices such as nomination letters, nomination acceptance letters, Resume/CVs and any other supporting documents that may assist Cabinet in making an informed decision in granting approval of the proposed appointments.
- 5.14 There is no requirement for the Ministry to conduct a review of the potential candidates.
- 5.15 Candidates are asked by NBVI to submit a copy of their Resume/CVs prior to their appointments being considered by Cabinet, to assist Cabinet in making a decision as to whether or not to grant approval for the proposed appointments.
- 5.16 Cabinet is tasked with determining whether the persons to be appointed are fit and proper and have the relevant knowledge, experience and expertise which could aid the Financial Services Commission in the performance of its functions. In considering candidates for the FSC Board both the Minister and Cabinet take convictions (spent and/or unspent) into account.
- 5.17 In accordance with Section 7 (2) of the Nat Bank Act, final approval of a Candidate's appointment to the NBVI Board is provided by Cabinet and pursuant to Articles 9.4 of the Articles of Association of NBVI Limited by Resolution of Shareholders or Directors.

- 5.18 Upon Cabinet's approval, The NBVI is informed of Cabinet's decision by the Ministry. The NBVI will then inform the successful candidate of their appointments.
- 5.19 In accordance with Section 10 of the Nat Bank Act, all appointments to the NBVI Board are gazetted in the Official Gazette of the Virgin Islands.
- 5.20 The assignment of roles is guided by the FSC Act as stipulated in Section 5 of the same and determined by the Minister's discretion.
- 5.21 The monthly stipends paid to NBVI Board members are as follows:
- (a) Chairman - \$2,500 per month;
 - (b) Vice Chairman - \$2,000 per month; and
 - (c) Members - \$2,000 per month
- 5.22 It must be noted that all stipend payments are subject to standard statutory deductions (i.e. payroll tax, Social Security and NHI). Further, the chief Executive Officer as an ex-officio member does not receive a stipend.
- 5.23 The only changes to the selection/appointment/re-appointment to the NBVI Board over the past five years are those in accordance with amendments to the Act, Memorandum of Association and Articles of Association, Development Bank of the Virgin Islands (Transfer of Assets and Liabilities) Act, 2017 and the Banks and Trust Companies Act, 1990.
- 5.24 The process for appointments to the NBVI Board does not differ for re-appointments to the NBVI Board.

C. INTERNATIONAL TAX AUTHORITY:

- 5.25 By virtue of statute, the membership composition and appointments of the International Tax Authority Board ('**ITA Board**') is established. Section 3 of the International Tax Authority Act, 2018 provides that the composition of the ITA Board are appointment based on title comprised of public servants and officers from key stakeholder statutory bodies. Consequently, all nominations and appointments are enshrined in the Act.
- 5.26 There is no remuneration for members of the ITA Board calculated and paid.
- 5.27 There is no requirement by statute or policy for these appointments to be gazetted.

D. BVI INTERNATIONAL ARBITRATION CENTRE:

- 5.28 In accordance with Section 95 of the British Virgin Islands Arbitration Act, 2013 ('**IAC Act**'), Cabinet, at any such time as it considers appropriate and acting on the advice of the Financial Services Commission may appoint a Board to the International Arbitration Centre ('**IAC**'), to be known as the British Virgin Islands International Arbitration Centre Board (the '**IAC Board**').
- 5.29 There is no requirement that the post is advertised and has not been the practise.
- 5.30 Candidates for the IAC Board are not interviewed. The nominations are made by the minister exercising his discretion and acting on the advice of FSC/ IAC. The IAC submits the requisite documentation to Ministry of Finance for the Cabinet paper to be prepared and put before Cabinet for approval. The recommendations are submitted to Cabinet accompanied by a Cabinet paper with appendices such as nomination letters, nomination acceptance letters, Resume/CVs and any other supporting documents that may assist Cabinet in making an informed decision in granting approval of the proposed appointments.

- 5.31 The Ministry prepares the Cabinet paper with appendices such as nomination letters, nomination acceptance letters, Resume/CVs and any other supporting documents that may assist Cabinet in making an informed decision.
- 5.32 In accordance with Section 96 of the IAC Act, Cabinet is tasked with determining whether the persons to be appointed are fit and proper and have the relevant knowledge, experience and expertise which could aid the Financial Services Commission in the performance of its functions. In considering candidates for the IAC Board both the Minister and Cabinet take convictions (spent and/or unspent) into account.
- 5.33 The assignment of roles is determined by the Minister's discretion.
- 5.34 A copy of each candidate's resume/CV is requested when they are notified of their nomination to serve by IAC.
- 5.35 There is no written criteria for appointing a person to the board outside of the governing Act.
- 5.36 The Ministry does not have a criteria for assigning roles in the Boards.
- 5.37 In accordance with Section 95 of the IAC Act, final approval of a candidate's appointment to the IAC Board is provided by Cabinet. The Cabinet paper is prepared by the Ministry with supporting documentation such as resumes/CVs, legislation, previous extracts where applicable.
- 5.38 Upon Cabinet's approval, the responsible statutory board which in this instance is the IAC is informed of Cabinet's decision by the Ministry. The Ministry will then request from Cabinet the instruments of appointments and instruct that the appointments be gazetted in accordance with Section 95 (2) of the IAC Act. The Ministry or the secretary to the Board if appointed will then deliver to each newly appointed member a copy of their instrument of appointment.
- 5.39 In accordance with Section 95 (2) of the IAC Act, all appointments are gazetted in the Official Gazette of the Virgin Islands.
- 5.40 During the incubation period when IAC was being established, the Financial Services Commission paid the remuneration for the Board. The monthly stipends paid to NBVI Board members are as follows:
- (a) Chairman - \$24,000 per annum;
 - (b) Deputy Chairman - \$21,600 per month; and
 - (c) Members - \$18,000 per month
- 5.41 There have been no changes to the selection/appointment/re-appointment to the IAC Board over the past five years.
- 5.42 The process for appointments to the IAC Board does not differ for re-appointments to the NBVI Board.
- 6. Composition & roles on the Boards**
- 6.1 Set out below is a table of the composition of the Boards over the past 5 years:

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many candidates were considered | First Appointment / Re-appointment | Total remuneration from appointment to end of appointment / to date |
|--------------------------------------|-----------------------|---|---|-------------------------------------|---|--|
| Financial Services Commission | | | | | | |
| Robin Gaul | Chairman | 6 th February 2015 to 6 th February 2018 (3 years) | Appointment renewed for two (2) years (6 th February 2021 to 5 th February 2023) | Information unknown | First appointment took effect 6 th February 2015 with subsequent reappointments as follows: 6 th February 2018 to 5 th February 2021 for three (3) years; and 6 th February 2021 to February 2023 | 6 th February 2015 to 31 st May 2021 - \$130,000 approx. |
| Langston Sibbles | External Commissioner | 14 th December 2020 to 30 th September 2022 (2 years) | On the 20 th December 2020 via email Mr. Sibbles indicated that he would not be able to serve as an external commissioner until the 1 st April 2021. As a result his appointment was rescinded via Cabinet Memo No. 29/2021 (REVISED) | Information unknown | First appointment was 14 th December 2020 to 30 th September 2022 (2 years) was rescinded by Cabinet Memo No. 29/2021 | 14 th December 2020 to 1 st April 2021 - \$7500 approx. |
| William Gilmore | External Commissioner | 14 th December 2020 to 13 th December 2022 (2 years) | Mr. Gilmore's appointment is currently active and will expire on 13 th December 2022 | Information Unknown | First appointment was 14 th December 2020 with no subsequent re-appointments. | 14 th December 2020 to 31 st May 2021 - \$9,000 approx. |
| Kharid Fraser | Deputy Chairman | 14 th December 2020 to 13 th December 2023 (3 years) | Mrs. Fraser's appointment is currently active and will expire on 13 th December 2022 | Information Unknown | First appointment was 14 th December 2020 with no subsequent re-appointments. | 14 th December 2020 - 31 st May 2021 - \$10,800 approx. |
| Rosemarie Flax | Deputy Chairman | 14 th December 2020 to 13 th December 2023 (3 years) | By Cabinet Memo No. 29/2021 revised Mrs. | Information Unknown | First appointment was 14 th December 2020 | 14 th December 2020 to 31 st May 2021 - \$10,800 approx. |

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| | | | | | | | | |
|-------------------|-----------------------|--|--|---------------------|---|---|-----------------------|--|
| | | | Rosemarie Flax appointment and revised appointment approved by Cabinet is to the role of Commissioner of the Board from 14 th December 2020 to 13 th November 2022 (2 years) | | | with subsequent re-appointments. Rescinded by Cabinet. | no re-appointments by | |
| Meivin Stoutt | Commissioner | 14 th December 2020 to 13 th December 2023 (3 years) | Mr. Stoutt's appointment is currently active and will expire on 13 th December 2023 | Information Unknown | First appointment was 14 th December 2020 with subsequent re-appointments. | 14 th December 2020 to 31 st May 2021 - \$9,000 approx. | | |
| Johanna Boyd | Commissioner | 14 th December 2020 to 13 th December 2022 (2 years) | Mr. Boyd's appointment will expire on 13 th December 2022 | Information Unknown | First appointment was 14 th December 2020 with subsequent re-appointments | 14 th December 2020 to 31 st May 2021 - \$9,000 approx. | | |
| Paul Carty | Commissioner | 14 th December 2020 to 13 th December 2023 (3 years) | Mr. Carty's appointment will expire on 13 th December 2023 | Information Unknown | First appointment was 14 th December 2020 with subsequent re-appointments | 14 th December 2020 to 31 st May 2021 - \$9,000 approx. | | |
| Ramnarine Mungroo | Commissioner | 14 th December 2020 to 13 th December 2023 (3 years) | Mr. Mungroo's appointment will expire on 13 th December 2023 | Information Unknown | First appointment was 14 th December 2020 with subsequent re-appointments | 14 th December 2020 to 31 st May 2021 - \$9,000 approx. | | |
| Carl Hiralal | External Commissioner | 1 st October 2017 to 1 st October 2019 (2 years) | Appointment renewed 1 st October 2019 to 30 th September 2021 via Cabinet Memo No. | Information Unknown | First appointment was 1 st October 2017 with a subsequent re-appointment for | 1 st October 2017 to 31 st May 2021 - \$66,000 approx. | | |

| | | | | | | |
|-------------------|---------------------------------------|--|---|---------------------|--|--|
| | | | 343/2019 | | two (2) years from 1 st October 2019 to 30 th September 2021 | |
| Denise Reovan | Commissioner | 1 st October 2016 to 1 st October 2018 (2 years) | Appointment renewed for two years from 1 st October 2018 to 30 th September 2020. The reason for end of term is due to expiration of appointment | Information unknown | First appointment was 1 st October 2016 with a subsequent re-appointment for two (2) years from 1 st October 2018 to 30 th September 2020 | 1 st October 2016 to 30 th September 2020 - \$54,000 approx. |
| Carlene Romney | Commissioner | 1 st October 2017 to 1 st October 2019 | Appointment renewed for one (1) year from 1 st October 2019 to 30 th September 2020. The reason for end of term is due to expiration of appointment. | Information Unknown | First appointment was 1 st October 2017 with a subsequent re-appointment for one (1) year from 1 st October 2019 to 30 th September 2020. | 1 st October 2017 to 30 th September 2020 - \$36,000 approx. |
| Jonathan Fiechter | External Commissioner/Deputy Chairman | 1 st October 2017 to 1 st October 2019 (2 years) | Appointment renewed for one (1) year from 1 st October 2019 to 30 th September 2020 in the role of Deputy Chairman. The reason for end of term is due to the expiration of appointment. | Information Unknown | First appointment was 1 st October 2017 with a subsequent re-appointment for one (1) years from 1 st October 2019 to 30 th September 2020 | 1 st October 2017 to 30 th September 2020 - \$36,000 approx. |
| Ian Smith | Commissioner | 1 st October 2017 to 1 st October 2020 (3 years) | Mr. Smith ceased to be a member of the Board on the expiration of his appointment on the 1 st October 2020. The reason for end of term is due to the expiration of appointment. | Information Unknown | First appointment was 1 st October 2017 with no subsequent re-appointments. | 1 st October 2017 to 1 st October 2020 - \$54,000 approx. |

LN780340007-EU-34022005/3

| | | | | | | |
|--|---|--|--|---------------------|---|---|
| Andrew Bickerton | Commissioner | 1 st October 2017 to 1 st October 2020 (3 years) | Mr. Bickerton's ceased to be a member of the Board on the expiration of his appointment on 1 st October 2020. The reason for end of term is due to the expiration of the appointment. | Information unknown | First appointment was the 1 st October 2017 with no subsequent re-appointments. | 1 st October 2017 to 1 st October 2020 - \$54,000 approx. |
| Robert Mactavious | Ex Officio (first Managing Director and Chief Executive Officer) | 2002 (date and month unknown) | Mr. Mactavious's ceased to be an Ex Officio upon his retirement as Managing Director/Chief Executive Officer of the Financial Services Commission on 31 st December 2021 | None | First appointment was in 2002 to 31 st December 2021 (date and month unknown) | No remuneration |
| Kenneth Baker | Ex officio (second Managing Director and Chief Executive Officer) | February 2021 | Mr. Baker is the currently Managing Director/Chief Executive Officer of the Financial Services Commission | Information Unknown | First appointment was February 2021 to present | No remuneration |
| National Bank Of The Virgin Islands | | | | | | |
| Nona Vanterpool-Bonelli | Non-Executive Director | 1 st February 2016 to 31 st January 2019 (3 years) | Appointment renewed for one (1) year from 1 st February 2019 to 31 st January 2020. The reason for end of term is due to expiration of appointment. | Information Unknown | First appointment was 1 st February 2016 with subsequent re-appointment for one (1) year from 1 st February 2019 to 31 st January 2020 | 1 st February 2016 to 31 st January 2020 - \$96,000 approx. |
| Drexel Glasgow | Non-Executive Director | 23 rd January 2015 to 22 nd January 2017 (2 years) | Dr. Glasgow is a current member of the Board | Information Unknown | First appointment was 23 rd January 2015 with subsequent re-appointments for | 23 rd January 2015 to 31 st May 2021 - \$152,000 |

LN78034/0007-EU-34022005/3

| | | | | | | | |
|------------------|------------------------------------|--|--|---------------------|---|--|--|
| | | | | | | two (2) years from 31st May 2017 to 31st May 2019; for one (1) year from 1st June 2019 to 31st May 2020; for one (1) year from 1st June 2020 to 31st May 2021; and for two (2) years from 1st June 2021 to 31st May 2023 | |
| Joy Francis | Chief Executive Officer/Ex Officio | Appointment is attached to her post as Chief Executive Officer | Ms. Francis appointment as an Ex Officio is attached to her post as Chief Executive Officer. Upon amendment to the Memorandum of Association and Articles of Association the Chief Executive Officer as an Ex Officio was re-instated and Mr. Francis-Penn was re-appointment for an indefinite period. | Information Unknown | First appointment attached to her post as Chief Executive Officer | No remuneration | |
| Stephanie George | Chief Financial Officer | Appointment is attached to her post as Chief Financial Officer | Ms. George as an Ex Officio is attached to her post as Chief Financial Officer. However, upon the acquisition of 33% of the shares by NBVI and due to the terms set out in the Bank's amended Memorandum and Articles of Association Ms. George will no longer serve as a Director of the Bank. Tenure ended | Information Unknown | First appointment attached to her post as Chief Executive Officer | No remuneration | |

| | | | | | | | |
|-------------------|--------------------------------------|--|----------------|--|---------------------|--|--|
| Clarence Faulkner | Chairman | 23 rd January 2015 to 22 nd January 2018 – (3 years) | December 2017. | Appointment renewed for 3 years from 23 rd January 2018 to 22 nd January 2021 via Cabinet Memo No. 016/2018. The reason for end of term is due to the expiration of appointment. | Information Unknown | First appointment was 23 rd January 2015 with a subsequent re-appointment for 3 years from 23 rd January 2018 to 22 nd January 2021 | 23 rd January 2015 to 22 nd January 2021 - \$180,000 approx. |
| Audley Maduro | Non-Executive Director | 23 rd January 2015 to 22 nd January 2018 – (3 years) | | Mr. Maduro ceased to be a member of the Board on the expiration of his appointment on the 22 nd January 2018. The reason for end of term is due to the expiration of appointment and recommendation by NBVI for no re-nomination. | Information Unknown | First appointment was 23 rd January 2015 with no subsequent re-appointments. | 23 rd January 2015 to 22 nd January 2018 - \$72,000 approx. |
| Ivan Hudson Carr | Non-Executive Director | 22 nd March 2017 to 21 st March 2020 | | Mr. Carr appointment is currently active for 3 years from 28 th February 2020 to 27 th February 2022 | Information Unknown | First appointment was 22 nd March 2017 with a subsequent re-appointment for 3 years from 28 th February 2020 to 27 th February 2022 | 22 nd March 2017 to 31 st May 2021 - \$102,000 approx. |
| Benedicta Samuel | Non-Executive Director/Vice Chairman | 1 st April 2014 to 31 st March 2017 – (3 years) | | Appointment renewed for a period of 3 years from 1 st April 2018 to 31 st March 2021 and again from 1 st April 2021 to 31 st March 2024. Appointment currently active. | Information Unknown | First appointment was 1 st April 2014 to 31 st March 2017 with subsequent re-appointments for 3 years from 1 st April 2018 to 31 st March 2021 and then again from 1 st | 1 st April 2014 to 31 st May 2021 - \$172,000 approx. |

| | | | | | | |
|-----------------------|--|--|--|---------------------|---|---|
| Paul Carty | Non-Executive Director | 1 st September 2020 to 31 st August 2023 – (3 years) | Mr. Carty's appointment is currently active. | Information Unknown | April 2021 to 31 st March 2024 | 1 st September 2020 to 31 st May 2021 - \$18,000 approx. |
| Rodney Herbert | Non-Executive Director | 23 rd January 2014 to 22 nd January 2016 – (2 years) | Mr. Herbert ceased to be a member of the Board on the expiration of his appointment on the 22 nd January 2016. The reason for end of term is due to the expiration of appointment. | Information Unknown | First appointment was 23 rd January 2014 with no subsequent re-appointments. Appointment rescinded by Cabinet. | 23 rd January 2014 to 22 nd January 2016 - \$48,000 approx. |
| Sandra Scatliffe | Non-Executive Director | 23 rd January 2014 to 22 nd January 2016 – (2 years) | Ms. Scatliffe cease to be a member of the Board on the expiration of her appointment on the 22 nd January 2016. The reason for end of term is due to the expiration of appointment. | Information Unknown | First appointment was 23 rd January 2014. | 23 rd January 2014 to 22 nd January 2016 - \$48,000 approx. |
| Mervyn Hope | Non-Executive Director (SSB appointment) | Appointment began 2 nd March 2018 for an Indefinite period | Indefinite | Information Unknown | First appointment 2 nd March 2018 | 2 nd March 2018 to 31 st May 2021 - \$78,000 approx. |
| Michelle Todman Smith | Non-Executive Director (SSB Appointment) | Appointment began 2 nd March 2018 for an Indefinite period | Indefinite | Information Unknown | First appointment 2 nd March 2018 | No remuneration |
| Antoinette Skelton | Non-Executive Director (SSB Appointment) | Appointment began 2 nd March 2018 for an Indefinite period | Indefinite – However Mrs. Skelton demitted office 31 st December | Information Unknown | First appointment 2 nd March 2018 | No remuneration |

| | | | | | | | |
|------------------------------------|--|---|-------|---|---------------------|---|---|
| Lois Malone | Director | 1 st May 2021 to 30 th April 2023 – (2 years) | 2020. | Mrs. Malone appointment is currently active | Information Unknown | First appointment 1 st May 2021 with no subsequent appointments. | 1 st May 2021 to 31 st May 2021 - \$2,000 approx. |
| Jeanette Scalliffe Boynes | | | | | | | No remuneration |
| International Tax Authority | | | | | | | |
| Lisa Penn-Lettsome | Director of International Business (Regulations) | Statutory Appointment – 1 st October 2019 upon appointment as Executive Director of International Business (Regulations) | | Duration of appointment hinged on appointment as Executive Director of International Business (Regulations). Mrs. Penn-Lettsome appointment is currently active. | N/A | First appointment 1 st October 2019 | No remuneration |
| Baba Aziz | Attorney General | Statutory Appointment – February 2015 – September 2020 upon appointment at Attorney General | | Duration of appointment hinged on appointment as Attorney General. Therefore, Mr. Aziz appointment ceased September 2020 on expiration of contract. | N/A | First appointment was February 2015 | No remuneration |
| Errol George | Director of Financial Investigations Agency | Statutory appointment upon appointment as director of Financial Investigations Agency - August 2020 to Present | | Duration of appointment hinged on appointment as director of Financial Investigations Agency. Mr. George between 2017 and 2020 was on study leave. His appointment is currently active. | N/A | First appointment was 2013 | No remuneration |
| Alcedo Fahie | Interim Director, Financial Investigation Agency | Statutory appointment upon appointment as Interim Director of Financial Investigation Agency – 2018 to 2019 | | Duration of appointment hinged on appointment as interim director of Financial Investigation Agency. | N/A | First appointment was 2018 | No remuneration |

| | | | | | | |
|---|---|--|---|---------------------|--|--|
| Wade Smith | Interim Director, Financial Investigation Agency | Statutory appointment upon appointment as Interim Director of Financial Investigation Agency – 2019 to August 2020 | Duration of appointment hinged on appointment as Interim Director of Financial Investigation Agency. | N/A | First appointment was 2019 | No remuneration |
| Robert Mactavious | Managing Director, Financial Services Commission | Statutory appointment upon appointment as Managing Director, Financial Services Commission – 2018 to December 31 st 2020 | Duration of appointment hinged on appointment as Managing Director, Financial Services Commission. Tenure ended upon retirement. | N/A | First appointment was 2018 | No remuneration |
| Kenneth Baker | Managing Director, Financial Services Commission | Statutory appointment upon appointment as Managing Director, Financial Services Commission – February 2021 to present | Duration of appointment hinged on appointment as Managing Director, Financial Services Commission. Appointment currently active | N/A | First appointment was 2018 | No remuneration |
| La Toya James | Director, International Tax Authority | Statutory appointment upon appointment as Director, International Tax Authority – 2018 to present | Duration of appointment hinged on appointment as Director, International Tax Authority. Appointment currently active | N/A | First appointment was 2018 | No remuneration |
| Hon. Dawn Smith | Attorney General | Statutory appointment – 1 st October 2020 | Duration of appointment hinged on appointment as Attorney General. Currently active. | N/A | First appointment was 1 st October 2020 | |
| BVI International Arbitration Centre | | | | | | |
| John Beechey | Chairman | 7 September 2015 – 6 th September 2017 – (2 years) | Mr. Beechey is currently on a three year appointment from 7 th September 2020 to 6 th September 2023 | Information Unknown | First appointment was 7 th September 2015 with subsequent re- appointments from | 7 th September 2015 to 31 st May 2021 - \$138,000 |

| | | | | | | |
|------------------|-----------------|--|--|---------------------|---|---|
| Cherno Jallow QC | Deputy Chairman | 7 September 2015 to 6 th September 2018 – (3 years) | Mr. Jallow is currently on a three year appointment retroactively approved from 7 th September 2018 to 6 th September 2021 | Information Unknown | First appointment was 7 th September 2015 with subsequent re-appointment for three years from 7 th September 2018 to 6 th September 2021. | 7 th September 2015 to 31 st May 2021 - \$124,200 approx. |
| Murray Smith QC | Member | 7 September 2015 to 6 th September 2017 – (2 years) | Mr. Smith is currently on a three year appointment from 7 th September 2020 to 6 th September 2023 | Information Unknown | First appointment was 7 th September 2015 with subsequent re-appointments from 7 th September 2017 to 6 th September 2020 and again for three years from 7 th September 2020 to 6 th September 2023 | 7 th September 2015 to 31 st May 2021 - \$103,500 approx. |
| Felice Swapp | Member | 7 September 2015 to 6 th September 2018 – (3 years) | Mrs. Swapp is currently appointed for two years from 7 th September 2019 to 6 th September 2021. | Information Unknown | First appointment was 7 th September 2015 with subsequent re-appointments in the first instance retroactively for one year from 7 th September 2018 to 6 th September 2019; in the second instance for two years from 7 th September 2019 to 6 th September 2021 | 7 th September 2015 to 31 st May 2021 - \$103,500 approx. |
| Mark Forte | Member | 7 September 2015 to 6 th September 2017 – (2 years) | Mr. Forte is currently appointed for three years from 7 th | Information Unknown | First appointment was 7 th September 2015 with | 7 th September 2015 to 31 st May 2021 - \$103,500 approx. |

| | | | | |
|--|--|--------|---|--|
| | | years) | September 2020 to 6 th September 2023 | subsequent re-appointments in the first instance for three years retroactively from 7 th September 2017 |
|--|--|--------|---|--|

6.2 Copies of all documents (such as CVs and references) of the members of the Boards appointed in the last three years which were put before the person/persons who made the decision to appoint that member are exhibited at pages 502 – 1079 of Exhibit 'JF-4'.

7. **Declarations of interest**

Financial Services Commission

7.1 The Commissioners' Declaration of Interests' written guidance is only provided to new appointees as to the rationale and purpose of identifying conflicts of interest and is the information contained within the text of the Declaration of Interests (see copy exhibited at pages 1080 - 1089 of Exhibit 'JF-4'). The Commission's HR Director, upon the appointment of a new Commissioner, writes to the Commissioner to provide information regarding their period of appointment and terms of remuneration and provides a copy of the Declaration of Interests which the Commissioner is required to complete immediately upon their acceptance of a FSC Board position. If the appointee has any questions, or requires any clarification, regarding the Declaration, these are dealt with by the HR Director.

7.2 In practice, it has not been considered necessary to provide separate written guidance to appointees explaining the rationale for identifying conflicts of interest since it is a statutory requirement of appointment as a FSC Board member that appointees have knowledge, experience and expertise in the regulation of financial services business, and an understanding of when and how conflicts of interest may arise, and the rationale for a Declaration of Interests, is considered to be a key requirement for appointment as a Commissioner. In circumstances where conflicts arise as a FSC Board member, the member in question steps outside the meeting until the conflicted discussion has ended, and steps are taken by the FSC Board Secretary so that a conflicted Commissioner does not have access to non-public documents or information relating to the conflicted entity.

National Bank of the Virgin Islands

7.3 In accordance with the compliance rules, successful candidates are required to make a declaration of interest. The written guidance provided to appointees is exhibited at pages 1090 - 1096 of Exhibit 'JF-4'

British Virgin Islands International Arbitration Centre

7.4 It has not been the practise or is there a requirement that successful candidates make a declaration of interest. Therefore, there is not written guidance.

International Tax Authority

7.5 These statutory appointments do not require a declaration of Interest.

8. **Performance of board members**

8.1 Presently, there is no approved written standard by which performance of each member or the Boards are monitored. However, the Ministry of Finance has sought to address this as outlined in para. 4 above.

Sworn by: Jeremiah Frett)

On 2 July 2021)

At Ministry of Finance)

Qwomar #2, 2nd Floor

Blackburn Highway

Tortola

Jeremiah Frett

Before me

Notary/Commissioner of Oaths

Charika Monique Wheatley



Jeremiah Frett
Second
2 July 2021
Exhibit 'JF-4'

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN
ISLANDS COMMISSION OF INQUIRY 2021**

**AND THE COMMISSION OF INQUIRY ACT (CAP 239)
(THE 'ACT')**

**SECOND AFFIDAVIT OF
JEREMIAH FRETT**

IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')

FIFTH AFFIDAVIT OF JEREMIAH FRETT

I, Jeremiah Frett of Major Bay, Tortola, Financial Secretary, **MAKE OATH** and **SAY** as follows:

1. **Introduction**

- 1.1 I am the Acting Financial Secretary of the Ministry of Finance (the '**Ministry**') in the Government of the Virgin Islands. I have served in this capacity effective 1 January 2021. The statements made in this Affidavit derive from information and documents obtained during the course of my role as Financial Secretary, and are true to the best of my knowledge, information and belief.
- 1.2 I make this Affidavit on behalf of the Hon Andrew A. Fahie (the '**Minister**') as a result of the letter sent to him on 4 June 2021 by Ms Rhea Harrikissoon, Solicitor to the Commission of Inquiry (the '**COI**') (the '**Request**') in relation to the Statutory Boards (the '**Statutory Boards**'), which come under the control of the Ministry.
- 1.3 I make this Affidavit further to my Second Affidavit dated 2 July 2021, and the accompanying Exhibit JF-4.
- 1.4 At the outset, I should further say that in this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it unless I do so expressly.
- 1.5 I shall refer in this Affidavit to the exhibit marked 'JF-8', which is a paginated bundle of documents.

2. **Statutory Bodies and Statutory Boards**

- 2.1 When I provided my Second Affidavit to the COI in response to the Request, I had understood the Request to be requesting information for Statutory Bodies which are autonomous. These Statutory Bodies were listed in my Second Affidavit as follows:
 - (a) Financial Services Commission Board
 - (b) National Bank of the Virgin Islands
 - (c) International Tax Authority
 - (d) BVI International Arbitration Centre
- 2.2 However, I now understand that the COI is requesting information of all Statutory Boards, i.e. any board, commission, committee, council or other like body established by or under an enactment. In addition to those referred to in paragraph 2, the following Statutory Boards fall under the responsibility of the Ministry:
 - (a) Asset Seizure and Forfeiture Management Committee
 - (b) Central Tender Board

- (c) Financial Services Complaints Tribunal
- (d) Internal Audit Advisory Committee
- (e) Joint Anti-Money Laundering and Territory Financing Advisory Committee
- (f) National AML/CFT Coordinating Council

2.3 I have been made aware of the Commission of Inquiry's letter dated 20 July 2021 stating that it wishes to focus on two additional Statutory Boards. On this basis, this Affidavit will only cover the below two Statutory Boards:

| Statutory Body | Date Statutory Body came under the control of the Ministry |
|-----------------------------------|--|
| Central Tender Board | 12 October 2005 |
| Internal Audit Advisory Committee | 1 st April 2011 |

2.4 Please note, the Internal Audit Advisory Committee was not active between 31 December 2016 and June 2021.

3. Legislation

3.1 The following legislation relates to the Statutory Bodies:

| Legislation | Date legislation came into force | Exhibited at following pages of Exhibit JF-8 |
|---|----------------------------------|--|
| Central Tender Board | | |
| Public Finance Management Regulations, 2005 S.I. No. 87 of 2005 | 12 October 2005 | 4-98 |
| Internal Audit Advisory Committee | | |
| Virgin Islands Internal Audit Act, 2011, No. 1 of 2011 | 1 April 2011 | 99-112 |
| Proclamation | | 113 |

4. The Boards

Central Tender Board

- 4.1 By virtue of Statute, the membership composition and appointments of the Central Tender Board ('CTB') is established in accordance with section 174 of the Public Finance Management Regulations, 2005 as amended (the '**Regulations**'). Consequently, the composition of the Board is made up of all public servants by virtue of their post.
- 4.2 In accordance with sections 174 (2) (e) and 174 (3), the Permanent Secretaries or their representatives are rotated in their appointment to the CTB in such order as determined by the relevant Minister.
- 4.3 The Secretary of the CTB is the Procurement Coordinator or, in the Procurement Coordinator's absence, the Budget Analyst as per section 174 (2) of the Regulations.

- 4.4 There is no remuneration for members of the CTB, as all members are public servants and do not receive remuneration as per the General Orders for the Public Service of the British Virgin Islands, 1971 at pages 114-182 and Section 3 of the Statutory Board (Remuneration of Public Officers) Act, 2004 at pages 183-185.
- 4.5 There is no requirement by statute or policy for these appointments to be gazetted or for appointees to be interviewed.

Internal Audit Advisory Committee

- 4.6 Cabinet upon a recommendation from the Minister and in accordance with section 8 (1) of the Virgin Islands Internal Audit Act, 2011 (the 'Act') shall appoint five (5) members to the Internal Audit Advisory Committee (the 'Committee').
- 4.7 The Committee shall comprise of the following:
- (a) a Chairperson, who is a person of good standing in the accounting or auditing profession;
 - (b) the Director, as an ex officio member;
 - (c) the Financial Secretary or the Deputy Financial Secretary as an ex officio member;
 - (d) a senior public officer; and
 - (e) a member who is not a public officer, to be determined by the Minister.
- 4.8 The Ministry of Finance would compile a list of potential candidates with experience in the related field. The proposed list would be analysed by the Minister of Finance and short listed accordingly. Nomination letters are sent out to the nominees by the Ministry of Finance requesting them to express whether they accept or deny and to submit a copy of their Resume/CV.
- 4.9 There is no statutory requirement for the advertisement of posts and it has not been the practice of Cabinet to advertise the posts before appointment are made.
- 4.10 There is no statutory requirement for the candidates to be interviewed and has not been the practice of Cabinet to conduct interviews before appointments are made.
- 4.11 The Minister with the assistance of the Ministry of Finance uses knowledge of the Financial Services Industry more specifically the Accounting sector and where necessary third parties within the private sector to identify fit and proper persons with relevant knowledge, experience and expertise. Once a list is compiled, nomination letters are prepared by the Ministry of Finance to the nominees requesting them to accept or decline the nomination. They are also asked to submit a copy of their resume/CV along with their written acceptance.
- 4.12 There is no written criteria for appointing a person to the Committee. However, in practice the Minister in making recommendations would generally ensure that the persons to be appointed are fit and proper and have the relevant knowledge, experience and expertise.
- 4.13 The composition of appointment is set out in section 8 (1) of the Act as outlined in paragraph (a) above. Therefore, the Minister is guided by the Act in the assignment of the roles to the Committee.
- 4.14 The Minister with the assistance of the Ministry of Finance uses knowledge of the Financial Services Industry more specifically the Accounting sector and where necessary third parties within the private sector to identify fit and proper persons with relevant knowledge, experience and expertise.
- 4.15 In considering candidates, both the Minister and Cabinet take convictions (spent and/or unspent) into account.

- 4.16 Appointments to the Committee are made by Cabinet acting on the advice of the Minister in accordance with section 8 (1) of the Act. The appointments are supported by a formal Cabinet Paper which made the recommendation for consideration and approval and provides a summary of the qualifications of each candidate (Resume/CV attached to the Cabinet Paper concerned).
- 4.17 Appointments to the Committee are approved by Cabinet acting on the advice of the Minister in accordance with section 8 (1) of the Act.
- 4.18 Upon receiving Cabinet's decision, instruments of appointments are issued and distributed to the successful candidates by the Ministry of Finance under cover letter.
- 4.19 There is no statutory requirement for appointments to be published.
- 4.20 In accordance with section 9 (4) of the Act, the Minister, upon the approval of the Cabinet, may pay to a member who is not a public officer, remuneration or an allowance in respect of the performance of the member's duties. As per Section 8 (4) of the Act, the Committee shall have at least one meeting every quarter but shall otherwise determine its own procedures. Therefore, remuneration is paid based on attendance of meetings.
- 4.21 The present remuneration approved by Cabinet is as follows:
- (a) Chairman - \$600 based on attendance of meetings; and
 - (b) Members (not public servants) - \$500 based on attendance of meetings.
- 4.22 There have been no process changes for the selection, appointment and re-appointment of members during the past five (5) years.
- 4.23 The re-appointment process does not differ from the above.

5. Composition & roles on the Boards

5.1 Set out below is a table of the composition of the Boards over the past 5 years:

| Name | Role | Date Appointed / length of time expected to sit on Board | Date ceased to be a member of the Board and reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|--|-------------|---|--|---|-------------------------------------|--|
| Central Tender Board | | | | | | |
| Financial Secretary or representative | Chairman | Statutory Appointment | N/A | N/A | Appointment is attached to the post | No remuneration paid |
| Attorney General or representative | Member | Statutory Appointment | N/A | N/A | Appointment is attached to the post | No remuneration paid |
| Director of Public Works or representative | Member | Statutory Appointment | N/A | N/A | Appointment is attached to the post | No remuneration paid |
| Permanent Secretary of the Ministry responsible for subject matter or particular tender, or representative | Member | Statutory Appointment | N/A | N/A | Appointment is attached to the post | No remuneration paid |
| Permanent Secretaries or representatives rotated in such order as determined by the Minister | Member | Statutory Appointment | N/A | N/A | Appointment is attached to the post | No remuneration paid |
| Procurement Coordinator or Budget Analyst in PC's absence | Secretary | Statutory Appointment | N/A | N/A | Appointment is attached to the post | No remuneration paid |
| Internal Audit Advisory Committee | | | | | | |
| Ms. Italia Penn | Chairperson | Appointment effective 1 June 2021 for three years and expires 31 May 2024 | Currently an active appointment | No other candidate considered. It was the Premier's preference to select Ms. Penn | First appointment | Chairperson as approved by Cabinet to receive a remuneration of \$600 |

| | | | | | | |
|--|-----------------------|---|------------------------------|--|-------------------------------|---|
| | | | | | | based on the meetings attended. |
| Mrs. C. Jovita Scatliffe | Senior Public Officer | Appointment effective 1 June 2021 for three years and expires 31 May 2024 | Currently active appointment | 1 other candidate was considered but refused due to the fact that she wasn't a senior public officer | First appointment | No remuneration paid |
| Mr. Terrence Gumbs | Member | Appointment effective 1 June 2021 for three years and expires 31 May 2024 | Currently active appointment | 1 other nomination. It was the Premier's preference to select Mr. Gumbs. | First appointment | Member as approved by Cabinet to receive a remuneration of \$500 based on the meetings attended |
| Mr. Jeremiah Frett, Financial Secretary | Ex officio | Statutory appointment | Currently active appointment | N/A | First appointment as per post | No remuneration paid |
| Ms. Dorea Corea, Director of Internal Audit Department | Ex officio | Statutory appointment | Currently active appointment | N/A | First appointment as per post | No remuneration paid |

5.2 Copies of all documents (such as CVs and references) of the members of the Boards appointed in the last three years which were put before the person/persons who made the decision to appoint that member are exhibited at pages 186-205 of Exhibit JF-8.

6. **Declarations of interest**

Central Tender Board

6.1 These statutory appointments do not require a declaration of interest

Internal Audit Advisory Committee

6.2 There is no requirement to make a declaration of interest for statutory appointments.

7. **Performance of board members**

7.1 Presently, there is no approved written standard by which performance of each member or the Boards are assessed.

Affirmed

~~Sworn~~ by: Jeremiah Frett)

On 26 August 2021)

At Ministry of Finance)

Qwomar #2, 2nd Floor

Blackburn Highway

Tortola

Jeremiah Frett

Before me:

~~Notary~~/Commissioner of Oaths

Lisa Penn-Lettsome



**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

FIFTH AFFIDAVIT OF JEREMIAH FRETT

IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')

SECOND AFFIDAVIT OF TASHA BERTIE

I, Tasha Bertie, Sea Meadow Building, Road Town, Ag. Permanent Secretary, **MAKE OATH** and **SAY** as follows:

Introduction

1. I am the Acting Permanent Secretary at the Ministry of Health & Social Development (the '**Ministry**'). I have served in this capacity since 7th June, 2021 and I make this Affidavit from facts within my own knowledge and are true or are without my own direct knowledge but are true to the best of my knowledge, information and belief, the sources of which are identified.
2. I make this Affidavit on behalf of the Hon Carvin Malone as a result of the letter sent to him on 4 June 2021 by Ms Rhea Harrikissoon, Solicitor to the Commission of Inquiry (the '**COI**') (the '**Request**') in relation to the Statutory Body / Bodies ('**Statutory Body/ Bodies**'), and in particular to the boards of those Statutory Board/ Bodies (the '**Board/s**'), which come under the control of the Ministry.
3. At the outset, I should further say that in this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it unless I do so expressly.
4. I shall refer in this Affidavit to the exhibit marked 'TB-2', which is a paginated bundle of documents.

Statutory Bodies

5. The following Statutory Body falls under the responsibility of the Ministry:

| Statutory Body | Date Statutory Body came under the control of the Ministry |
|-------------------------------|--|
| BVI Health Services Authority | 24 th October, 2004 |

Legislation

6. The following legislation relates to the Statutory Body:

| Legislation | Date legislation came into force | Exhibited at following pages of Exhibit TB-2 |
|---|----------------------------------|--|
| BVI Health Services Authority | | |
| BVI Health Services Authority Act, 2004 (Act No. 14 of 2004) (the ' Act ') | 22 nd October, 2004 | 1-29 |

The Boards

7. I set out below the process of how people are appointed to the board of the BVI Health Services Authority (the **'Board'**), including any re-appointment:
- a. Candidates are nominated by the Minister for Health and Social Development (the **'Minister'**) based on their knowledge, experience and expertise in the fields specified under Part II, Section 3(a) of the Act. The Leader of the Opposition is stipulated under Section 5(a) to nominate two persons under Section 3(a).
 - b. In relation to specific roles on the Board:
 - i. The Minister in consultation with the Leader of the Opposition has the power to recommend a Chairman for approval by the House of Assembly as specified under Section 5(b);
 - ii. The Minister also has powers to recommend the appointment a Deputy Chairman as specified under Section 5(c) for approval by Cabinet; and
 - iii. The Chief Executive Officer and Financial Comptroller are ex officio members. Sections 8 (a) and (g) of the Act stipulate that the Board with the approval of Cabinet in accordance with Section 3(b) appoint the Chief Executive Officer and Financial Comptroller.
 - c. There is no requirement under the Act that posts on the Board be advertised.
 - d. Candidates nominated are submitted to Cabinet for selection except for the candidate selected as Chairman which is approved by Members of the House of Assembly.
 - e. Once candidates have been nominated, they are then requested to provide their curriculum vitae to the Ministry for submission to Cabinet and the House of Assembly accordingly. Potential nominees are screened by the Ministry against information held by the Ministry to verify that they do not breach Section 1, subsections (1), (2) and (3) under Schedule 1 of the Act.
 - f. Cabinet and the House of Assembly have the discretion to request interviews and stipulate the appointment process. I note that Section 6 of the Act places the onus on the Cabinet and the House of Assembly to determine whether nominees are "fit and proper". In this regard, Part II, Section 5, subsection 7(c) of the Act requires that convictions / spent convictions be taken into account.
 - g. In the event that the Ministry is aware of any questionable circumstances regarding persons that are recommended for appointment to the board, advice is provided accordingly to the Minister for consideration. There exists a practice based on the candidate's known standing in society for example, whether he/she is employed, has good standing in the community, good reputation etc., that is used informally when recommending nominations.
 - h. Candidates' curriculum vitae and the relevant Cabinet Paper are provided to Cabinet for their consideration and in respect of the Chairman, the Ministry submits his/her curriculum vitae, and letter from the Leader of Opposition to the Cabinet Secretary for submission to the House of Assembly for consideration and approval.
 - i. The Cabinet provides final approval in the case of all candidates with the exception of the Chairman which is approved by the House of Assembly.
 - j. Once Cabinet approves the appointment, an extract of Cabinet's decision is sent to the Ministry by the Cabinet Secretary. The Ministry then writes to the Attorney General Chambers regarding the drafting of the requisite Instrument of Appointment for signature

by the Minister. Candidates are then contacted regarding their appointment and provided with a package including a letter disclosing the other members of the Board and their individual Instrument of Appointment.

- k. Appointments to the Board are published in the *Virgin Islands Gazette* and at least twice in a local newspaper circulated in the Territory (see Section 1, subsection 4 under Schedule 1 of the Act).
8. There has been no change to the above appointment / re-appointment process since the Act was enacted.
9. As to the remuneration for members on the board, Section 5(8) of the Act stipulates that non-ex officio members of the Board shall be paid a remuneration determined by Cabinet.

Composition & roles on the Board

10. Set out below is a table of the composition of the Board over the past 5 years:

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date ¹ |
|-------------------------------------|-----------------|--|--|--|------------------------------------|---|
| BVI Health Services Authority Board | | | | | | |
| Ms. Brittny S Smith | Member | 24 August 2020 / 2 years | 23 August, 2022 | Unknown | First appointment | No remuneration paid |
| Mr. Kenneth Hodge | Deputy Chairman | 12 August 2019 / 2 years | 11 August 2021 | Unknown | Re-appointment | \$11,632.86 |
| Dr. Yvonne Renee Venzen | Member | 19 June 2019 / 2 years | 21 June 2021 | Unknown | Re-appointment | \$10,316.67 |
| Mr. Lemuel Smith | Member | 19 June 2019 / 2 years | 21 June 2021 | Unknown | Re-appointment | \$10,816.67 |
| Ms. Kisha Frett | Member | 19 June 2019 / 2 years | 21 June 2021 | Unknown | First appointment | \$10,816.67 |

¹ Please refer to tables exhibited at pages 30-131 of Exhibit 'TB-2' for further details

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date ¹ |
|------------------------------|----------|--|--|--|------------------------------------|---|
| Ms. Esther Wheatley | Member | 19 June 2019 / 2 years | 21 June 2021 | Unknown | First appointment | \$10,816.67 |
| Mrs Kishelle Blaize-Cameron | Member | 19 June 2019 / 2 years | 21 June 2021 | Unknown | Re-appointment | \$10,816.67 |
| Ms. Andrea Walters | Member | 19 June 2019 / 2 years | 21 June 2021 | Unknown | First appointment | \$10,816.67 |
| Dr. Joel Stevens | Chairman | 15 May 2019 / 2 years | 14 May 2021 | Unknown | Re-appointment | \$22,483.87 |
| Mr. Romeo Frett | Member | 15 January 2019 / 2 years | 14 January 2021 [Appointment was revoked with effect from 16 May, 2019 in the meeting of Cabinet held on 15 May 2019] | Unknown | First appointment | \$2,032.25 |
| Mrs. Kishelle Blaize-Cameron | Member | 15 January 2019 / 2 years | 14 January 2021. [Appointment was revoked with effect from 16 May, 2019 in the meeting of | Unknown | First appointment | \$2,032.25 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date ¹ |
|----------------------------|--------|--|--|--|------------------------------------|---|
| | | | Cabinet held on 15 May 2019] | | | |
| Dr. Yvonne Renne Venzen | Member | 15 January 2019 / 2 years | 14 January 2021 [Appointment was revoked with effect from 16 May, 2019 in the meeting of Cabinet held on 15 May 2019] | Unknown | First appointment | \$2,032.25 |
| Professor Joseph Frederick | Member | 1 May 2018 / 2 years | 30 April 2020. [Appointment was revoked with effect from 16 May, 2019 in the meeting of Cabinet held on 15 May 2019] | Unknown | Re-appointment | \$6,258.06 |
| Mrs. Helen Frett | Member | 19 March 2018 / 2 years | 18 March 2020 | Unknown | Re-appointment | \$9,816.67 |
| Mr. Junior Romney | Member | 20 March 2017 / 2 years | 19 March 2019 | Unknown | First appointment | \$10,322.58 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date ¹ |
|---------------------------|------------------------|--|--|--|------------------------------------|---|
| Ms. Marlene Alva McCall | Member | 19 March 2018 / 2 years | 18 March 2019 [Appointment was revoked with effect from 16 May, 2019 in the meeting of Cabinet held on 15 May 2019] | Unknown | Re-appointment | No remuneration was paid |
| Mrs. Irma Gordon | Member | 1 January 2017 / 2 years | 31 December 2018 | Unknown | Re-appointment | \$6,000.00 |
| Mr. Michael George | Member | 1 January 2017 / 2 years | 31 December 2018 | Unknown | Re-appointment | \$6,000.00 |
| Dr. Joel Stevens | Member | 1 January 2017 / 2 years | 31 December 2018 | Unknown | Re-appointment | \$12,000.00 |
| Mr. Kenneth Hodge | Member/Deputy Chairman | 19 May 2017 / 2 years | 19 March 2019 | Unknown | First appointment | \$15,522.58 |
| Mrs. Ayana Glasgow-Liburd | Chairman | 15 March 2017 / 2 years | 14 March, 2019 | Unknown | Re-appointment | \$11,451.51 |
| Mr. John Cline | Chairman | 1 January 2016 | 31 December 2017 | Unknown | Re-appointment | \$13,000.00 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date ¹ |
|----------------------------|-----------------|--|---|--|------------------------------------|---|
| | | | [He ceased to be a member on 8 January 2017 when he submitted his letter of resignation at the expressed wishes of the Premier] | | | |
| Mrs. Anyana Glasgow-Liburd | Deputy Chairman | 1 January 2016 / 2 | 31 December 2017 | Unknown | Re-appointment | \$18,200.00 |
| Ms. Patricia Hanley | Member | 1 January 2016 / 2 | 31 December 2017 | Unknown | Re-appointment | \$12,000.00 |

11. Copies of all documents (such as CVs and references) of the members of the Boards appointed in the last three years which were put before the person/persons who made the decision to appoint that member are exhibited at pages 132-158 of Exhibit 'TB-2'. The CVs for Mrs. Anyana Glasgow-Liburd, Mr. John Cline, Professor Joseph Frederick and Mrs. Patricia Hanley could not be located.

Declarations of interest

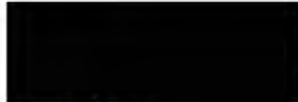
12. There is no written guidance given to members appointed to the Board, except as provided in the Act, hard copies of which are distributed to members usually during the first official meeting of the Board by the secretary assigned to the Board

Performance of board members

13. There are no written standards by which members appointed to the Board are monitored or assessed.

Sworn by: Tasha Bertie

)



On 18 June 2021

)

Road Town, Tortola

)

Tasha Bertie

Before me:



Notary/Commissioner of Oaths



**IN THE MATTER OF THE TERRITORY OF THE VIRGIN
ISLANDS COMMISSION OF INQUIRY 2021**

**AND THE COMMISSION OF INQUIRY ACT (CAP 239)
(THE 'ACT')**

SECOND AFFIDAVIT OF TASHA BERTIE

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

THIRD AFFIDAVIT OF TASHA BERTIE

I, Tasha Bertie, Acting Permanent Secretary, Sea Meadow Building, Road Town, **MAKE OATH** and **SAY** as follows:

1. Introduction

- 1.1 I am the Acting Permanent Secretary at the Ministry of Health & Social Development (the '**Ministry**'). I have served in this capacity since 7 June, 2021 and I make this Affidavit from facts within my own knowledge and are true or are without my own direct knowledge but are true to the best of my knowledge, information and belief, the sources of which are identified.
- 1.2 I make this Affidavit on behalf of the Honourable Carvin Malone as a result of the letter sent to him on 4 June 2021 by Ms Rhea Harrikissoon, Solicitor to the Commission of Inquiry (the '**COI**') (the '**Request**') in relation to the Statutory Body/Bodies ('**Statutory Body/ies**'), and in particular to the boards of those Statutory Board/Bodies (the '**Board/s**'), which come under the control of the Ministry.
- 1.3 I make this Affidavit further to my Second Affidavit dated 18 June 2021, and the accompanying Exhibit TB-2.
- 1.4 At the outset, I should further say that in this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it unless I do so expressly.
- 1.5 I shall refer in this Affidavit to the exhibit marked 'TB-3', which is a paginated bundle of documents.

2. Statutory Boards

- 2.1 When I made my Second Affidavit, I misunderstood the Request to be directed only at the Boards of autonomous statutory bodies (which we in the public service often refer to as 'Statutory Boards'). I now understand that the Request sought information about a wider range of bodies, including committees. I apologise for this misunderstanding.
- 2.2 The following additional Statutory Board also falls under the responsibility of the Ministry:

| Statutory Body | Date Statutory Body came under the control of the Ministry |
|-----------------------------|--|
| Public Assistance Committee | 3 February, 2014 (see page 1) Please note, the Committee was established by statute under the Public Assistance Ordinance (Cap. 265) on 1 February 1957 (see pages 2-6). The power to select the Committee was assigned to the Governor. The matter was delayed during the transition of the Executive Council to the Cabinet of the Virgin Islands. Subsequently the subject was revisited in 2012 where a decision was taken to repeal the Public Assistance Ordinance and replace it with the Public Assistance Act, 2013, which included the provision granting the Minister powers to appoint the Public Assistance Committee. |

3. **Legislation**

3.1 The following legislation relates to the Statutory Body (as appropriate):

| Legislation | Date legislation came into force | Pages of Exhibit TB-3 |
|--|---------------------------------------|-----------------------|
| Public Assistance Committee | | |
| Public Assistance Ordinance (Cap. 265) | 1 February 1957 (repealed in 2013) | 2-6 |
| Public Assistance Act, 2013 (No. 14 of 2013) (the ' Act ') | 17 January 2014 | 7-30 |

4. **The Boards**

4.1 The process by which potential candidates for board membership are identified and selected is described below:

- (a) Persons are recommended to the Minister by the Permanent Secretary or the Desk Officer for the subject or the Minister might make recommendations in accordance with Section 3(2)(b) of the Act 7-30.
- (b) The persons recommended are contacted by the Desk Officer for the subject or an Administrator assigned to ascertain if they wish to serve on the Committee. They are provided with copies of the relevant legislation at this stage and are requested to provide their curriculum vitae if they consent to serve. The curriculum vitae are reviewed to satisfy the interests of the Ministry in filling vacancies on the Committee with persons possessing the requisite knowledge, experience and expertise in accordance with Section 3(2) of the Act (see pages 7-30).
- (c) The appointments are made by the Minister in accordance with Section 3(2)(b), with the approval of Cabinet (see pages 7-30).
- (d) Once consents are obtained and the curriculum vitae are satisfactorily reviewed, the Permanent Secretary or the Desk Officer for the subject prepare a draft. The first draft of the Cabinet Paper is circulated to the Financial Secretary and Attorney General for comments. The final draft Cabinet Paper is submitted to Cabinet for consideration and approval along with the curriculum vitae.
- (e) Once Cabinet approves the appointment of the recommended individuals, drafting instructions are provided to the Attorney General's Chambers to prepare Instruments of Appointments.
- (f) The Instruments of Appointment are sent to the Chief Social Development Officer (an ex-officio member of the Committee) for his/her information, and also to the Cabinet Office to be published in the Gazette.

Members are allowed to hold office for a term not exceeding three years and are eligible for re-appointment under section 8(1) of the Act (see pages 7-30). Once the appointments are nearing expiration, the Chief Social Development Officer makes a recommendation to the Permanent Secretary for consideration based on members' readiness to participate in meetings, their contribution to meetings and their attendance. The members recommended for reappointment are contacted to ascertain if they desire to serve for another term. If they

do wish to be reappointed, the process outlined in points c – e above applies. For those members not wishing to serve another term, the process outlined in points a – e applies to find new persons to appoint.

Are candidates interviewed? If so, by whom and at what stage of the appointment process?

4.2 There is no formal interviewing process for the appointment or reappointment of members.

Are references or other due diligence sought from potential candidates? If so, how many, from whom and at what stage of the appointment process?

4.3 The recommended persons are selected from a cadre of known and established professionals who work and operate in various sectors, as noted in the Act. In compliance with the condition that persons must be fit and proper for the role, as stipulated in section 3(2)(b) of the Act (see pages 7-30), it is standard practice of the Ministry to request persons to provide their curriculum vitae to obtain background information on their work history, professional and educational achievements for the purposes of drafting the Cabinet Paper.

What is the criteria for appointing a person to the board?

4.4 The criteria for appointing persons to the Committee is stipulated under section 3 of the Act (see pages 7-30). This is supplemented with adopted practice implemented by the Ministry, as described in the answer submitted for Question 9(a).

Please also explain whether the Ministry has a criteria for assigning roles in the Boards, such as: chair, vice chair or ex-officio member. If the Ministry does not deal with the assigning of roles, please explain who does.

4.5 The Ministry does not assign roles in the Committee. The powers for assigning roles are reserved by the Minister, as stipulated under sections 3 (3) and (4) of the Act (see pages 7-30).

Do you consider whether the candidate is of 'good character' and/or a fit and proper person? If so, how is this determined?

4.6 The Ministry in good faith judges the credibility of persons based on the following criteria: good standing, professional background, qualification and educational background, notable work and service within the community, in compliance with section 3(2)(b) of the Act (see pages 7-30).

Are convictions / spent convictions taken into account?

4.7 Convictions are taken into account during the appointment process, since a conviction disqualifies a person from being a member as outlined under section 8(3)(c) of the Act (see pages 7-30).

Who provides final approval for the appointment? Are any documents placed before the appointing body, if so, what?

4.8 The Minister with approval from Cabinet provides final approval for appointments, as stipulated under section 3(2) of the Act (see pages 7-30). The Cabinet Paper is presented along with the curriculum vitae of the person/s recommended for appointment.

Is Cabinet involved in the final approval or at any stage of the process?

4.9 Yes, please see above at paragraph 4.1(e).

How are candidates notified of their success (or otherwise)?

4.10 Persons are informed by the Minister via a letter enclosing their Instrument of Appointments. They are contacted by telephone to arrange collection of the appointment documentation. Alternatively, the Chief Social Development Officer assists in dispensing the appointment documentation to members when the first Committee meeting is convened.

Are appointments published?

4.11 Yes, please see above at paragraph 4.1(f).

How is the remuneration for members of the boards calculated and paid?

4.12 Remuneration paid may be determined by Cabinet as stipulated in section 11 of the Act (see pages 7-30). It is paid to persons on the Committee that are not public officers. The current stipendiary compensation paid is \$150 to the Chairman and \$125 to members per meetings attended.

Have there been any process changes to selection/appointment/re-appointment to board over past 5 years? If so, please explain.

4.13 There have been no changes to the current process over the past five years.

Does the process above differ for re-appointments? If so, how?

4.14 The process for reappointments is the same as for appointments, as set out in paragraph 4.1. The Ministry takes into consideration the recommendation based on performance made by the Chief Social Development Officer (*ex officio* member) when reappointing persons.

Please exhibit any and all documents relevant to the above (i.e. written criteria, policies, guidelines etc.)

4.15 Please refer to the legislation, as set out in paragraph 3.

5. **Composition & roles on the Board**

5.1 Set out below is a table of the composition of the Board over the past 3 years:

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|------------------------------------|-----------------|---|---|---|---|---|
| Public Assistance Committee | | | | | | |
| Pastor Calvin Mills | Chairman | 3 February, 2021 / 3 years | Presently a member. Term expires on 2 February, 2024. | This information is not on record. | Reappointment | \$600.00 |
| Mrs. Keturah Crabbe | Deputy Chairman | 3 February, 2021 / 3 years | Presently a member. Term expires on 2 February, 2024. | This information is not on record. | Reappointment | \$500.00 |
| Mrs. Wistaria Donovan | Members | 3 February, 2021 / 2 years | Presently a member. Term expires on 2 February, 2024. | This information is not on record. | Reappointment | \$500.00 |
| Ms. Trisha Evans | Member | 22 March, 2021 / 3 years | Presently a member. Term expires on 21 March, 2024. | This information is not on record. | Reappointment | \$500.00 |
| Mrs. Claudette I. Francis-Smith | Member | 1 October, 2019 / 3 years | Presently a member. Term expires on 30 September, 2022. | This information is not on record. | Reappointment | \$625.00 |
| Mr. Paul Thomas II | Member | 3 February, 2020 / 2 years | Presently a member. Term expires on 2 February, 2022. | This information is not on record. | Reappointment | No payments made |
| Mrs. Helen Frett | Member | 3 February, 2020 / 2 years | Presently a member. Term expires on 2 February, 2022. | This information is not on record. | Reappointment | \$750.00 |
| Pastor Gregory George | Member | 3 February, 2020 / 2 years | Presently a member. Term expires on 2 February, 2022. | This information is not on record. | Reappointment | No payments made |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|-----------------------|-----------------|--|--|--|------------------------------------|--|
| Mrs. Keturah Crabbe | Deputy Chairman | 3 February, 2019 / 2 years | 2 February, 2021 Membership expired | This information is not on record. | Reappointment | \$375.00 |
| Mrs. Wistaria Donovan | Member | 3 February, 2019 / 2 years | 2 February, 2021 Membership expired | This information is not on record. | Reappointment | \$375.00 |
| Ms. Trisha Evans | Member | 22 March, 2019 / 2 years | 21 March, 2021 Membership expired | This information is not on record. | Reappointment | \$375.00 |
| Pastor Calvin Mills | Chairman | 3 February, 2019 / 2 years | 2 February, 2021 Membership expired | This information is not on record. | Reappointment | \$450.00 |

5.2 Copies of all documents (such as CVs and references) of the members of the Boards appointed in the last three years which were put before the person/persons who made the decision to appoint that member are exhibited at pages 31-79 of Exhibit **TB-3**.

6. **Declarations of interest**

- 6.1 Members of the Committee are guided by section 4 of Part I of the Act in terms of their functions. They are also guided by other provisions throughout the Act with respect to the administration of the Public Assistance Programme subject to general directions by the Minister. They receive a copy of the Act when they are initially contacted or when they receive the official letter and Instrument of Appointment.

7. **Performance of board members**

- 7.1 The duties of the Chief Social Development Officer under Section 12 of the Act, is responsible for the administration and supervision of the Public Assistance Programme subject to general directions by the Minister. As a member of the Committee she interacts directly with members and provides recommendation to the Permanent Secretary on their reappointment based on her personal assessment of their readiness to participate in meetings, their contribution and attendance. This assessment is not formalised in writing.

Sworn by: Tasha Bertie

)

On 6 September 2021

)

Road Town, Tortola

)

Tasha Bertie

Before me:

Notary/Commissioner of Oaths



**IN THE MATTER OF THE TERRITORY OF THE VIRGIN
ISLANDS COMMISSION OF INQUIRY 2021**

**AND THE COMMISSION OF INQUIRY ACT (CAP 239)
(THE 'ACT')**

THIRD AFFIDAVIT OF TASHA BERTIE

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

FIRST AFFIDAVIT OF MR JOSEPH SMITH ABBOTT

I, Joseph Smith Abbott of Pusser's Warehouse, 3rd Floor, Road Town, Tortola, VG1110, Virgin Islands, Acting Permanent Secretary, **MAKE OATH** and **SAY** as follows:

Introduction

1. I am the Acting Permanent Secretary of the Ministry of Natural Resources, Labour and Immigration. I have served in this capacity since 17 May 2021 and I make this Affidavit from facts within my own knowledge that are true or are without my own direct knowledge but are true to the best of my knowledge, information and belief, the sources of which are identified.
2. I make this Affidavit on behalf of the Hon Vincent O Wheatley as a result of the letter sent to him on 4 June 2021 by Ms Rhea Harrikissoon, Solicitor to the Commission of Inquiry (the '**COI**') (the '**Request**') in relation to the Statutory Bodies ('**Statutory Body / Statutory Bodies**'), and in particular to the Board of Directors of those Statutory Bodies (the '**Boards**'), which come under the control of the Ministry of Natural Resources, Labour & Immigration (the '**Ministry**').
3. At the outset, I should further say that in this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it, unless I do so expressly.
4. I shall refer in this Affidavit to the exhibit marked 'JSA-1', 'which is a paginated bundle of documents.

Statutory Bodies

5. The following Statutory Bodies fall under the responsibility of the Ministry:

| Statutory Body | Date Statutory Body came under the control of the Ministry |
|--|---|
| National Parks Trust of the Virgin Islands | 1961 |
| BVI Social Security Board | The responsibility for Social Security was delegated to the Ministry on 3 April 2020 by an Instrument with Public Seal signed by Governor A. J. Jaspert (see page 154-156 of Exhibit 'JSA-1') |

Legislation

6. The following legislation relates to the Statutory Bodies:

| Legislation | Date legislation came into force | Exhibited at following pages of Exhibit JSA-1 |
|---|----------------------------------|---|
| BVI National Parks Trust | | |
| National Parks Trust Act, 2006 (No. 4 of 2006) | 2006 | Page 59 |
| BVI Social Security Board | | |
| Social Security Ordinance (Cap. 266) (the ' SSB Principal Act ') | 1 July 1980 | Page 1 |
| Social Security (Amendment) Act of 2005 | 20 October, 2005 | Page 36 |
| Social Security (Amendment) Act of 2012 | 30 August 2012 | Page 43 |
| Social Security (Amendment) Act, 2014 | 22 May 2014 | Page 46 |

The Boards

7. I set out below information relating to the questions per Statutory Body as posed in the Request

8. Advertising of vacant positions

- 8.1. BVI National Parks Trust ('NPTVI'): There is no requirement to advertise when a position on the NPTVI Board becomes available. The Director or NPTVI Board members may make recommendations to the Minister for membership, which may or may not be advanced to Cabinet.
- 8.2. Social Security Board ('SSB'): There is no requirement to advertise when a position on the SSB Board becomes available. The process of selection to the SSB Board is outlined under section 4 of the SSB Principal Act. The Schedule to the SSB Principal Act which addresses the constitution and proceedings of the SSB was further amended in 2014. In that amendment, an increase the board's composition took place from 7 to 9 members. The Director, three members representing Government, one of whom shall be the Chief Medical Officer, and two representatives each of employers and employees comprise the board. The Schedule as amended outlines the procedure for appointment.

9. Interview process

| | Candidates Interviewed | Interviewers | Stage |
|--------------|------------------------|----------------|----------------|
| NPTVI | No | Not applicable | Not applicable |
| SSB | No | Not applicable | Not applicable |

10. References / due diligence

| | Reference(s) Sought from all Members | Other Due Diligence from Signatories | Qty. & Source | Stage |
|--------------|--|--|-------------------|--|
| NPTVI | <i>Curriculum Vitae, Biography or Resume</i> | <i>None found</i> | <i>None found</i> | <i>Prior to preparation of the Cabinet Paper</i> |
| SSB | <i>Curriculum Vitae or Resume</i> | <i>None found</i> | <i>None found</i> | <i>Prior to preparation of the Cabinet Paper</i> |

11. Appointment Criteria

| | Appointment Criteria |
|--------------|--|
| NPTVI | <p><i>The National Parks Trust Act, 2006, Schedule I. re Membership</i></p> <p><i>"2. (3) The Board shall, in addition to the Director, consist of not more than ten members appointed from members of the public, any one or more of whom may represent a non-governmental organisation, as follows:</i></p> <p style="padding-left: 40px;"><i>(a) one representative each from Tortola, Virgin Gorda, Anegada and Jost Van Dyke;</i></p> <p style="padding-left: 40px;"><i>(b) three representatives from the business community with interests in recreational or tourism activity in connection with the Territory's parks and protected areas, including but not limited to the marine, hotel, restaurant, taxi, travel, fishing and dive industries;</i></p> <p style="padding-left: 40px;"><i>(c) three persons with knowledge or experience in one or more of the fields of biodiversity conservation; biology with special attention to indigenous plants and animals; coastal and marine ecology; cultural heritage; marine archaeology; architecture or historical preservation.</i></p> <p><i>(4) The Minister shall appoint</i></p> <p style="padding-left: 40px;"><i>(a) a Chairman of the Board from previous persons appointed under subparagraph (3); and</i></p> <p style="padding-left: 40px;"><i>(b) a suitable person to serve as Secretary to the Board on such terms and conditions as the Minister may determine.</i></p> <p><i>(5) The Minister, in making appointments of members pursuant to subparagraph 3, shall be satisfied that the person</i></p> <p style="padding-left: 40px;"><i>(a) is of a stature in the community to bring credit to the Trust; and</i></p> |

| | |
|------------|--|
| | <p><i>(b) has capacity to do one or more of the following:</i></p> <p><i>(i) increase public knowledge, understanding and appreciation of the importance of parks and other protected areas as provided under this Act;</i></p> <p><i>(ii) attract financial support for the Trust and ensure sound financial management;</i></p> <p><i>(iii) provide sound advice, leadership and direction to the Board in fulfilling the objects and purposes of this Act."</i></p> <p>(see pages 112 of Exhibit JSA-1)</p> |
| SSB | <p>Section 40(4) of the Interpretation Act, Cap 136 provides that:</p> <p><i>"Any authority or person empowered by or under an enactment to appoint or designate a person to be a member of a statutory board or to perform any other functions, may</i></p> <p><i>(a) appoint or designate a person by name or</i></p> <p><i>(b) direct the person for the time being holding such office as is specified in the direction to be such member or to perform such other functions,</i></p> <p><i>and it shall be the duty of the person or officer appointed, designated or directed to perform the respective functions accordingly."</i></p> <p>(see pages 140-141 of Exhibit JSA-1)</p> |

12. Criteria for assigning roles on the Boards

| | Ministry Criteria | Other Entity |
|--------------|---|--|
| NPTVI | <p>The National Parks Trust Act, 2006, Schedule 1. Section 2. (4) says</p> <p><i>"The Minister shall appoint</i></p> <p><i>(a) a Chairman of the Board from previous persons appointed under subparagraph (3); and</i></p> <p><i>(b) a suitable person to serve as Secretary to the Board on such terms and conditions as the Minister may determine."</i></p> <p><i>No Ex-Officio member is featured in the language of the legislation or Board of Directors manual.</i></p> | <p>The National Parks Trust Act, 2006, Schedule 1. Section 2. (7) says "The Board may designate from time to time one of its members to serve as Vice-Chairman for such general or specific functions and lengths of time as the Board may specify, and the Board may revoke any such appointment or the designated person may resign by written notice to the Board."</p> <p>(see page 113 of Exhibit JSA-1)</p> |

| | | |
|------------|--|--|
| | (see page 112 of Exhibit JSA-1) | |
| SSB | <p><i>There is no provision in the Social Security Ordinance, Chap 266, for the Ministry to have criteria for assigning roles in the Board.</i></p> | <p><i>The Social Security Ordinance, CAP 266, Section 7(1) as amended</i> titled <i>Director speaks to the Executive Council appointing a Director subject to a negative resolution based on a recommendation from the Minister.</i></p> <p><i>The Social Security Ordinance, CAP 266, Section 9(1) as amended.</i> titled <i>Director's Deputy speaks to the Minister seeking the approval of Cabinet on the recommendation of the Board of Directors to select and appoint a Deputy Director to the Board.</i></p> <p>(see pages 8-9 of Exhibit JSA-1)</p> |

13. Good character / Fitness of a Candidate

| | Consideration of Character/Fitness | How Determined |
|--------------|---|--|
| NPTVI | <p><i>Schedule 1, Section 2(5)(a) refers to:</i></p> <p><i>"The Minister, in making appointments of members pursuant to subparagraph 3, shall be satisfied that the person</i></p> <p><i>(a) is of a stature in the community to bring credit to the Trust."</i></p> <p>(see page 112 of Exhibit JSA-1)</p> | <p><i>Current members of the NPTVI Board, in the exercise of this subsection may make recommendations to the Minister of such individuals who may bring good repute to the NPTVI Board. Moreover, the Minister may in his own right recognize and recommend for Cabinet's consideration, individuals to membership to the NPTVI Board.</i></p> |
| SSB | <p><i>Sections 7 and 9 of the Social Security Ordinance (CAP 266) as amended, speak to the Director and Deputy Director, respectively being appointed shall be a "fit and proper" person "on such terms and conditions as are considered appropriate."</i></p> <p>(see pages 8-9 of Exhibit JSA-1)</p> | <p><i>The SSB Principal Act's schedule, subsequently amended in 2014 provides for a process of vetting the selection of board candidates. This process may take into account recommendations from employers and employees, as well as the Minister and other stakeholders.</i></p> <p>(see pages 34-35 of Exhibit JSA-1)</p> |

14. Consideration of Convictions

| | Convictions/Spent Convictions Considered |
|--------------|---|
| NPTVI | <p><i>The legislation does not speak to convictions (spent or in train) being considered <u>prior to or while</u> an applicant/prospective Member is being considered. However, the National Parks Trust Act, 2006, Schedule I. Membership Section 2. 4. (1) states "The Office of a member becomes vacant if the member</i></p> <p><i>[...] (f) is convicted of a criminal offence."</i></p> <p><i>It may therefore be assumed that the same principle applies to the phrase before the member's appointment when they are being considered by the Ministry and Cabinet.</i></p> <p><i>(see page 113 of Exhibit JSA-1)</i></p> |
| SSB | <p><i>The legislation does not speak to convictions. However, the section of the Social Security Ordinance, CAP 266, Section 7(1). titled <i>Director</i> states: "(1) The Executive Council shall appoint a fit and proper person to be the Director of the Board on such terms and conditions as are considered appropriate.</i></p> <p><i>(1A) For the purposes of subsection (1),</i></p> <p><i>(a) the Minister shall, before referring the matter of the appointment of the Director to the Executive Council, consult with the Board; and</i></p> <p><i>(b) the appointment of the Director shall be subject to a negative resolution of the Legislative Council.</i></p> <p><i>(2) The Director shall subject to the provisions of this Ordinance, and any direction by the Minister, be charged with the administration of the staff of the Board and for the management of the Fund and in particular for –</i></p> <p><i>(a) the collection of contributions under this Ordinance;</i></p> <p><i>(b) the payment of benefit under this Ordinance, and of the expenditure necessary for the administration of the Fund; and</i></p> <p><i>(c) accounting for all moneys collected, paid and invested under this Ordinance."</i></p> <p><i>A similar principle is expressed for the Deputy Director of the Board in section 9. (1). To the extent that the Director and Deputy Director should be "fit and proper" to execute the several duties of the Office, and to lead the staff of the institution in doing so, and to work with and be guided by the Board of the institution also in doing so, it may be possible to surmise that the same consideration of being "fit and proper" should apply to all the members of the Board and the staff.</i></p> <p><i>(see pages 8-9 of Exhibit JSA-1)</i></p> |

15. Final Approval for the Appointment

| | Final Approvals | Document(s) to Appointing Body |
|--------------|-----------------|--|
| NPTVI | <i>Cabinet</i> | <i>It is the practice of the Ministry to submit a Cabinet Paper along with the following supporting documents: 1) copy of section of Legislation re Membership, 2) recommendation of the Director, 3) signed declarations of willingness to continue to serve by current Board members, 4) signed written interest of prospective Board members, 5) CV/resumes of prospective Board members (as available), 6) comments from the Attorney General, 7) comments from the Financial Secretary.</i> |
| SSB | <i>Cabinet</i> | <i>It is the practice of the Ministry to submit a Cabinet Paper along with the following supporting documents: 1) copy of section of Legislation re Membership, 2) recommendation of the Director, 3) signed declarations of willingness to continue to serve by current Board members, 4) signed written interest of prospective Board members, 5) CV/resumes of prospective Board members (as available), 6) comments from the Attorney General, 7) comments from the Financial Secretary.</i> |

16. Cabinet involvement

| | Cabinet Final Approval | Cabinet Involvement Before Approval |
|--------------|------------------------|-------------------------------------|
| NPTVI | Yes | No |
| SSB | Yes | No |

17. Notification of outcome to Candidates

| | Candidate Notification |
|--------------|---|
| NPTVI | <i>The individual receives notice in writing from the Minister for Natural Resources, Labour & Immigration</i> |
| SSB | <i>The individual receives notice in writing from the Minister for Natural Resources, Labour & Immigration (see pages 157-171 of Exhibit JSA-1)</i> |

18. Publication of Appointments

| | Appointments Published |
|--------------|--|
| NPTVI | <i>Yes. Decisions are published by the Virgin Islands Official Gazette.</i> |
| SSB | <i>Yes. By official Government Press Release to Government's website and by the Virgin Islands Official Gazette.</i> |

19. Remuneration

| | Remuneration Calculation | Remuneration Payment |
|--------------|---|--|
| NPTVI | <p><i>The National Parks Trust Act, 2006, Section 5. re Members of the Board, holds that, "...other than the Director, shall be paid such remuneration as the Minister may from time to time determine."</i></p> <p>(see page 114 of Exhibit JSA-1)</p> | <p><i>Remuneration is paid as a monthly stipend by the National Parks Trust of the Virgin Islands.</i></p> <p><i>The Board of the National Parks Trust via Board decision on June 2020 halted the payment of stipends for a period of one year based on the fiscal constraints brought on by Covid-19. Remuneration of board stipends resume in July 2021.</i></p> |
| SSB | <p><i>The Social Security Ordinance, CAP 266, Section 6. Remuneration of the Board and its Committees holds that,</i></p> <p><i>"There shall be paid out of the Fund-</i></p> <p><i>(a) to the Chairman, Deputy Chairman and each member of the Board in respect of his office as such, such remuneration and allowances as the Legislative Council may determine; and</i></p> <p><i>(b) to any person, not being a member of the Board, who serves on the Committee of the Board, such remuneration and allowances as the Legislative Council may determine upon a recommendation by the Board."</i></p> <p><i>There is no comment as to how remuneration packages are calculated.</i></p> <p>(see page 8 of Exhibit JSA-1)</p> | <p><i>Remuneration is paid as a quarterly stipend and allowances by the Social Security Board out of the Fund.</i></p> |

20. Process changes to selection/appointment/re-appointment to Boards over past 5 years

| | Process Changes in 5 Years | Explanation |
|--------------|----------------------------|------------------------|
| NPTVI | <i>None found.</i> | <i>Not applicable.</i> |
| SSB | <i>None found.</i> | <i>Not applicable.</i> |

21. Re-appointment process

| | Re-Appointment Differences | Description |
|--------------|----------------------------|------------------------|
| NPTVI | <i>Not applicable.</i> | <i>Not applicable.</i> |
| SSB | <i>Not applicable.</i> | <i>Not applicable.</i> |

Composition & roles on the Boards

22. Set out below is a table of the composition of the Boards over the past 5 years:

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment /Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|---|--------------------|--|--|--|-----------------------------------|--|
| BVI Social Security Board, Board of Directors (see page 157 of Exhibit JSA-1) | | | | | | |
| Mrs. Jeanette Scatliffe Boynes | Acting Director | 1 January 2021 / 1 year 6 months | Not applicable | Not applicable | First appointment | \$7,800 |
| Mrs. Patsy Lake | Deputy Chairperson | 18 May 2020 / 3 years | Not applicable | Not applicable | First appointment | \$20,500 |
| Mrs. Maya Barry | Member | 18 May 2020 / 3 years | Not applicable | Not applicable | First appointment | \$18,700 |
| Mr. Dereck Marshall | Member | 18 May 2020 / 3 years | Not applicable | Not applicable | First appointment | \$16,200 |
| Mrs. Tasha Bertie | Member | 18 May 2020 / 3 years | Not applicable | Not applicable | First appointment | \$17,200 |
| Mrs. Lyra George | Member | 18 May 2020 / 3 years | Not applicable | Not applicable | First appointment | \$17,100 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment /Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|-------------------------|-----------------|--|--|--|-----------------------------------|--|
| Dr. Mitchel Penn | Member | 18 May 2020 / 3 years | Not applicable | Not applicable | Re-appointment | \$17,950 |
| Mrs. Annie Malone-Frett | Member | 1 September 2016 / 3 years | 31 August 2019 | Not applicable | Re-appointment | \$58,500 |
| Mr. Simon Potter | Member | 1 March 2019 / 1 year | February 2020 | Not applicable | First appointment | \$17,050 |
| Mr. Michael Vanterpool | Member | 1 March 2019 / 1 year | February 2020 | Not applicable | First appointment | \$14,300 |
| Mr. Ian Smith | Chairman | 7 September 2018 / 3 years | Not applicable | Not applicable | Re-appointment | \$75,650 |
| Dr. Dawn Brewley | Member | 1 September 2016 / 3 years | 20 February 2019 / appointment revoked by Cabinet | Not applicable | Re-appointment | \$9,600 |
| Ms. Vareen Vanterpool | Member | 1 September 2016 / 3 years | 31 August 2019 | Not applicable | First appointment | \$58,500 |
| Mr. Anghel George | Deputy Chairman | 1 September 2016 / 3 years | 31 August 2019 | Not applicable | Re-appointment | \$80,350 |
| Mrs. Antoinette Skelton | Director | 18 May 2020 / 3 years | 31 December 2020 / resigned | Not applicable | Re-appointment | \$9,200 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment /Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|--|--------|--|--|--|-----------------------------------|--|
| Dr. Irad Potter | Member | 18 May 2020 / 3 years | Not applicable | Not applicable | Re-appointment | \$16,500 |
| BVI National Parks Trust, Board of Directors (see page 175 of Exhibit JSA-1) | | | | | | |
| <i>N.B. In its meeting of 03 June 2020, the Board of Directors took a decision to impose a moratorium on the payment of monthly Board stipends. The Board has worked pro bono until present., with no expectation of reimbursement retroactively. The Board considered the measure necessary due to the budgetary shortfalls experienced by the Trust since March 2020. Therefore, no values are available for the current Board to date (See page 183 of Exhibit JSA-1)</i> | | | | | | |
| Mrs. Rosalia Gardener | Member | 29 November 2019 / 2 years | Not applicable | Not applicable | Re-appointment | Not applicable |
| Mr. Gregory Callwood | Member | 29 November 2019 / 3 years | Not applicable | Not applicable | First appointment | Not applicable |
| Mr. Gregory Levons | Member | 29 November 2019 / 2 years | Not applicable | Not applicable | Re-appointment | Not applicable |
| Ms. Jennifer Bertie | Member | 29 November 2019 / 2 years | Not applicable | Not applicable | First appointment | Not applicable |
| Ms. Alesia Hamm | Member | 29 November 2019 / 3 years | Not applicable | Not applicable | First appointment | Not applicable |
| Ms. Lianna Jarecki | Member | 29 November 2019 / 3 years | Not applicable | Not applicable | First appointment | Not applicable |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment /Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|-------------------------|---------------|--|--|--|-----------------------------------|--|
| Mr. Laurens Blok | Member | 29 November 2019 / 3 years | Not applicable | Not applicable | First appointment | Not applicable |
| Ms. Noni Georges | Member | 29 November 2019 / 3 years | Not applicable | Not applicable | First appointment | Not applicable |
| Mr. Joseph Smith Abbott | Member | 29 November 2019 / 2 years | Not applicable | Not applicable | Re-appointment | Nil |
| Mr. Nelson Samuel | Chairman | 29 November 2019 / 3 years | Not applicable | Not applicable | First appointment | Not applicable |
| Ms. Ayana Hull | Chairman | 15 September 2018 / 2 years | 29 November 2019 / revocation of appointment | Not applicable | Re-appointment | \$29,600 |
| Mr. Louis Potter | Vice Chairman | 01 April 2018 / 3 years | 29 November 2019 / revocation of appointment | Not applicable | Re-appointment | \$20,500 |
| Mr. John Shirley | Member | 01 April 2018 / 2 years | 29 November 2019 / revocation of appointment | Not applicable | Re-appointment | \$19,500 |
| Mr. Randy Keil | Member | 01 April 2018 / 2 years | 29 November 2019 / revocation of appointment | Not applicable | Re-appointment | \$20,000 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment /Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|-----------------------|--------|--|--|--|-----------------------------------|--|
| Ms. Tamara Maduro | Member | 15 September 2018 / 2 years | 29 November 2019 / revocation of appointment | Not applicable | First appointment | \$5,525 |
| Mrs. Tessa Callwood | Member | Not found | 29 November 2019 / revocation of appointment | Not applicable | Re-appointment | \$15,000 |
| Mr. Wayne Robinson | Member | 01 April 2018 / 3 years | 29 November 2019 / revocation of appointment | Not applicable | Re-appointment | \$19,500 |
| Mrs. Rosalia Gardener | Member | 01 April 2018 / 3 years | 29 November 2019 / revocation of appointment | Not applicable | Re-appointment | \$19,500 |

23. Copies of all documents (such as CVs and references) of the members of the Boards appointed in the last three years which were put before the person/persons who made the decision to appoint that member are exhibited at pages 206-242 of Exhibit 'JSA-1'.

24. Declarations of interest

| | Guidance to Appointees | Guidance Changes in 5 Years | Explanation |
|--------------|---|-----------------------------|-----------------------|
| NPTVI | <i>The NPTVI Board Manual (see page 184 of Exhibit JSA-1)</i> | <i>None</i> | <i>Not applicable</i> |
| SSB | <i>SSB Operating Policy & Procedures for New Board (Members) II. The Board, D. (2) d) and g), as well as III. Officers of the Board, C. (2) a) – e)</i> <i>(see page 224 of Exhibit JSA-1)</i> | <i>None</i> | <i>Not applicable</i> |

25. Performance of board members

| | Performance Monitoring, Assessment & Recording |
|--------------|--|
| NPTVI | <p><u>Tab 16: Internal Board Policies</u></p> <p>4. <u>Board Self-Assessment:</u> All Boards need to undergo a self-assessment on a regular basis. This assessment relates to the collective performance of the Board. Main areas for assessment are:</p> <p>Management of the Board (adequacy of member orientation and training, operational procedures, compliance with code of ethics and conflict of interest policies, response to urgent issues, adequacy of annual calendar, documentation, reporting and record-keeping requirements).</p> <p>Strategic leadership (does the Board carry out appropriate planning for setting and reviewing strategies on operational and financial management).</p> <p>Financial management (does the Board formally discuss and approve budgets, financial statements and related reports; does the Board receive regular reports on finances, budget and other performance matters; effectiveness and regularity of audits).</p> <p>Board relations with Director (has the Board clearly defined its role and that of the Director, clearly articulated their expectations of the Director's performance, provided regular feedback, delegated appropriate authority, etc.)</p> <p>5. <u>Self-Assessment Guidance:</u></p> <p>Conduct annually following a format agreed by the Board, coordinated by the Board Governance Committee and completed by the end of the calendar year.</p> <p>Use self-assessment results to determine Board training needs.</p> |

| | |
|------------|--|
| | <p>As deemed useful, may include discussion of roles of individual members.</p> <p>A Board member may request that a special discussion item be put on a Board meeting agenda concerning the collective performance of the Board or the performance of an individual Board member.</p> <p>The Board may identify amendments, as it deems appropriate, to its Code of Ethics, conflict of interest policies and other aspects of the operating procedures based on needs identified during the self-assessment.</p> |
| SSB | <p>The Social Security Board's Operating Policy & Procedures Manual does not speak to performance evaluation regime, however, the Ministry, with the Board, intends to establish a mechanism for such.</p> |

Sworn by: Mr Joseph Smith Abbott)

On 29 June 2021)

[place])

ROAD TOWNS

Mr Joseph Smith Abbott

Before me:

Notary/Commissioner of Oaths

Kelvin M. Dawson
Notary Public



**IN THE MATTER OF THE TERRITORY OF THE VIRGIN
ISLANDS COMMISSION OF INQUIRY 2021**

**AND THE COMMISSION OF INQUIRY ACT (CAP 239)
(THE 'ACT')**

**FIRST AFFIDAVIT OF MR
JOSEPH SMITH ABBOTT**

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

SECOND AFFIDAVIT OF JOSEPH SMITH ABBOTT

I, Joseph Smith Abbott, Pusser's Warehouse, 3rd Floor, Road Town, Tortola, VG1110, Virgin Islands, Acting Permanent Secretary, **MAKE OATH** and **SAY** as follows:

1. Introduction

- 1.1 I am the Acting Permanent Secretary of the Ministry of Natural Resources, Labour and Immigration (the '**Ministry**'). I have served in this capacity since 17 May 2021 and I make this Affidavit from facts within my own knowledge and are true or are without my own direct knowledge but are true to the best of my knowledge, information and belief, the sources of which are identified.
- 1.2 I make this Affidavit on behalf of the Hon Vincent O Wheatley as a result of the letter sent to him on 4 June 2021 by Ms Rhea Harikissoon, Solicitor to the Commission of Inquiry (the '**COI**') (the '**Request**') in relation to the Statutory Boards (the '**Boards**'), which come under the control of the Ministry (see pages 1-3 of Exhibit JSA-2).
- 1.3 I make this Affidavit further to my First Affidavit dated 29 June 2021, and the accompanying Exhibit JSA-2.
- 1.4 At the outset, I should further say that in this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it unless I do so expressly.
- 1.5 I shall refer in this Affidavit to the exhibit marked '**JSA-2**', which is a paginated bundle of documents.

2. Statutory Bodies and Boards

- 2.1 The following Statutory Bodies and Boards were referred to in my First Affidavit:
 - (a) BVI Social Security Board
 - (b) BVI National Parks Trust
- 2.2 The following additional Statutory Boards fall under the responsibility of the Ministry:
 - (a) Immigration Board; and
 - (b) Surveyor's Board.
- 2.3 I have been made aware of the COI's letter dated 20 July 2021 stating that it wishes to focus on the Immigration Board. I had already collated the information for the Boards referred to in paragraph 2.2, and therefore have included information for both in this Affidavit.
- 2.4

| Statutory Board | Date Statutory Board came under the control of the Ministry |
|------------------------|---|
| Immigration Board | The responsibility for the Immigration Department and Board was delegated to the Ministry on 01 May 2020 (see confirmation of this at pages 4-6 of Exhibit JSA-2) |
| Land Survey Board | July 1970 |

3. **Legislation**

3.1 The following legislation relates to the Statutory Boards (as appropriate):

| Legislation | Date legislation came into force | Exhibit 'JSA-2' pages |
|--|---|------------------------------|
| Immigration Board | | |
| Immigration & Passport Act | 7 July 1997 | 7-38 |
| Immigration & Passport Regulations | 30 June 2013 | 39-70 |
| Land Surveyor's Board | | |
| Land Surveyors' Ordinance (No. 03 of 1970) | 20 July 1970 | 71-83 |
| Registered Lands Ordinance (Cap. 229) | 20 July 1970 | 84-155 |
| Land Survey Regulations | 25 September 1979 | 156-167 |
| Condominium Ordinance | 1 August 1979 | 168-198 |
| Land Surveyors' (Amendment) Regulations | 18 November 2004 | 199-202 |
| Land Surveyors' (Amendment) Act | 28 September 2005 | 203-207 |

4. **The Boards**

4.1 In relation to the current process by which potential candidates for board membership are identified and selected, I make the following comments:

4.2 Advertising vacant positions

- (a) Immigration Board ('**IB**'): There is no requirement to advertise when a position on the Immigration Board becomes available. The Chief Immigration Officer and/or Chairman with Board members may make recommendations to the Minister for membership, but the Governor appoints the members on the advice of the Minister.
- (b) Survey Board ('**SB**'): There is no requirement to advertise when a position on the Survey Board becomes available. The Chief Surveyor and/or Chairman with Board members may make recommendations to the Minister for membership, which may or may not be advanced to Cabinet.

4.3 Interviews

- (a) Candidates are not interviewed for positions on the Immigration Board or Survey Board.

4.4 References

| | Reference(s) Sought from all Members | Other Due Diligence from Signatories | Qty. & Source | Stage |
|-----------|--|---|---------------|--|
| IB | Curriculum Vitae or Resume | None found | None found | Prior to preparation of the Cabinet Paper |
| SB | Curriculum Vitae or Resume and Chartered Survey License | None found | None found | Prior to preparation of the Cabinet Paper |

4.5 Appointment criteria

- (a) The Immigration Act, Part I, Section 13:

"(1) There shall be a Board called "The Board of Immigration" consisting of 8 members who shall be appointed by the Governor, acting on the advice of the Minister [(Amended by Act 12 of 2000)]

(2) (a) The Governor, acting on the advice of the Minister, shall appoint one of the members to be Chairman of the Board [...]

(3) The Governor, acting on the advice of the Minister, may appoint another person to be a temporary member during the absence of any member of the Board who, through illness, absence from the Territory or for any just cause is unable to sit on the Board [...]

(7) Every member shall hold office for a term of 2 years from the date of his or her appointment, but a member may at any time tender his or her resignation to the Governor by written notice through the Chairman of the Board."

(see pages 7-38 of Exhibit JSA-2)

- (b) The Land Surveyors' (Amendment) Act, 2005:

"4.(1) There shall be established a Board to be known as the Land Surveyors' Board consisting of the following persons, four of whom shall form a quorum:

(a) the Chief Surveyor;

(b) the Chief Registrar of Lands or, if that post is vacant, the Registrar of Lands;

(c) two licensed surveyors nominated in writing by licensed surveyors practising in the Virgin Islands;

(d) two persons from the building industry who may or may not be licensed surveyors, nominated by the Minister; and

(e) one legal practitioner representing the Attorney General's Chambers, nominated in writing by the Attorney General.

(2) All members of the Board shall be appointed by the Minister by writing under his hand and shall, except members holding office under subsection (1)(a), (b) or (e), hold office for three years and be eligible for re-appointment.

(3) A member of the Board, except a member appointed under subsection (1)(a), (b) or (e), may at any time resign from office by writing addressed to the Minister.

(4) The Minister shall designate one of the members of the Board as Chairman.

(5) The Board may, from time to time, appoint a Secretary, who shall hold office during the pleasure of the Board.

(6) The Minister may appoint an alternate for a member appointed under subsection (1)(c), (d) or (e), who shall have the same qualifications and be nominated in the same manner and by the same nominating authority as the substantive member.

(7) Notwithstanding subsection (6), where a member of the Board, other than a member appointed under subsection (1)(e), is, by illness or otherwise, unable to perform his functions or unable to attend meetings of the Board, the Minister may, without declaring the office vacant and after consulting the Chief Surveyor, appoint another suitably qualified person to act as an alternate member for the remainder of the term of a member.

(8) An alternate member, while acting in the absence of the member, shall be deemed to be a member of the Board and shall enjoy all the powers, rights and privileges and be subject to the duties of the substantive member.

(9) The appointment or termination of membership, whether by death, resignation, revocation or otherwise, of a member of the Board shall be published in the Gazette.

(10) The Board shall be deemed to be properly constituted notwithstanding any vacancy in its membership or defect in the appointment of any of its members.

(11) Notwithstanding that the term of office of a member of the Board may have expired, he shall, unless he sooner vacates his office under section 4A, continue in office until his successor is appointed."

(see pages 203-207 of Exhibit JSA-2)

4.6 Criteria for assigning roles in the Boards

| | Ministry Criteria | Other Entity |
|-----------|--|-----------------|
| IB | <p>The <i>Immigration Act, Part I, Section 13:</i></p> <p>"(1) There shall be a Board called "The Board of Immigration" consisting of 8 members who shall be appointed by the Governor, acting on the advice of the Minister. (Amended by Act 12 of 2000)</p> <p>(2) (a) The Governor, acting on the advice of the Minister, shall appoint one of the members to be Chairman of the Board.</p> <p>(3) The Governor, acting on the advice of the Minister, may appoint another person to be a temporary member during the absence of any member of the Board who, through illness, absence from the Territory or for any just cause is unable to sit on the Board.</p> <p>(7) Every member shall hold office for a term of 2 years from the date of his or her appointment, but a member may at any time tender his or her resignation to the Governor by written notice through the Chairman of the Board. (Amended by Act 12 of 2000)."</p> <p>(see pages 7-38 of Exhibit JSA-2)</p> | Not applicable. |
| SB | <p>The <i>Land Surveyors Amendment Act, 2005:</i></p> <p>"(4) The Minister shall designate one of the members of the Board as Chairman.</p> <p>(5) The Board may, from time to time, appoint a Secretary, who shall hold office during the pleasure of the Board.</p> <p>(6) The Minister may appoint an alternate for a member appointed under subsection (1)(c), (d) or (e), who shall have the same</p> | Not applicable. |

| | | |
|--|--|--|
| | <p>qualifications and be nominated in the same manner and by the same nominating authority as the substantive member.</p> <p>(7) Notwithstanding subsection (6), where a member of the Board, other than a member appointed under subsection (1)(e), is, by illness or otherwise, unable to perform his functions or unable to attend meetings of the Board, the Minister may, without declaring the office vacant and after consulting the Chief Surveyor, appoint another suitably qualified person to act as an alternate member for the remainder of the term of a member.</p> <p>(8) An alternate member, while acting in the absence of the member, shall be deemed to be a member of the Board and shall enjoy all the powers, rights and privileges and be subject to the duties of the substantive member."</p> <p>(see pages 203-207 of Exhibit JSA-1)</p> | |
|--|--|--|

4.7 Candidate's 'good character' and/or a fit and proper person

| | Consideration of Character/Fitness | How Determined |
|-----------|---|-----------------|
| ID | The legislation offers no comment to the character or fitness of members. | Not applicable. |
| SD | The legislation offers no comment to the character or fitness of members | Not applicable. |

4.8 Convictions / spent convictions

- (a) IB: There is no reference to consideration of convictions in the legislation.
- (b) SB: The **Land Surveyors' (Amendment) Act, 2005** states at "4A. *The Office of a member of the Board becomes vacant where he is removed by the Minister where he (iv) is sentenced to imprisonment without the option of a fine or is convicted of an offence involving dishonesty*" (see page 203-207 of Exhibit JSA-2)

4.9 Final approval for the appointment

| | Final Approvals | Document(s) to Appointing Body |
|-----------|-----------------|--|
| IB | Cabinet | It is the practice of the Ministry to submit a Cabinet Paper along with the following supporting documents: 1) copy of section of Legislation re Membership, 2) recommendation of the Chief Immigration Officer, 3) signed declarations of willingness to continue to serve by current Board members, 4) signed written interest of prospective Board members, 5) CV/resumes of prospective Board members (as available), 6) comments from the Attorney General, 7) comments from the Financial Secretary. |
| SB | Cabinet | It is the practice of the Ministry to submit a Cabinet Paper along with the following supporting documents: 1) copy of section of Legislation re Membership, 2) recommendation of the Chief Surveyor, 3) CV/resumes of prospective Board members (as available), 4) comments from the Attorney General, 5) comments from the Financial Secretary. |

4.10 Cabinet involvement in the process

| | Cabinet Final Approval | Cabinet Involvement Before Approval |
|-----------|-------------------------------|--|
| IB | No | No |
| SB | Yes | No |

4.11 Notifying candidates of outcome

- (a) IB: The individual receives notice in writing from the Governor, on advice of the Minister for Natural Resources, Labour & Immigration.
- (b) SB: The individual receives notice in writing from the Minister for Natural Resources, Labour & Immigration.

4.12 Publication of appointments

- (a) IB: Appointments are published by the Virgin Islands Official Gazette.
- (b) SB: Appointments and changes to appointments are published by the Virgin Islands Official Gazette.

4.13 Remuneration

| | Remuneration Calculation | Remuneration Payment |
|-----------|--|-------------------------------------|
| IB | Calculated monthly by attendance (member must attend one meeting or function of the board (interviews) to qualify for stipend within that month. That is an internal policy created under PO and passed unto the Ministry. | Payments are made monthly by check. |
| SB | The legislation makes no reference or provision for remuneration for Survey Board members. | Not applicable. |

4.14 Re-appointments

- (a) There have been no process changes to the selection, appointment, or re-appointment to the IB and SB Boards over the past 5 years.
- (b) The process for re-appointments does not differ for the IB nor the SB.

5. **Composition and roles on the Boards**

| Name | Role | Date Appointed / length of time expected to sit on Board | Date ceased to be a member of the Board and reason for end of term | How many other candidates were considered at the time of the first appointment | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|--|--|---|---|--|--|---|
| Immigration Board | | | | | | |
| (1) CVs and resumes for all the Land Survey Board members (of the last three years) are unavailable for inclusion due to physical compromise of the files/records in which they were housed resulting from exposure to moisture and mould. | | | | | | |
| (2) Payment values reflected in this table were only for 2020. All 2019 payments were made by the Premier's Office as the monies were already included in its approved 2019 budget. | | | | | | |
| Mr. Glenn Harrigan | Chairman | 1 May 2021 / 2 years | Not applicable | A list of twenty names were submitted to the Minister for his consideration | Re-appointment | \$1,200 |
| Ms. Roxanne Sylvester | Member | 1 May 2021 / 2 years | Not applicable | | Re-appointment | \$800 |
| Ms. Rosalia Gardener | Member | 1 May 2021 / 2 years | Not applicable | | Re-appointment | \$800 |
| Mr. Shane Baptiste | Member | 1 May 2021 / 2 years | Not applicable | | First appointment | \$800 |
| Mr. Coy Levons | Member | 1 May 2021 / 2 years | Not applicable | | First appointment | \$800 |
| Ms. Rexella Hodge | Member | 1 May 2021 / 2 years | Not applicable | | First appointment | \$800 |
| Ms. Kimberly Seagojo | Member | 1 May 2021 / 2 years | Not applicable | | First appointment | \$800 |
| Mrs. Vareen Vanterpool-Nibbs | Member | 1 Sep 2021 / 1 year, 9 months | Not applicable | | First appointment | \$2,600 |
| Mr. Ian Penn | Chief Immigration Officer / Ex-Officio | 1 May 2021 | Not applicable | Not applicable | Re-appointment | Nil |
| | | | | | | |

| | | | | | | |
|------------------------|--|----------------------|---|----------------|-------------------|----------------|
| Mr. Glenn Harrigan | Chairman | 1 May 2019 / 2 years | 31 April 2019 / end of appointment | Not applicable | First appointment | \$11,400 |
| Mr. James Harris | Member | 1 May 2019 / 2 years | 31 April 2019 / end of appointment | Not applicable | First appointment | \$5,950 |
| Ms. Violet Gaul | Member | 1 May 2019 / 2 years | 31 April 2019 / end of appointment | Not applicable | First appointment | \$5,950 |
| Ms. Roxanne Sylvester | Member | 1 May 2019 / 2 years | Re-appointed | Not applicable | First appointment | \$5,950 |
| Mr. Nathaniel Isaac | Member | 1 May 2019 / 2 years | 31 April 2019 / end of appointment | Not applicable | First appointment | \$5,950 |
| Mr. Elvin Grant | Member | 1 May 2019 / 2 years | 31 April 2019 / end of appointment | Not applicable | First appointment | \$5,950 |
| Ms. Rosalia Gardener | Member | 1 May 2019 / 2 years | Re-appointed | Not applicable | First appointment | \$5,950 |
| Ms. Lisa Penn-Lettsome | Member | 1 May 2019 / 2 years | 01 October 2019 / date of resignation (see page 208 of Exhibit JSA-2) | Not applicable | First appointment | Nil |
| Mr. Ian Penn | Chief Immigration Officer / Ex-Officio | 1 May 2019 / 2 years | Not applicable | Not applicable | Re-appointment | Not applicable |

Board of Land Surveyors

N.B.

1) CVs and resumes for all the Land Survey Board members (of the last three years) are largely unavailable for inclusion due to physical compromise of the files/records in which they were housed resulting from exposure to moisture and mould. The documents available are included in the corresponding bundle. Appointment letters and instruments for all the current Board Members were similarly unavailable for the same reasons, but the documents available are included in Exhibit JSA-2.

2) The resignation of Mr. Winston Donovan from chairmanship/membership of the Board of Land Surveyors in February 2019 is not presently accessible as it is understood to be housed in an area that has been exposed to moisture/mould. The attached copy of an email from Mr. Donovan refers to the fact of his resignation (see page 214 of Exhibit JSA-2)

| | | | | | | |
|--|------------|--|---|--|-------------------|----------------|
| Mr. Marc Downing, Surveyor | Chairman | 26 March 2020 / 1 year (see page 209 of Exhibit JSA-2) | 31 March 2021 | Not applicable* (replaced Winston Donovan who resigned in February 2019) | First appointment | None |
| Ms. Maya Barry, For Attorney General | Ex-officio | 26 March 2020 / 1 year | 31 March 2021 | Not applicable* (replaced Baba Aziz) | First appointment | Not applicable |
| Mr. Dion Stoutt, Businessman/Contractor | Member | 26 March 2020 / 1 year (see pages 210-211 of Exhibit JSA-2) | 31 March 2021 | Not applicable* (replaced Gregory Adams) | First appointment | None |
| Mr. Kelvin Dawson, For Chief Registrar of Lands | Ex-officio | 20 January 2018 / 3 years | 31 March 2021 | Not applicable | Re-appointment | Not applicable |
| Mr. Dwayne Nibbs, Chief Surveyor | Ex-officio | 20 January 2018 / 3 years | 31 March 2021 | Not applicable | Re-appointment | Not applicable |
| Mr. Burton Chalwell, Surveyor | Member | 20 January 2018 / 3 years | 31 March 2021 | Not applicable | Re-appointment | None |
| Mr. Michael Adamson, Surveyor | Member | 20 January 2018 / 3 years | 31 March 2021 | Not applicable | Re-appointment | None |
| Board of Land Surveyors | | | | | | |
| <i>N.B. The appointment letters and instruments for all the Board Members were unavailable, but a copy of the letter and instrument issued was secured from one immediate past Board Member which attests to the documents the other appointees would have received.</i> | | | | | | |
| Mr. Winston Donovan, Surveyor | Chairman | 20 January 2015 / 3 years | 31 March 2018 (see page 212 of Exhibit JSA-2) | Not applicable | First appointment | None |
| Mr. Kelvin Dawson, | Ex-officio | 20 January 2015 / 3 years | 31 March 2018 | Not applicable | Re-appointment | Not applicable |

| | | | | | | | | | |
|---|------------|---|---------------|----------------|-------------------|----------------|--|--|--|
| Deputy Chief Registrar | | | | | | | | | |
| Mr. Baba Aziz Attorney General Representative | Ex-officio | 20 January 2015 / 3 years | 31 March 2018 | Not applicable | First appointment | Not applicable | | | |
| Mr. Gregory Adams Town & Country Planning Dept. | Ex-officio | 20 January 2015 / 3 years | 31 March 2018 | Not applicable | Re-appointment | Not applicable | | | |
| Mr. Ottley Rhymmer, Businessman | Member | 20 January 2015 / 3 years | 31 March 2018 | Not applicable | First appointment | Not applicable | | | |
| Mr. Burton Chalwell, Surveyor | Member | 20 January 2015 / 3 years | 31 March 2018 | Not applicable | Re-appointment | None | | | |
| Mr. Michael Adamson, Surveyor | Member | 20 January 2015 / 3 years (see pages 213-214 of Exhibit JSA-2) | 31 March 2018 | Not applicable | First appointment | None | | | |
| Mr. Gregory Hodge | Member | 20 January 2015 / 3 years | 31 March 2018 | Not applicable | First appointment | None | | | |

6. **Declarations of interest**

6.1 IB: The legislation does not speak to Declarations of Interest.

6.2 SB: The legislation does not speak to Declarations of Interest.

7. **Performance of board members**

7.1 IB: There is no formal tool or guidance distinctly prescribed within the legislation. However, please see sections 13 and 15 of the Act. Additionally, in practice performance is taken to be measured by the number of applications processed and sent forward to Cabinet in a given year, as well as submissions for amendment to the Act.

7.2 SB: There is no formal tool or guidance distinctly prescribed within the legislation.

Sworn by: Joseph Smith Abbott

On 30 July 2021

1604 Route 212
Saugerties, New York 12477
United States of America

) Joseph Smith Abbott

Before me:

Notary/Commissioner of Oaths

HOLLY STRUTT
Notary Public, State of New York
No. 02ST6279592
Qualified in Ulster County
My Commission Expires April 15, 2025

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN
ISLANDS COMMISSION OF INQUIRY 2021**

**AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE
'ACT')**

SECOND AFFIDAVIT OF JOSEPH SMITH ABBOTT

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021
AND THE COMMISSION OF INQUIRY ACT (CAP 239) (THE 'ACT')**

SECOND AFFIDAVIT OF DR MARCIA POTTER

I, Dr Marcia Potter of Martin Spring Ghut, Tortola, Permanent Secretary of the Ministry of Education, Culture, Youth Affairs, Fisheries and Agriculture, **MAKE OATH** and **SAY** as follows:

Introduction

1. I was the Permanent Secretary of the Ministry of Natural Resources, Labour and Immigration from September 2019 until 14th May 2021 when I was reassigned to the Ministry of Education, Culture, Youth Affairs, Fisheries and Agriculture (the '**Ministry**') and I make this Affidavit from facts within my own knowledge and are true or are without my own direct knowledge but are true to the best of my knowledge, information and belief, the sources of which are identified.
2. I make this Affidavit on behalf of the Hon Natalio Wheatley as a result of the letter sent to him on 4 June 2021 by Ms Rhea Harrikissoon, Solicitor to the Commission of Inquiry (the '**COI**') (the '**Request**') in relation to the Statutory Bodies ('**Statutory Bodies**'), and in particular to the boards of those Statutory Bodies (the '**Boards**'), which come under the control of the Ministry.
3. At the outset, I should further say that in this Affidavit, where I mention a document, I do not waive any privilege asserted in respect of it unless I do so expressly.
4. I shall refer in this Affidavit to the exhibit marked 'MP-2', which is a paginated bundle of documents.

Statutory Bodies

5. The following Statutory Bodies fall under the responsibility of the Ministry:

| Statutory Body | Date Statutory Body came under the control of the Ministry |
|---|---|
| H. Lavity Stoutt Community College (the ' College ') | December 14 th , 1990 |
| The Recreation Trust | 1966 |
| Virgin Islands Festivals and Fairs Committee | 2005 |

Legislation

6. The following legislation relates to the Statutory Bodies (together, the "Legislation"):

| Legislation | Date legislation came into force | Exhibited at following pages of Exhibit MP-2 |
|---|----------------------------------|--|
| The College | | |
| British Virgin Islands College Fund Act, 1989 (No. 14 of 1989) | 28 th November, 1989 | 1-2 |
| H.L. Stoult Community College Act, 1990 (No. 14 of 1990) (the 'HLSCC Act') (This Act was originally known as the British Virgin Islands Community College Act, 1990. Its name was amended on September 27 th , 1993 and assented to by the Governor on October 7 th , 1993.) | 28 th February, 1991 | 3-16 |
| British Virgin Islands College Fund (Amendment) Act, 1993 (No. 5 of 1993) | 7 th October, 1993 | 17 |
| British Virgin Islands College Fund (Amendment) Act, 1998 (No. 9 of 1998) | 30 th December, 1998 | 18-20 |
| Virgin Islands Festivals and Fairs Committee | | |
| Virgin Islands Festival and Fairs Committee Act, 2005 (the 'Festivals Act') | 14 th April, 2005 | 21-28 |
| Recreation Trust Committee | | |
| Recreation Trust Ordinance | 17 th January, 1966 | 29-33 |
| Recreation Trust (Amendment) Act, 2012 | May, 2012 | 34-42 |

The Boards

7. I set out below the process of how people ('Candidates') are appointed to the Boards: H. Lavity Stoult Community College Board of Governors, the Virgin Islands Festivals and Fairs Committee and the Recreation Trust Committee including any re-appointment. Please note that the process set out below applies to all three Boards except where otherwise noted.
- The Minister for Education, Culture, Youth Affairs, Fisheries and Agriculture (the 'Minister') makes recommendations as to persons who should be appointed to the Boards. While there are no formal enquiries made as to whether a Candidate is of 'good character', the recommendations are mainly based on community knowledge as to the contributions of the individual Candidates in society.
 - There is no requirement that posts on the Boards be advertised and they have never been advertised to my knowledge.

- c. The nominated Candidates are asked to supply a recent *Curriculum Vitae*, Resumé, or Biography to be submitted to Cabinet. No other references are sought.
- d. Cabinet makes the final decision as to appointments to the Boards.
- e. The criteria for appointing persons to the Virgin Islands Festivals and Fairs Committee are contained in the Festivals Act, with the Board consisting of inter alia *'not more than fifteen persons with interest in cultural and entertainment activities'* (s3(1)(f)). The Festivals Act also states that *'the Minister shall ensure that the islands of Anegada, Jost Van Dyke and Virgin Gorda are each represented by no more than three members who are resident in these islands'* (s3(2)).
- f. The criteria for appointing persons to the Recreation Trust Committee are contained in the Recreation Trust Ordinance (as amended) (see s1 of that Act).
- g. As for appointments to the College Board of Governors (the **'College Board'**), Cabinet considers the criteria set out in the First Schedule, Section 1(1) of the HLSCC Act (i.e. that appointments be made *"from among persons of proven capacity in matters relating to the aim of the college as set out in Section 3 and likely to contribute to the furtherance thereof."*) The Candidates' areas of expertise that are considered as part of the appointment process are those stated in legislation, e.g. legal or business background, or interest in cultural and entertainment activities. Although not specified in the HLSCC Act, Higher Education experience/expertise, financial expertise etc. which would be helpful in the work of the Board to guide the institution are considered. Cabinet may also consider the specific representation of sister islands or certain areas of expertise. In relation to this, some Boards (such as the Recreation Trust Committee) specifically ask for sister island representation. Various Ministers have tried to ensure that the sister islands are represented and will make nominations of persons from those islands.
- h. In respect of specific roles on the Boards:
 - i. I am unaware of how the Minister decides who is to be Chair or Deputy Chair. He may ask the Permanent Secretary of the Ministry (the **'Permanent Secretary'**) for advice on his/her recommendation to be sent to Cabinet.
 - ii. Ex-officio members are either appointed according to what is stated in the relevant Legislation, or by the Minister if he wants a Ministry Representative on the Board. In the case of the College Board, the Permanent Secretary sits as the Minister's Representative. For the Virgin Islands Festivals and Fairs Committee, the Permanent Secretary or another designated individual sits as the Minister's Representative. For the Recreation Trust Committee, the Executive Director of the Recreation Trust and the Permanent Secretary sit as ex-officio members.
- i. Candidates are not interviewed during the appointment process to the Boards.
- j. Candidates put before Cabinet for approval are contacted prior to the Cabinet paper relating to their nomination being put before Cabinet to ascertain their availability, interest and willingness to serve.
- k. Upon Cabinet's approval and the publication of a Cabinet Memorandum Extract, candidates are sent a letter and Instrument of Appointment.
- l. Appointments are published in the Gazette.
- m. There has been no change to the appointment / re-appointment process to the Boards.
- n. As to remuneration:

- i. The remuneration received by members of the College Board is paid by the College. I do not have knowledge as to how such remuneration is calculated and when such remuneration started being paid for the College Board. To the best of my knowledge, where payment is to be made to the members of the College Board, this will be proposed in Cabinet by the Minister.
- ii. Recreation Trust Committee members are remunerated per month by the Ministry. I am unsure of how the amount is decided upon by Cabinet. However, the amount is usually guided by payments made to members of other Boards and Committees both within and outside the Ministry.
- iii. The Virgin Islands Festivals and Fairs Committee members receive no remuneration. Service is on a voluntary basis.

Composition & roles on the Boards

8. Set out below is a table of the composition of the Boards over the past 3 years.
9. Please note that ex-officio members and Public Officers do not receive any remuneration for their service on the Boards.

H. Lavity Stoutt Community College

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|--|--|--|--|--|--|
| Dr. Richard Georges | President of the College – <i>ex-officio</i> | 1 October 2020 / 3 years | Continues since appointment | Re-appointment | N/A |
| Dr. Arlene Smith-Thompson | Vice President – <i>ex-officio</i> | 1 October 2020 / 3 years | Continues since appointment | First appointment | N/A |
| Mrs. Fiona Forbes-Vanterpool | Chairman | 15 September 2020 / expected to sit until 31 May 2020 | Continues | Re-appointment First appointed as member in June 2019 | \$15,000 |
| Dr. L. Sauda Smith | Deputy Chairperson | 15 September 2020 / expected to sit until 31 May 2020 | Continues | Appointment as Deputy Chair. First appointed as member in June 2019 | \$9,600 |
| Ms. Nakema Bell | Member | 15 September 2020 / expected to sit until 31 May 2020 | Continues | First appointment | \$3,600 |
| Mr. Kenneth Baker – Rep. Financial Services Commission | Member | 1 June 2019 / 3 years | Continues | Re-appointment Was appointed to Board Jan 2018 and appointment was revoked in | \$13,200 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|----------------------------------|--------|--|--|---|--|
| | | | | April 2019 | |
| Ms. Josephine Callwood | Member | 1 June 2019 / 3 years | Continues | First appointment | \$9,600 |
| Mrs. Shanica Maduro Christopher | Member | 1 June 2019 / 3 years | Continues | First appointment | \$9,600 |
| Mr. Derek Dunlop | Member | 1 June 2019 / 3 years | Continues | Re-appointment Was appointed to Board Jan 2018 and appointment was revoked in April 2019 | \$10,500 Jan 2015 – Dec 2017- \$9,600 |
| Ms. Latoya Freeman | Member | 1 June 2019 / 3 years | Continues | First appointment | \$9,600 |
| Mr. Chad George | Member | 1 June 2019 / 3 years | Continues | First appointment | \$7,200 |
| Mr. Cecil Hodge | Member | 1 June 2019 / 3 years | Continues | First appointment | N/A (Public Officer) |
| Dr. Henry Jarecki | Member | 1 June 2019 / 3 years | Continues | Re-appointment Was appointed to Board Jan 2018 and appointment was revoked in April 2019 | \$7,200 Jan 2015 – Dec 2017- \$10,800 |
| Dr. Anthony Layne | Member | 1 June 2019 / 3 years | Continues | First appointment | \$9,600 |
| Prof. Emeritus Arthur Richardson | Member | 1 June 2019 / 3 years | Continues | Re-appointment Was appointed to Board Jan 2018 and appointment was revoked in April 2019 | \$15,600 Jan 2015 – Dec 2017 - \$10,800 |
| Mr. Cromwell Smith | Member | 1 June 2019 / 3 years | Continues | Re-appointment Was appointed to Board Jan 2018 and appointment was revoked in April 2019 | \$15,600 Jan 2015 – Dec 2017 - \$14,400 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|--|--|---|--|------------------------------------|--|
| Dr. L. Sauda Smith | Member | 1 June 2019 / 3 years | Continues | First appointment | As above |
| Mr. John Williams | Member | 1 June 2019 / 3 years | Continues | First appointment | \$9,600 |
| Mr. John Samuel | Deputy Chairman | 1 June 2019 / 3 years | 5 September 2020 / resigned | First appointment | \$16,000 |
| Mrs Judith E. Vanterpool | Ag. President of the College – <i>ex-officio</i> | 1 August 2018 – July 31, 2019. Board recommended appointment from Aug 1, 2019 – July 31, 2021. | 18 October 2019 / resigned | First appointment | N/A |
| Dr. Charles H. Wheatley, OBE | Chairman | 1 January 2018 / 3 years | 23 May 2019 / appointment revoked | Re-appointment | \$15,000 – Paid from January 2018 – April 2019 Jan 2015 – Dec 2017 - \$36,000 |
| Ms. Eileene L. Parsons, OBE | Deputy Chairperson | 1 January 2018 / 3 years | 23 May 2019 / appointment revoked | Re-appointment | \$6,000 Jan 2015 – Dec 2017 - \$12,000 |
| Mrs. Lorna Smith, OBE | Member | 1 January 2018 / 3 years | 23 May 2019 / appointment revoked | Re-appointment | \$6,000 Jan 2015 – Dec 2017 - \$10,800 |
| Ms. Sonia George | Member | 1 January 2018 / 3 years | 23 May 2019 / appointment revoked | First appointment | \$6,000 |
| Ms. Marlie Romney | Member | 1 January 2018 / 3 years | 23 May 2019 / appointment revoked (never attended any meetings) | First appointment | \$0 |
| Mrs. Sharon Flax-Brutus – (Director, BVI TB) | Member | 1 January 2018 / 3 years | 23 May 2019 / appointment revoked (never attended any meetings) | First appointment | N/A |
| Ms. Coleen Farrington | Member | 1 January 2018 / 3 years | 23 May 2019 / appointment revoked | First appointment | \$4,800 Jan 2015 – Dec 2017 - \$7,200 |
| Mr. Wendell M. Gaskin | Member | 1 January 2018 / 3 years | 23 May 2019 / appointment revoked | Re-appointment | \$6,000 Jan 2015 – Dec 2017 - \$0 – was a Public Officer then. |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|---------------------------------|---------------------------------------|--|---|------------------------------------|--|
| Mr. Hilroy George | Member | 1 January 2018 / 3 years | 23 May 2019 / appointment revoked | First appointment | N/A |
| Dr. Janet D. Smith | Interim President – <i>ex-officio</i> | Aug 1, 2016 – July 31, 2018 | August 2018 | First appointment | N/A |
| Dr. Lydia Pickering | Member | Jan 1, 2015 / 3 years | December 31, 2017 / End of Term | Re-appointment | Jan 2015 – Dec 2017 - \$14,400 |
| Dr. Marcia Potter | Member – <i>ex-officio</i> | Jan 1, 2018 – Dec 31, 2020 | Sept. 2019 / Re-assigned to another Ministry. | Re-appointment | N/A |
| Mr. Lester Hyman | Member | Jan 1, 2015/ 3years | 2018 / Cited personal Health Reasons | Re-appointment | Jan 2015 – Dec 2017 \$9,600 |
| Mrs. Jennifer Potter-Questelles | Member | Jan 1, 2015 / 3 years | December 2017 / Asked not to be the Representative for the next cycle when nominated. Gave reasons of excessive workload and asked that Financial Services Commission appoint a new Representative for the new Term | Re-appointment | Jan 2015 – Dec 2017 \$13,200 |
| Mrs. Sandy Harrigan-Underhill | Member | Jan 1, 2018 / 3 years | September 2018 / Resigned to run in the Elections in 2019 | Re-appointment | N/A |
| Mrs. Erlin Vanterpool | Member | Jan 1, 2015 / 3 years | December 31, 2017 / End of Term | Re-appointment | Jan 2015 – Dec 2017 \$14,400 |

Recreation Trust Committee

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|--------------------------|------------|--|--|------------------------------------|--|
| Mrs. Dawn Crabbe-Herbert | Chairman | July 15, 2020 / 3 years | Continues | First appointment | \$3,500 (Oct, 2020 – April, 2021) |
| Mr. Terrence Gumbs | Vice Chair | July 15, 2020 / 3 years | Continues | First appointment | \$2,100 (Oct, 2020 – April, |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|--|----------------------------|--|--|------------------------------------|--|
| | | | | | 2021) |
| Mr. Byron Hodge | Member | July 15, 2020 / 3 years | Continues | First appointment | \$1,500 (December, 2020 – April, 2021) |
| Mr. Marc Noel | Member | July 15, 2020 / 3 years | Continues | First appointment | N/A (Public Officer) |
| Mrs. Stephanie Russ-Penn | Member | July 15, 2020 / 3 years | Continues | First appointment | \$2,100 (Oct, 2020 – April, 2021) |
| Mr. Allen Smith | Member | July 15, 2020 / 3 years | Continues | First appointment | \$2,100 (Oct, 2020 – April, 2021) |
| Mr. Roy Pickering | Member | July 15, 2020 / 2 years | Continues | First appointment | \$1,800 (November, 2020 – April, 2021) |
| Mr. Deondre Rymer | Member | July 15, 2020 / 2 years | Continues | First appointment | \$2,100 (Oct, 2020 – April, 2021) |
| Mr. Eric Brathwaite | Member | July 15, 2020 / 2 years | Continues | First appointment | \$2,100 (Oct, 2020 – April, 2021) |
| Mr. Stephen Payne – Executive Director | Member – <i>ex-officio</i> | July 15, 2020 | Continues | Re-appointment | N/A |
| Permanent Secretary or Designate – Lorna Stevens viz Mrs. Carolyn Stoutt-Igwe/Dr. Marcia Potter (since May 2021) | Member – <i>ex-officio</i> | July 15, 2020 / 3 years | Continues | Re-appointment | N/A |
| Mr. Eustace Freeman – Executive Director | Member – <i>ex-officio</i> | June 2021 | Continues | First appointment | N/A |
| Mr. Roy Barry | Chairman | January 1, 2015 / 3 years | December 31, 2017 / Term Expired New Board Appointed in 2020 | Re-appointment | \$18,000 |
| Ms. Franka Pickering (Virgin Gorda Rep) | Deputy Chair | January 1, 2015 / 3 years | December 31, 2017 / Term expired New Board Appointed in 2020 | Re-appointment | \$10,800 |
| Mr Mario Smith | Member | January 1, 2015 / 3 years | December 31, 2017 / Term Expired - New Board Appointed in 2020 | Re-appointment | \$10,800 |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | First Appointment / Re-appointment | Total level of remuneration from date of appointment to end of appointment / to date |
|---|---------------------|--|--|------------------------------------|--|
| Mr. Shan Mohammed | Member | January 1, 2015 / 3 years | December 31, 2017 / Term Expired New Board Appointed in 2020 | Re-appointment | \$5,700 (Did not attend some meetings over the period) |
| Mr. Brian Brewley | Member | January 1, 2015 / 3 years | December 31, 2017 / Term Expired New Board Appointed in 2020 | Re-appointment | \$10,800 |
| Ms. Jacklyn Weekes | Member | January 1, 2015 / 3 years | December 31, 2017 / Term Expired New Board Appointed in 2020 | Re-appointment | \$6,300 (Did not attend some meetings) |
| Mr. Charles Mercer | Member | January 1, 2015 / 3 years | December 31, 2017 / Term Expired New Board Appointed in 2020 | Re-appointment | \$10,800 |
| Mr. Lawrence Wheatley (Anegada Rep) | Member | January 1, 2015 / 3 years | December 31, 2017 / Term Expired New Board Appointed in 2020 | Re-appointment | Never received any remuneration because he never attended meetings |
| Mr Dean Greenaway | Member | January 1, 2015 / 2 years | December 31, 2016 / Term Expired | Re-appointment | N/A – Public Officer |
| Mr Neville Smith | Member | January 1, 2015 / 3 years | December 31, 2017 / Term Expired | Re-appointment | \$10,800 |
| Ms Gertrude Thomas | Member | January 1, 2015 / 2 years | December 31, 2016 / Term Expired | Re-appointment | N/A Public Officer |
| Mr Dereck Marshall | Member | January 1, 2015 / 2 years | December 31, 2016 / Term Expired | Re-appointment | \$10,800 |
| Permanent Secretary or Designate (Mrs. Brenda Lettsome-Tye viz Dr. Marcia Potter) | Member – ex-officio | January 1, 2015 / 3 years | Between 2018 and 2020 – much of the work related to the Trust was managed by the Executive Director and the Ministry as we endeavoured to get through Re-development following the 2017 disasters. | Re-appointment | N/A |

Virgin Islands Festivals and Fairs Committee

10. Please note that Members of the Virgin Islands Festivals and Fairs Committee are not paid a stipend.

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | First Appointment / Re-appointment |
|--|--------------------------|--|--|------------------------------------|
| Mr. Khalid Frett | Chairman | January 1, 2021/ 1 year 3 months - Appointed Chair on January 1, 2021 after former Chair resigned to fulfil time up to March 26, 2022 - Gave oversight from June 2020 to appointment - Was Dep. Chair March 11, 2019 / 3years | Continues | Re-appointment |
| Mrs. Violet de Castro | Vice Chairman | 26th March, 2022 - Was Member March 27, 2019 / 3years - Appointed Dep Chair on January 1, 2021 to 26 th March, 2022 to fulfil time | Continues | Re-appointment |
| Ms. Ishelle Hodge | Treasurer | February 1, 2021 / 2 years | Continues to 29 th February, 2024 | First appointment |
| Ms. April Glasgow | Public Relations Officer | March 1, 2021 / 2 years, 9 months | Continues to December 31, 2023 | First appointment |
| Ms. Sharia deCastro | Member | February 1, 2021 / 1 year, 2 months (To fulfil term of March 2019 appointment) | Continues to 26 th March, 2022 | Re-appointment |
| Mr. Dion Kendall | Member | February 1, 2021 / 2 years | Continues to 29 th February, 2024 | First appointment |
| Ms. Delia Jon-Baptiste | Member | February 1, 2021 / 2 years | Continues to 29 th February, 2024 | First appointment |
| Mrs. Marieta Headley | Member | February 1, 2021 / 2 years | Continues to 29 th February, 2024 | First appointment |
| Mrs. Luce Hodge-Smith | Member | February 1, 2021 / 2 years | Continues to 29 th February, 2024 | First appointment |
| Mr. Ottley Hodge | Member | January 1, 2021 / 3 years | Continues to December 31, 2023 | Re-appointment |
| Mr. Stuart Donovan | Member | January 1, 2021 / 3 years | Continues to December 31, 2023 | Re-appointment |
| Ms. Harella Georges | Member | January 1, 2021 / 3 years | Continues to December 31, 2023 | Re-appointment |
| Ms. Sasha Flax - Representative for Virgin Gorda Easter Festival Committee | Member | January 1, 2021 / 1 year, 2 months | Continues to March 26, 2022 | Re-appointment |
| Mr. Gregory Callwood - Representative from Jost Van Dyke | Member | January 1, 2021 / 1 year, 2 months | Continues to March 26, 2022 | Re-appointment |
| Representative – Carrot | Member | January 1, 2021 / 1 year, 2 | Continues | First appointment |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | First Appointment / Re-appointment |
|---|----------------------------|--|--|--|
| Bay Cultural Fiesta | | months | | No one has been sent by this entity since |
| Representative - East End Long Look Festival Committee | Member | January 1, 2021 / 1 year, 2 months | Continues | First appointment No one has been sent by this entity since |
| The Permanent Secretary or Designate, Ministry of Education and Culture.(Mrs. Brenda Lettsome-Tye | Member – <i>ex-officio</i> | January 1, 2021 / 3 years | Continues | Reappointment |
| Director of Culture - Dr. Kathryn Smith | Member – <i>ex-officio</i> | January 1, 2021 / 3 years | Continues | Reappointment |
| Mr. Carnel Clyne | Chairman | March 27, 2019 / 3 years | Resigned June 11, 2020 | First appointment |
| Mr. Nicholas Bailey | Treasurer | March 27, 2019 / 3 years | December 31, 2020 Board reconstituted in January 2021 | First appointment |
| Ms. Lynette Harrigan | Public Relations Officer | March 27, 2019 / 2 years | December 31, 2020 / Term expired | Re- appointment |
| Mr. Samuel Hodge | Member | March 27, 2019 / 2 years | December 31, 2020 / Term expired | First appointment |
| Mr. Trefor Grant | Chairman | January 2017 / 2 years | Resigned December 30, 2018 | First appointment |
| Ms. Xavyrna Samuels | Deputy Chair | February 2018 / 3 years | Resigned March 1, 2019 | Reappointment |
| Mrs. Nashema Smith-McKenzie | Treasurer | February 2018 / 3 years | Resigned March 1, 2019 | First appointment |
| Ms. Kishma Baronville | Chairman | January 1, 2015 / 3 years | Resigned December 2016 | First appointment |
| Mrs. Jasmin Brewley | Member | January 1, 2015 / 3 years | Completed term in December 31, 2017 | First appointment |
| Mr. Aaron Parillon | Member | January 1, 2015 / 3 years | Completed term in December 31, 2017 | First appointment |
| Mr. Keith Gumbs | Member | January 1, 2015 / 3 years | Completed term in December 31, 2017 | First appointment |
| Mr. Frandie Martin | Member | January 1, 2015 / 3 years | Completed term in December 31, 2017 | First appointment |
| BVI Tourist Board Representative | Member – <i>ex-officio</i> | January 1, 2015 / 3 years | Completed term in December 31, 2017 | First Appointment |
| Mr. Aubrey Levons – Anegada Representative | Member | January 1, 2015 / 3 years | Completed term in December 31, 2017 | Re- appointment |
| Rev. Dr. Melvin Turnbull – Chair of Heritage Month | Member | July 1, 2014 / 3 years, 6 months | 31 st December, 2017 / Expiration of term | First appointment |

| Name | Role | Date Appointed / length of time expected to sit on board | Date ceased to be a member of the Board & reason for end of term | First Appointment / Re-appointment |
|---|--------|--|---|------------------------------------|
| Committee | | | | |
| Ms. Bernadette Brathwaite | Member | July 1, 2014 / 3 years, 6months | 31 st December, 2017 / Expiration of Term | First appointment |
| Mr. Marvin Blyden | Member | January 2018 / 3 years | Should have expiration of term in December 2020 / Did not attend any meetings. Was a former Chairman | Re-appointment |
| Dr. Richard Georges | Member | January 2018 / 3 years | Should have expiration of term in December 2020 / Did not attend any meetings | First Appointment |
| Mr. Lyndon Hodge | Member | January 2018 / 3 years | Should have expiration of term in December 2020/ Did not attend any meetings | Re-appointment |
| Mr. Ricky Callwood – Jost Van Dyke Representative | Member | January 2018 / 3 years | Should have expiration of term in December 2020/ Did not attend any meetings | First appointment |

11. Copies of (i) documents (such as CVs and references) of the members of the Boards appointed in the last three years which were put before the person/persons who made the decision to appoint that member; (ii) Cabinet decisions approving the appointment of members of the Boards; and (iii) Cabinet papers put before Cabinet seeking their decision on appointment of members of the Boards are exhibited at pages 43-188 of Exhibit 'MP-2'.
12. Where copies of documents within the categories set out in paragraph 11 above have not been exhibited, this is because such documents were found filled with mould and with pages stuck together due to them having being wet. I am therefore requesting assistance from the Cabinet Office to obtain copies of these documents.

Declarations of interest

13. There is no formal written guidance given to successful candidates on declarations of interest. However, when members of the Boards are appointed, there is an initial meeting with all of the individual Boards which the Minister and Permanent Secretary attend and introduce the members to each other. The Minister's vision is explained for the work of the relevant Board. All members are given a copy of the relevant legislation governing the Statutory Body and told that the relevant legislation is their main guide in carrying out their duties. Any other document relating to the work of the Statutory Body is also provided. A legally-trained person is sometimes invited to take members through the relevant legislation to ensure full understanding.
14. In the case of the College Board, it is standard practice for a retreat to be held when a new Board is appointed and all the various policies and procedures are explained. Prior to the retreat, a folder with all the relevant documents (such as Policy related to Hiring, giving of scholarships to staff members, the legislation, Governance Model, College Catalogue, Strategic plan/Priorities Plan, and information on Accreditation Policy) are provided to each member and the College Board is given a full report by the various Heads / Deans of the College regarding their respective portfolios. This retreat is organized

by the President of the College.

15. The processes set out at paragraphs 13 and 14 above have not changed in the last five years.

Performance of Board members

16. There is no formal monitoring process or assessment exercise for Board members. If Board members do not attend meetings, or if there is any other problem relating to members which may prevent the progress of work, the Chairman of the relevant Board writes to the Minister to have the member(s) replaced so that the work of the Statutory Body can progress.

Sworn by: Dr Marcia Potter)

On 25 June 2021)

At Road Town, Tortola)

Dr Marcia Potter

Before me

Notary/Commissioner of Oaths



**IN THE MATTER OF THE TERRITORY OF THE VIRGIN
ISLANDS COMMISSION OF INQUIRY 2021**

**AND THE COMMISSION OF INQUIRY ACT (CAP 239)
(THE 'ACT')**

**SECOND AFFIDAVIT OF DR
MARCIA POTTER**

| Health Services Authority | | |
|---------------------------|---|-----------------------------------|
| | Potential criticism | Evidence |
| 1 | <p>In May 2019 Cabinet approved the appointment of new members of the Health Services Authority Board. It appears from the documents that have been disclosed that:</p> <p>(1) No competency profile was compiled.</p> <p>(2) None of the board positions were advertised.</p> <p>(3) There was no independent or transparent process by which a suitable pool of candidates was identified.</p> <p>(4) There was no independent or transparent process by which proposed candidates were selected.</p> <p>(5) None of the candidates were interviewed at any stage prior to appointment.</p> <p>(6) No due diligence was carried out in respect of any of the proposed appointees.</p> <p>(7) No mention was made in the relevant Cabinet paper or minutes of the fact that Dr Venzen and Mrs Blaize-Cameron's appointments were revoked less than a month</p> | <p>COI013173</p> <p>COI013179</p> |

136

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| | <p>earlier.</p> <p>(8) It follows that no reasonable effort was made to identify and select the most suitable and qualified candidates for membership of the Health Services Authority Board.</p> | |
| | <p>RESPONSE</p> <p>During successive governments, over many years, it had not been the practice in the Virgin Islands Government to advertise vacancies on statutory boards or to hold a formal interview process (other than for executive posts). The ministries and departments have invariably applied the criteria specified in the relevant statute.</p> <p>Given the small size of the Virgin Islands and of the suitable pool of possible candidates, desk officers and permanent secretaries in the ministries and departments have been used to holding informal discussions both internal and external to identify willing candidates of appropriate standing and discussing them with the minister, as did ministers with their colleagues. Officials researched, considered and discussed with the minister the known credentials of possible appointees in the light of the functions they were to exercise. By these informal means, officials and ministers sought in good faith to find fit and proper persons to serve in these capacities on this and other Boards. All candidates were asked to submit their CVs prior to the decision of the Cabinet.#</p> <p>The reappointment of and Dr Yvonne Renee Venzen and Mrs Kishelle Blaize members was consistent with achieving a balance of expertise in the new Board. The Cabinet Paper specifically mentioned that each of them had served on the BVIHSA Board</p> | <p>137</p> |

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| | until 16 May 2019. No confusion or misapprehension was likely to be caused by the fact that the Cabinet Paper did not specifically mention that those appointments had been revoked. | |
| 2 | <p>In relation to the May 2019 appointments, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out, and</p> <p>(2) The procedures set out at paragraph 6.8 of the Handbook were not followed.</p> | COI010416 |
| | <p>RESPONSE</p> <p>There is no basis for the assertion that the steps contemplated by ¶6.8 of the Cabinet Handbook were ignored. Candidates are asked, at the time they are approached to ascertain their willingness to serve and officials are mindful of the need to avoid such conflicts when considering the suitability of a candidate. The Cabinet Memorandum sets out the information required by the Handbook and the considerations ¶6.8 mandates were part of the informal process of discussion and decision-making that led to the proposals to the Cabinet.</p> | |

4 September 2021

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION
OF INQUIRY 2021**

AND THE COMMISSION OF INQUIRY ACT (CAP 237) (THE 'ACT')

**WRITTEN RESPONSE OF THE HONOURABLE CARVIN MALONE, MINISTER OF
HEALTH AND SOCIAL DEVELOPMENT TO WARNING LETTER DATED 24
AUGUST 2021**

This is the Written Response of Honourable Carvin Malone to potential criticisms of him as set out in Appendix A of the letter dated 24 August 2021 sent to him by Andrew King, Senior Solicitor to the Territory of the Virgin Islands Commission of Inquiry 2021.

| Health Services Authority Board | | |
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| | Potential criticism | Evidence |
| 1 | <p>On 30 April 2019, Cabinet decided to revoke the memberships of all but one of the Health Services Authority Board (save for ex officio members) with immediate effect at the instigation of Carvin Malone, Minister for Health and Social Development. It appears from the evidence that this was done for the following reasons (at COI013129) :</p> <p><i>(a) "Three of the aforementioned members... were appointed to the Board in January 2019 by the then Minister for Health and Social Development (now the Leader of the Opposition). At present, the Leader of the Opposition is entitled to appoint two persons to serve on the Board. As such, in an effort to conform with Section 5(3) of the Act, revocation of these appointments is necessary to allow for the balance envisaged by the Act..."</i></p> <p><i>(b) "Additionally, Professor Joseph Federick is stationed overseas and to date has been unable to physically attend meetings of the Board. In an effort to allow the Board to function at maximum efficiency, the preference is to have</i></p> | <p>COI013129</p> <p>BVI Health Services Authority Act, 2004- this is at pages 1-29 of Exhibit TB-2</p> <p>(COI036641)</p> <p>to the Second Affidavit of Tasha Bertie (COI036642).</p> <p>COI013122</p> <p>COI013108</p> |

members who are in a position to physically attend meetings and actively participate on the various committees of the Board as stipulated in the Act...

(c) "Ms. Alva McCall was first appointed to the Board while employed by a Statutory Body. However, now that she is working as a Public Officer in a capacity where decisions are made that could impact the Health Services Authority, it would be best that she no longer serve as a member on the Board..."

It appears from the evidence that the reasons given for immediate revocation of the membership of the Health Services Authority Board were insufficient:

i. The Act deals with the possibility of changing governments through the imposition of term limits for Board members (Schedule 1 section 1), meaning that revocation on the basis described at [a] above is unnecessary. Further, Section 5(5)(1) specifies that the Leader of the Opposition is entitled to nominate two Board members. This is not the same as the Leader of the Opposition being entitled to have two of his or her preferred members on the Board at all times;

ii. The reason given at [b] above is at odds with the fact that Dr Joel Stevens was appointed as Chairman of the Board in May 2019 despite working overseas in Washington DC (COI013108);

iii. The removal of five members of the Board appears not to have been for any of the reasons specified in Schedule 1 section 3. Therefore, this removal appears to be contrary to the Act.

In general, the revocation of almost all of the members of the

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| | <p>Health Services Authority Board with insufficient justification gives rise to the following criticisms:</p> <p>a. The revocation of the membership of the Health Services Authority Board failed adequately to provide for independent expertise and oversight of the Board;</p> <p>b. The policy of revoking the membership of statutory boards with every new administration fails adequately to provide for independent expertise and oversight of all such boards.</p> | |
| | <p>RESPONSE</p> <p>It was Government policy to reinvigorate board appointments generally. The Health Services Authority Board (BVIHSA Board) illustrates the flexible approach taken with that policy, as demonstrated by the re-appointment of some members of the BVIHSA Board. As set out in Memo 160/2019 changes were made in an effort to maintain an effective and well balanced board in furtherance of the aims of the Act. The Attorney General advised that the reasons in the Cabinet Paper appeared to be a good basis for the exercise of the discretion to revoke.</p> <p>As well as the <i>ex officio</i> members, the following members were re-appointed:</p> <ol style="list-style-type: none"> 1. Dr Yvonne Renee Venzen 2. Mrs Kishelle Blaize <p>The practical effect of this was that the BVIHSA Board was not revoked on a wholesale basis. Rather, particular BVIHSA Board members' appointments were revoked for reasons that were set out in Cabinet Paper.</p> <p>The reappointment of the existing members was consistent with achieving a balance of expertise in the new Board.</p> | <p>See Memo No.160/2019</p> |

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| | <p>While advising that the Cabinet must act in good faith and reasonably and for the purposes of the Act, the Attorney General did not advise that the proposed revocation would be unlawful. To the contrary, the Attorney General advised in <i>positive</i> terms that the reasons provided in the Cabinet Paper would appear to be a good basis for the exercise of the discretion to revoke. Cabinet was entitled to place reasonable reliance on that advice.</p> <p>Moreover, there was no reason to suppose that new members, with the inclusion of some of those who had previously served or otherwise, could not provide effective and independent oversight of its management and activities. Seasoned former members of the Board, Dr Joel Stevens and Lemuel Smith were appointed. There is no evidence that any of the appointees are not independent or that they lack expertise. The resumes of the nominees are exemplary, and it is not understand from the potential criticism to be suggested that any nominee is not well-qualified to carry out the role.</p> <p>On the issue of availability to attend meetings: Dr Stevens is a Virgin Islander who visited the Territory very regularly, and no difficulties were anticipated in his attending meetings. Historically he has visited the BVI on a monthly basis for work purposes, so no issues were foreseen in relation to his attendance as Chairman of the BVIHSA Board. He was not merely a visitor.</p> | |
| 2 | <p>In May 2019 Cabinet approved the appointment of new members of the Health Services Authority Board. It appears from the documents that have been disclosed that:</p> <ul style="list-style-type: none"> (1) No competency profile was compiled. (2) None of the board positions were advertised. (3) There was no independent or transparent process by which | <p>COI013173 COI013179</p> |

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| | <p>a suitable pool of candidates was identified.</p> <p>(4) There was no independent or transparent process by which proposed candidates were selected.</p> <p>(5) None of the candidates were interviewed at any stage prior to appointment.</p> <p>(6) No due diligence was carried out in respect of any of the proposed appointees.</p> <p>(7) No mention was made in the relevant Cabinet paper or minutes of the fact that Dr Venzen and Mrs Blaize-Cameron's appointments were revoked less than a month earlier.</p> <p>(8) It follows that no reasonable effort was made to identify and select the most suitable and qualified candidates for membership of the Health Services Authority Board.</p> | |
| | <p>RESPONSE</p> <p>During successive governments, over many years, it had not been the practice in the Virgin Islands Government to advertise vacancies on statutory boards or to hold a formal interview process (other than for executive posts). The ministries and departments have invariably applied the criteria specified in the relevant statute.</p> <p>Given the small size of the Virgin Islands and of the suitable pool of possible candidates, desk officers and permanent secretaries in the ministries and departments have been used to holding informal discussions both internal and external to identify willing candidates of appropriate standing and discussing them with the minister, as did ministers with their colleagues. Officials researched, considered and discussed with the minister the known credentials of possible appointees in the light of the functions they were to exercise. By these informal means, officials and ministers sought in good faith to find fit and proper persons to serve in these capacities on this and other Boards. All candidates were asked to submit their CVs prior to the decision of the Cabinet.</p> | |

It has always lain within the responsibility and power of the Governor to instigate a change in the standard practice of public officers and the advice given to ministers on such a subject. The newly elected and appointed Cabinet was not then advised by the Attorney General, the Governor or the Deputy Governor that appointments should be advertised, and candidates interviewed, or that the long-standing approach of the public service they inherited, and the advice to ministers in making such appointments, should be replaced by a wholly new system or that it was or might be unlawful.

It was only in May 2020, that the Governor, who was well aware of the existing practice, suggested a “shift to a more transparent process” for critical leadership posts such as the Chairmen of Boards. It is notable that even then, the Governor did not extend his recommendation to the appointment of ordinary board members.

The Government fully accepts that the appointments process requires modernisation and has encouraged measures to change Government practice by developing a process of advertising, interviewing, and “ranking” candidates for the membership of boards. For example, that process was followed in connection with recent appointments to the Recovery and Development Agency. The Cabinet has suggested the publication of cross-departmental written guidance for public officers in advising ministers on making such appointments similar to the UK Cabinet Office’s Governance Code on Public Appointments.

As stated above, the reappointment of and Dr Yvonne Renee Venzen and Mrs Kishelle Blaize members was consistent with achieving a balance of expertise in the new

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| | <p>Board. The Cabinet Paper specifically mentioned that each of them had served on the BVIHSA Board until 16 May 2019. No confusion or misapprehension was likely to be caused by the fact that the Cabinet Paper did not specifically mention that those appointments had been revoked.</p> | |
| 3 | <p>In relation to the May 2019 appointments, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook.</p> <p>In particular:</p> <p>(1) No conflict checks were carried out, and</p> <p>(2) The procedures set out at paragraph 6.8 of the Handbook were not followed.</p> | COI010416 |
| | <p>RESPONSE</p> <p>There is no basis for the assertion that the steps contemplated by ¶6.8 of the Cabinet Handbook were ignored. Candidates are asked, at the time they are approached to ascertain their willingness to serve and officials are mindful of the need to avoid such conflicts when considering the suitability of a candidate..The Cabinet Memorandum sets out the information required by the Handbook and the considerations ¶6.8 mandates were part of the informal process of discussion and decision-making that led to the proposals to the Cabinet.</p> <p>As is plain from the Cabinet Minute, Cabinet noted that Mr Lemuel Smith was employed at a private company owned by the Minister for Health and Social Development, thereby identifying and considering the potential conflict. No such conflict was deemed to have existed as a result of the appointment of Mr. Lemuel Smith. His appointment was on the basis of his exemplary services rendered on previous BVIHSA Boards</p> | <p>See HB Page 3271</p> |

31 August 2021

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION
OF INQUIRY 2021**

AND THE COMMISSION OF INQUIRY ACT (CAP 237) (THE 'ACT')

**WRITTEN RESPONSE OF MR SMITH-ABBOTT, ACTING PERMANENT
SECRETARY, MINISTRY FOR NATURAL RESOURCES, LABOUR AND
IMMIGRATION TO WARNING LETTER DATED 24 AUGUST 2021**

This is the Written Response of Mr Joseph Smith-Abbott to potential criticisms of him as set out in Appendix A of the letter dated 24 August 2021 sent to him by Andrew King, Senior Solicitor to the Territory of the Virgin Islands Commission of Inquiry 2021.

Mr Smith-Abbott took up his role as Acting Permanent Secretary in the Ministry of Natural Resources, Labour and Immigration on 17 May 2021, which is after the facts and matters set out in the potential criticisms.

| | Social Security Board | |
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| | Potential criticism | Evidence |
| 1 | <p>In May 2020 the cabinet approved the appointment of new members of the Social Security Board (“the May 2020 Appointments”). It appears from the documents that have been disclosed that:</p> <p>(1) No competency profile was compiled.</p> <p>(2) None of the board positions were advertised.</p> <p>(3) There was no independent or transparent process by which a suitable pool of candidates was identified.</p> <p>(4) There was no independent or transparent process by which proposed candidates were selected.</p> <p>(5) None of the candidates were interviewed at any stage prior to appointment.</p> <p>(6) No due diligence was carried out in respect of any of the proposed appointees.</p> <p>(7) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the Social Security Board.</p> | <p>COI013386</p> <p>147</p> |

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| | <p>RESPONSE</p> <p>During successive governments, over many years, it had not been the practice in the Virgin Islands Government to advertise vacancies on statutory boards or to hold a formal interview process (other than for executive posts). The ministries and departments have invariably applied the criteria specified in the relevant statute. Given the small size of the Virgin Islands and of the suitable pool of possible candidates, desk officers and permanent secretaries in the ministries and departments have been used to holding informal discussions both internal and external to identify willing candidates of appropriate standing and discussing them with the minister, as did ministers with their colleagues. Officials researched, considered and discussed with the minister the known credentials of possible appointees in the light of the functions they were to exercise. By these informal means, officials and ministers sought in good faith to find fit and proper persons to serve in these capacities on this and other Boards. All candidates were asked to submit their CVs prior to the decision of the Cabinet.</p> | |
| 2 | <p>In relation to the May 2020 Appointments, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out on potential appointees</p> <p>(2) Some of the appointees were relatives of Cabinet</p> | <p>COI003244</p> <p>COI013380</p> <p>COI013386</p> <p>COI010416</p> |

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| | Members but these relationships were not described in the cabinet papers and on at least one occasion the relevant cabinet member did not excuse himself when the nomination was being considered (see below). | |
| | <p>RESPONSE</p> <p>All efforts are made in the selection process to avoid any potential conflicts in the persons selected for these roles.</p> <p>The reference to a Cabinet Minister not excusing himself is not particularized.</p> | |
| 3 | The criticisms in (1) and (2) above also apply to the appointment of Jeanette Scatliffe-Boynes. | COI009054 COI009055 |
| | <p>RESPONSE</p> <p>Ms Scatliffe-Boynes has been Deputy Director of the SSB since 1992.</p> <p>There was an interview process prior to the recommendation of Ms Scatliffe-Boynes as acting director. Ms Scatliffe-Boynes, Mr Roy Barry and Ms Michelle Todman-Smith were all interviewed, and Ms Scatliffe-Boynes succeeded in that process.</p> <p>The SSB Board made the recommendation to the Minister to have Ms Scatliffe-Boynes take an 'acting' role, and the former director then proceeded to go on pre-retirement leave.</p> <p>The recommendation was accepted by the Minister, and Ms Scatliffe-Boynes' name was forwarded to Cabinet and once approved, it moved on to the House of Assembly for ratification/negative resolution.</p> | |

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| | <p>Ms Scatliffe-Boynes has been the Deputy Director for many years, she had the experience and was educationally competent to hold the post. Given that experience, the suggestion that she might not be a fit and proper person is unrealistic. Similarly, given Ms Scatliffe-Boynes' role as Deputy Director, the criticism about conflict checking appears to be misplaced.</p> <p>Again, the reference to a Cabinet Minister not excusing himself is not particularized.</p> | |
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4 September 2021

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION
OF INQUIRY 2021**

AND THE COMMISSION OF INQUIRY ACT (CAP 237) (THE 'ACT')

**WRITTEN RESPONSE OF HONOURABLE VINCENT O WHEATLEY, MINISTER
FOR NATURAL RESOURCES, LABOUR AND IMMIGRATION TO WARNING
LETTER DATED 24 AUGUST 2021**

This is the Written Response of Honourable Vincent O Wheatley to potential criticisms of him as set out in Appendix A of the letter dated 24 August 2021 sent to him by Andrew King, Senior Solicitor to the Territory of the Virgin Islands Commission of Inquiry 2021.

| Social Security Board | | |
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| | Potential criticism | Evidence |
| 1 | <p>In May 2020 the cabinet approved the appointment of new members of the Social Security Board ("the May 2020 Appointments"). It appears from the documents that have been disclosed that:</p> <ul style="list-style-type: none"> (1) No competency profile was compiled. (2) None of the board positions were advertised. (3) There was no independent or transparent process by which a suitable pool of candidates was identified. (4) There was no independent or transparent process by which proposed candidates were selected. (5) None of the candidates were interviewed at any stage prior to appointment. (6) No due diligence was carried out in respect of any of the proposed appointees. (7) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the Social Security Board. | COI013386 |
| | <p>RESPONSE</p> <p>During successive governments, over many years, it</p> | |

had not been the practice in the Virgin Islands Government to advertise vacancies on statutory boards or to hold a formal interview process (other than for executive posts). The ministries and departments have invariably applied the criteria specified in the relevant statute. Given the small size of the Virgin Islands and of the suitable pool of possible candidates, desk officers and permanent secretaries in the ministries and departments have been used to holding informal discussions both internal and external to identify willing candidates of appropriate standing and discussing them with the minister, as did ministers with their colleagues. Officials researched, considered and discussed with the minister the known credentials of possible appointees in the light of the functions they were to exercise. By these informal means, officials and ministers sought in good faith to find fit and proper persons to serve in these capacities on this and other Boards. All candidates were asked to submit their CVs prior to the decision of the Cabinet.

It has always lain within the responsibility and power of the Governor to instigate a change in the standard practice of public officers and the advice given to ministers on such a subject. The newly elected and appointed Cabinet was not during that time advised by the Attorney General, the Governor or the Deputy Governor that the long-standing approach of the public service they inherited, and the advice to ministers in making such appointments, should be replaced by a wholly new system or that it was or might be unlawful.

It was only in May 2020, that the Governor, who was well aware of the existing practice, suggested a “shift to a more transparent process” for critical leadership

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| | <p>posts such as the Chairmen of Boards. It is notable that even then, the Governor did not extend his recommendation to the appointment of ordinary board members.</p> <p>The Government fully accepts that the appointments process requires modernisation and has encouraged measures to change Government practice by developing a process of advertising, interviewing, and “ranking” candidates for the membership of boards. The Honourable Minister Wheatley intends to put such a structure in place. The Cabinet has suggested the publication of cross-departmental written guidance for public officers in advising ministers on making such appointments similar to the UK Cabinet Office’s Governance Code on Public Appointments.</p> | |
| 2 | <p>In relation to the May 2020 Appointments, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out on potential appointees</p> <p>(2) Some of the appointees were relatives of Cabinet Members but these relationships were not described in the cabinet papers and on at least one occasion the relevant cabinet member did not excuse himself when the nomination was being considered (see below).</p> | <p>COI003244 COI013380 COI013386</p> <p>COI010416 (Cabinet Handbook)</p> |
| | <p>RESPONSE</p> <p>All efforts are made in the selection process to avoid any potential conflicts in the persons selected for these roles.</p> <p>The reference to a Cabinet Minister not excusing himself is not particularized. We do not understand</p> | |

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| | there to be any evidence to suggest that the Honourable Minister Wheatley ought to have excused himself. | |
| 3 | In December 2020, Cabinet removed the Director of the SSB, Antoinette Skelton and appointed Mrs Jeanette Scatliffe-Boynes as Director for a period of 18 months. It appears from the evidence that a) the appointment was not subject to a negative resolution of the Legislative Council and b) no steps were taken to ascertain whether Mrs Skelton was a “fit and proper person”. The appointment was therefore made in breach of Section 7 of the Ordinance. | COI009054 HB page 3197 COI009055 HB page 3201 Social Security Ordinance |
| | RESPONSE This potential criticism is not understood: Ms Skelton became the director of the Social Security Board in 1990. | |
| 4 | The criticisms in (1) and (2) above also apply to the appointment of Jeanette Scatliffe-Boynes. | COI009054 HB page 3197 COI009055 HB page 3201 |
| | RESPONSE Ms Scatliffe-Boynes has been Deputy Director of the SSB since 1992. There was an interview process prior to the recommendation of Ms Scatliffe-Boynes as acting director. Ms Scatliffe-Boynes, Mr Roy Barry and Ms Michelle Todman-Smith were all interviewed, and Ms | |

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| | <p>Scatliffe-Boynes succeeded in that process.</p> <p>The SSB Board made the recommendation to the Minister to have Ms Scatliffe-Boynes take an 'acting' role, and the former director then proceeded to go on pre-retirement leave.</p> <p>The recommendation was accepted by the Minister, and Ms Scatliffe-Boynes' name was forwarded to Cabinet and once approved, it moved on to the House of Assembly for ratification/negative resolution.</p> <p>Ms Scatliffe-Boynes has been the Deputy Director for many years, she had the experience and was educationally competent to hold the post. Given that experience, the suggestion that she might not be a fit and proper person is unrealistic. Similarly, given Ms Scatliffe-Boynes' role as Deputy Director, the criticism about conflict checking appears to be misplaced.</p> <p>Again, the reference to a Cabinet Minister not excusing himself is not particularized. We do not understand there to be any evidence to suggest that the Honourable Minister Wheatley ought to have excused himself.</p> | |
| 5 | <p>In May 2020, Patsy Lake (representing employers), Dereck Marshall (representing employees) and Lyra George (representing employees) were appointed to the SSB but there is no indication in the papers that the Minister consulted on the appointments as required by paragraphs 2 and 3 of the Schedule to the Ordinance.</p> | <p>COI003244 HB page 3189</p> <p>COI013380 HB page 3195</p> <p>COI013386 HB page 3187</p> <p>Social Security</p> |

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| | | Ordinance |
| | <p>RESPONSE</p> <p>The Attorney General reviewed the draft Cabinet Papers and discerned no adverse legal implications.</p> | |
| 6 | <p>In May 2020, Pasty Lake was appointed Deputy Chairman but there is no indication that the Minister attempted to agree her appointment with the Leader of the Opposition. This would appear to be a breach of paragraph 4 of the Schedule to the Ordinance.</p> | <p>COI003244 HB page 3189</p> <p>COI013380 HB page 3195</p> <p>COI013386 HB page 3187</p> <p>Social Security Ordinance</p> |
| | <p>RESPONSE</p> <p>The Attorney General reviewed the draft Cabinet Papers and did not so advise or discern any adverse legal implications.</p> | <p>See HB page 3189</p> |

31 August 2021

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION
OF INQUIRY 2021**

AND THE COMMISSION OF INQUIRY ACT (CAP 237) (THE 'ACT')

**WRITTEN RESPONSE OF DR O'NEAL-MORETON, PERMANENT
SECRETARY, PREMIER'S OFFICE TO WARNING LETTER DATED 24
AUGUST 2021**

This is the Written Response of Dr Carolyn O'Neal-Moreton to potential criticisms of her as set out in Appendix A of the letter dated 24 August 2021 sent to her by Andrew King, Senior Solicitor to the Territory of the Virgin Islands Commission of Inquiry 2021.

Dr O'Neal-Morton took up her role as Permanent Secretary in the Premier's Office in March 2020, which is after the facts and matters set out in the potential criticisms.

| BVI Electricity Corporation | | |
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| | Potential criticism | Evidence |
| 1 | <p>On 25th March 2019¹ the membership of the Board of the BVI Electricity Corporation was revoked by Cabinet decision, effective on 22nd April 2019.</p> <p>On 7th November 2019, save for the position of Chair, the cabinet approved the appointment of new members of the BVI Electricity Corporation Board. It appears from the evidence that:</p> <ul style="list-style-type: none">(1) No competency profile was compiled.(2) None of the Board positions were advertised.(3) There was no independent or transparent process by which a suitable pool of candidates was identified.(4) There was no independent or transparent process by which proposed candidates were selected.(5) None of the candidates were interviewed at any stage prior to appointment.(6) No due diligence was carried out in respect of any of the | <p>COI003026</p> <p>COI002900</p> <p>COI003103</p> <p>COI003238</p> <p>COI011009</p> <p>COI010416</p> |

¹ Date taken from COI002823

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| | <p>proposed appointees.</p> <p>(7) None of the candidates appear to have been asked to submit their resumes/CVs prior to the Cabinet meeting of the 7th November 2019 at which these individuals were identified and the Cabinet was asked to approve their appointment.</p> <p>(8) No fit and proper test was applied.</p> <p>(9) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the BVI Electricity Corporation Board.</p> <p>Moreover, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out, and;</p> <p>(2) The procedures in paragraph 6.8 of the Handbook were not followed.</p> | |
| | <p>RESPONSE</p> <p>During successive governments, over many years, it had not been the practice in the Virgin Islands Government to advertise vacancies on statutory boards or to hold a formal interview process (other than for executive posts). The ministries and departments have invariably applied the criteria specified in the relevant statute. Given the small size of the Virgin Islands and of the suitable pool of possible candidates, desk officers and permanent secretaries in the ministries and departments have been used to holding informal discussions both internal and external to identify willing candidates of appropriate standing and discussing them with the minister, as did ministers with their colleagues. Officials researched, considered and discussed with the minister the known credentials of possible appointees in the light of the functions they were to exercise. By these informal means, officials</p> | |

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| | <p>and ministers sought in good faith to find fit and proper persons to serve in these capacities on this and other Boards. All candidates were asked to submit their CVs prior to the decision of the Cabinet.</p> <p>There is no basis for the assertion that the steps contemplated by ¶6.8 of the Cabinet Handbook were ignored. Candidates are asked, at the time they are approached to ascertain their willingness to serve, if they might have any conflict of interest, and officials are mindful of the need to avoid such conflicts when considering the suitability of a candidate. The Cabinet Memorandum sets out the information required by the Handbook and the considerations ¶6.8 mandates were part of the informal process of discussion and decision- making that led to the proposals to the Cabinet.</p> | |
| 2 | <p>A position on the Board became vacant following the death of a member. On 18th May 2020, Violet de Castro was recommended to the Cabinet for appointment. At a Cabinet meeting on 3rd June 2020, the Cabinet approved Ms de Castro's appointment effective from 25th May 2020. The criticisms at 2 above apply equally to this appointment.</p> | <p>COI003291 COI002952 COI003195</p> |
| | <p>RESPONSE</p> <p>Reference is made to the Dr O'Neal Morton's earlier response.</p> | |

| BVI Tourist Board | | |
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| | Potential criticism | Evidence |
| 1 | <p>On March 27th 2019, Cabinet decided to revoke the entire membership of the BVI Tourist Board (save for ex officio members) with immediate effect.</p> <p>In July 2019, a new board membership was recommended to Cabinet to come into effect on August 1st 2019. It appears from the evidence that:</p> <ul style="list-style-type: none"> (1) No competency profile was compiled. (2) None of the Board positions were advertised. (3) There was no independent or transparent process by which a suitable pool of candidates was identified. (4) There was no independent or transparent process by which proposed candidates were selected. (5) None of the candidates were interviewed at any stage prior to appointment. (6) No due diligence was carried out in respect of any of the proposed appointees. (7) No fit and proper test was applied. (8) None of the candidates had been asked to submit their resumes/CVs prior to the Cabinet in July 2019 at which these individuals were identified and the Cabinet was asked to approve their appointment. (9) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the BVI Tourist board. <p>Moreover, It appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <ul style="list-style-type: none"> (1) No conflict checks were carried out, and; (2) The procedures in paragraph 6.8 of the Handbook were not followed. | <p>COI002895COI003044</p> <p>COI003190</p> <p>COI009723</p> <p>COI010416</p> |
| | RESPONSE | |
| | Reference is made to the Dr O'Neal Moreton's earlier | |

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| | responses. | |
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| BVI Airports Authority | | |
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| | Potential criticism | Evidence |
| 1 | <p>In April 2019, all of the previous members of the BVIAA Board (apart from ex-officio members) resigned. On 23 May 2019, Cabinet decided to appoint new members of the BVIAA Board. It appears from the evidence that:</p> <ul style="list-style-type: none"> (1) None of the board positions had been advertised. (2) There was no process by which a suitable pool of candidates were identified. (3) There was no process by which proposed candidates were identified. (4) None of the candidates were interviewed at any stage prior to appointment. (5) No due diligence was carried out in respect of any of the proposed appointees. (6) Some of the candidates failed to submit CVs/resumes prior to their proposed membership. (7) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the Board. <p>Moreover, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <ul style="list-style-type: none"> (1) No conflict checks were carried out, and; (2) The procedures in paragraph 6.8 of the Handbook were not followed. | <p>COI013151 COI013156 COI037053 COI010416</p> |
| | <p>RESPONSE</p> <p>Please see earlier responses on the long-standing approach and practice of the public service and successive governments in appointing members of statutory boards.</p> | |

| BVI Ports Authority | | |
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| | Potential criticism | Evidence |
| 1 | <p>On March 27th 2019, Cabinet decided to revoke the entire membership of the BVI Ports Authority board (save for ex officio members) with immediate effect at the instigation of the Premier.</p> <p>In May 2019, prospective members of the BVI Port Authority Board were contacted to be informed that they had been nominated for membership of the Board.</p> <p>It appears from the evidence that:</p> <ol style="list-style-type: none"> (1) No competency profile was compiled. (2) None of the board positions were advertised. (3) There was no independent or transparent process by which a suitable pool of candidates was identified. (4) There was no independent or transparent process by which proposed candidates were selected. (5) None of the candidates were interviewed at any stage prior to appointment. (6) No due diligence was carried out in respect of any of the proposed appointees. (7) No fit and proper test was applied (8) None of the candidates had been asked to submit their resumes/CVs prior to the Cabinet meeting of the 6th May 2019 at which these individuals were identified and the Cabinet was asked to approve their appointment. (9) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the BVI Port Authority board. <p>Moreover, It appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <ol style="list-style-type: none"> (1) No conflict checks were carried out, and; (2) The procedures in paragraph 6.8 of the Handbook were not followed. | <p>COI002932</p> <p>COI002965</p> <p>COI002976</p> <p>COI003003</p> <p>COI003312</p> <p>COI002955</p> <p>COI010416</p> |

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| | RESPONSE | |
| | Reference is made to the earlier responses on these matters. | |

| | Telecommunications Regulatory Commission (“TRC”) | |
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| | Potential criticism | Evidence |
| 1 | <p>On 5 February 2020, the cabinet decided that a) Mr Vance Lewis be appointed as Commissioner and Chairman of the TRC for a period of 3 years with effect from 1 February 2020 and b) Mr Vincent Wattley be appointed as Commissioner and Deputy Chairman of the Board, also for a period of 3 years with effect from 1 February 2020. It appears from the documents that have been disclosed that:</p> <p>(1) No competency profile was compiled for either nominee.</p> <p>(2) The positions were not advertised.</p> <p>(3) There was no independent or transparent process by which a suitable pool of candidates was identified.</p> <p>(4) There was no independent or transparent process by which proposed candidates were selected.</p> <p>(5) None of the candidates were interviewed at any stage prior to appointment.</p> <p>(6) No due diligence was carried out in respect of any of the proposed appointees.</p> <p>(7) None of the candidates appear to have been asked to submit their resumes/CVs prior to the Cabinet meeting of 5 February 2020 at which these individuals were identified and the Cabinet was asked to approve their appointment.</p> <p>(8) No fit and proper test was applied.</p> <p>(9) No steps were taken to establish that Mr Lewis or Mr Wattley were not disqualified for appointment under section 7(5) of the Telecommunications Act 2006 despite this apparently being standard practice and despite legal advice to this effect.</p> <p>(10) Accordingly, it appears from the evidence that (1) no effort was made to identify and select the most suitable and</p> | <p>COI009754</p> <p>COI009758</p> <p>Paragraph 7(c) of COI036644</p> <p>Section 7, Telecommunications Act 2006.</p> |

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| | qualified candidates as commissioners of the TRC; and (2) the appointments were ultra vires the Telecommunications Act 2006. | |
| | <p>RESPONSE</p> <p>Reference is made to earlier responses about the informal processes used to identify suitable candidates. Both Mr Lewis and Mr Wattley were consulted about the terms of section 7(5) of the Telecommunications Act 2006 and made the necessary statutory declarations. Their appointments were not ultra vires the Act.</p> <p>A copy of Mr Lewis's statutory declaration is enclosed. A search is underway for a copy of Mr Wattley's statutory declaration, and this will be provided to the COI Team if found.</p> | |
| 2 | <p>In relation to the appointment of Mr Lewis and Mr Wattley, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out, and;</p> <p>(2) The procedures in paragraph 6.8 of the Handbook were not followed.</p> | COI010416 |
| | <p>RESPONSE</p> <p>Reference is made to earlier responses. Both were consulted about any possible conflicts of interest and there is no basis for the assertion that there was “no compliance” with the Cabinet Handbook requirements for the submission of candidates for statutory board appointments to the Cabinet.</p> | |
| 3 | On 16 February 2020, the cabinet decided that a) Ms Joycelyn Murraine and b) Mr Bevis Sylvester be appointed as Commissioners for a period of 2 years commencing 20 | <p>COI009750</p> <p>COI013540</p> |

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| | February 2020. The criticisms in 1 and 2 above apply equally to these appointments. | |
| | <p>RESPONSE</p> <p>Reference is made to earlier responses.</p> <p>Mr. Sylvester is known for his very successful regional management of Delta Petroleum (Caribbean) Limited over many years, building it up to one of the leading locally run businesses in the Virgin Islands with operations in Montserrat, St Kitts, Nevis and Anguilla. He is well qualified to serve on the Telecommunications Regulatory Commission.</p> <p>Ms Murraine is well qualified for her role on the Commission. She was a senior figure in the Virgin Islands Banking Industry, having been the Managing Director of Scotia Bank and a director of the Bank of Asia. She possesses proven leadership abilities.</p> | |

4 September 2021

IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021

AND THE COMMISSION OF INQUIRY ACT (CAP 237) (THE 'ACT')

WRITTEN RESPONSE OF THE HONOURABLE ANDREW FAHIE, PREMIER AND MINISTER OF FINANCE TO WARNING LETTER DATED 24 AUGUST 2021

This is the Written Response of Honourable Andrew Fahie to potential criticisms of him as set out in Appendix A of the letter dated 24 August 2021 sent to him by Andrew King, Senior Solicitor to the Territory of the Virgin Islands Commission of Inquiry 2021.

| BVI Electricity Corporation | | |
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| 1 | <p>On 25 March 2019 the membership of the Board of the BVI Electricity Corporation was revoked by Cabinet decision, effective on 22 April 2019.</p> <p>The justification for the revocation was as follows: <i>"The British Virgin Islands Electricity Corporation has achieved its goal of completing Phase V Development and divesting to renewable sources of energy. The Government now has a new mandate which necessitates revamping the Board membership coupled with a new strategic goal of ensuring that there is adequate and consistent supply of electricity for homes and business 24/7. Cabinet Members are asked to consider and concur with the decision sought"</i> and a broader policy set out in the following terms by the Premier; <i>"a new government has assumed office with a new mandate, and as a result, he has decided to reassess the membership of all Boards in a manner that will allow the mandate given by the people to be expedited in a transparent and accountable manner. Furthermore, the Premier stated that he would be recommending a policy that the membership on Boards would extend for the duration of the Administration's term in office".</i></p> | <p>COI002823, COI002954, COI002959, COI003007, COI013074, COI003105</p> |

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| | <p>It appears from the evidence that:</p> <p>(1) The reasons given for immediate revocation of the membership of the BVI Electricity Board were insufficient.</p> <p>(2) There was insufficient or no regard given to the application of section 4 (b) of the BVI Electricity Ordinance, 1978 (Act No. 7 of 1978) , namely, that appointments should be made “having taken into account the desirability of such interests as are affected by the Corporation’s activities being represented”.</p> <p>(3) The revocation of the membership of the BVI Electricity Board failed to adequately provide for independent expertise and oversight of the Board.</p> <p>(4) The policy of revoking the membership of statutory boards with every new administration fails to adequately provide for independent expertise and oversight of all such boards.</p> <p>The decision to replace all of the members of the Board failed adequately to take into account legal advice indicating that the policy of replacing the membership of statutory boards with every new administration may be unconstitutional.</p> | |
| | <p>RESPONSE</p> <p>There was nothing to stop the Cabinet from adopting the policy. It was common practice on the assumption of office of a new government for some or all the membership of statutory boards to be changed. The legal advice was couched in equivocal terms and referred to a risk of conflict with the constitution. In any event, the revocation was not carried out in a discriminatory manner. Consistent with its programme of comprehensive modernisation and reform, the new Government wanted to make radical changes to ensure greater coherence and cooperation between the Boards in related sectors and that the exercise of the functions of</p> | <p>Memo 103/2019 at ¶4,5</p> |

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| | <p>the BVI Electricity Board was reinvigorated and pursued with greater urgency by the inclusion of “new, innovative and progressive minded members” including young persons. The policy envisaged the possible reappointment of some of the existing members in the interests of achieving a balance of expertise in the new Board. While advising that the Cabinet must act in good faith and rationally in the light of the statutory purpose, the Attorney General did not advise that the proposed revocation would be unlawful based on that policy. The Cabinet was not advised that Section 4 (b) of the BVI Electricity Ordinance, 1978 (Act No. 7 of 1978) was relevant to its considerations. In any event, it was not relevant to the revocation of the appointments. Furthermore, there was no reason to suppose that new members, with the inclusion of some of those who had previously served or otherwise, could not provide effective and independent oversight of its management and activities. Indeed, that is precisely what they have done.</p> | <p>Memo 110/2019</p> |
| 2 | <p>On 7 November 2019, save for the position of Chair, the cabinet approved the appointment of new members of the BVI Electricity Corporation Board. It appears from the evidence that:</p> <ol style="list-style-type: none"> (1) No competency profile was compiled. (2) None of the Board positions were advertised. (3) There was no independent or transparent process by which a suitable pool of candidates was identified. (4) There was no independent or transparent process by which proposed candidates were selected. (5) None of the candidates were interviewed at any stage prior to appointment. (6) No due diligence was carried out in respect of any of the proposed appointees. None of the candidates appear to have been asked to submit their resumes/CVs prior to the Cabinet meeting of the 7 November 2019 at which these individuals | <p>COI003026, COI002900, COI003103, COI003238, COI011009 COI010416</p> |

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| | <p>were identified and the Cabinet was asked to approve their appointment.</p> <p>(7) No fit and proper test was applied.</p> <p>(8) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the BVI Electricity Corporation Board.</p> <p>Moreover, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out, and;</p> <p>(2) The procedures in paragraph 6.8 of the Handbook were not followed.</p> | |
| | <p>RESPONSE</p> <p>During successive governments, over many years, it had not been the practice in the Virgin Islands Government to advertise vacancies on statutory boards or to hold a formal interview process (other than for executive posts). The ministries and departments have invariably applied the criteria specified in the relevant statute. Given the small size of the Virgin Islands and of the suitable pool of possible candidates, desk officers and permanent secretaries in the ministries and departments have been used to holding informal discussions both internal and external to identify willing candidates of appropriate standing and discussing them with the minister, as did ministers with their colleagues. Officials researched, considered and discussed with the minister the known credentials of possible appointees in the light of the functions they were to exercise. By these informal means, officials and ministers sought in good faith to find fit and proper persons to serve in these capacities on this and other Boards. All candidates were asked to submit their CVs prior to the decision of the Cabinet.</p> | <p>169</p> |

There is no basis for the assertion that the steps contemplated by ¶6.8 of the Cabinet Handbook were ignored. Candidates are asked, at the time they are approached to ascertain their willingness to serve, if they might have any conflict of interest, and officials are mindful of the need to avoid such conflicts when considering the suitability of a candidate. The Cabinet Memorandum sets out the information required by the Handbook and the considerations ¶6.8 mandates were part of the informal process of discussion and decision-making that led to the proposals to the Cabinet.

It has always lain within the responsibility and power of the Governor to instigate a change in the standard practice of public officers and the advice given to ministers on this subject. The newly elected and appointed Cabinet was not then (in March and April 2019) advised by the Attorney General, the Governor or the Deputy Governor that all appointments should be advertised, and candidates interviewed, or that the long-standing approach of the public service they inherited, and the advice to ministers in making such appointments, should be replaced by a wholly new system, or that it was or might be unlawful.

It was only in May 2020, that the Governor, who was well aware of the existing practice, suggested a “shift to a more transparent process” for critical leadership posts such as the Chairmen of Boards. It is notable that even then, the Governor did not extend his recommendation to the appointment of ordinary board members.

As the Premier has explained in his evidence before the Commissioner, the Government fully accepts that the appointments process requires modernisation and has encouraged measures to change Government practice by

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| | <p>developing a properly recorded process of advertising, interviewing, and “ranking” candidates for the membership of boards. For example, that process was followed in connection with recent appointments to the Recovery and Development Agency. The Cabinet has suggested the publication of cross-departmental written guidance for public officers in advising ministers on making such appointments similar to the UK Cabinet Office’s Governance Code on Public Appointments.</p> | |
| 3 | <p>A position on the Board became vacant following the death of a member. On 18 May 2020, Violet de Castro was recommended to the Cabinet for appointment. At a Cabinet meeting on 3 June 2020, the Cabinet approved Ms de Castro’s appointment effective from 25 May 2020. The criticisms at 2 above apply equally to this appointment.</p> | <p>COI003291, COI002952, COI003195</p> |
| 4 | <p>It is understood that Ms Violet De Castro is your aunt.</p> <p>(1) In proposing Ms Violet De Castro and in her subsequent appointment to the BVI Electricity Corporation Board you failed formally to declare your association with her and failed formally to bring to the attention of the Cabinet a potential conflict of interest.</p> <p>(2) Furthermore, you failed to seek legal advice as to the potential conflict of interest arising.</p> <p>It follows from (1) and (2) that deliberations and decision-making within Cabinet were not fully informed in respect of the appointment of these individuals.</p> | <p>COI003291, COI002952, COI003195</p> |
| | <p>RESPONSE</p> <p>Ms Violet De Castro is neither the Premier’s Aunt nor in any relation to him or his family. She had a long and distinguished career in the public service, specializing in accounting and administration, and is eminently qualified to fulfill the role to which she was appointed. She replaced the brother of the former Minister of Health in the previous Government, the late Mr. Oliver Skelton.</p> | <p>171</p> |

| BVI Tourist Board | | |
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| | Potential criticism | Evidence |
| 1 | <p>On March 27 2019, Cabinet decided to revoke the entire membership of the BVI Tourist Board (save for ex officio members) with immediate effect.</p> <p>The justification for the revocation was as follows: <i>“a new government has assumed office with a new mandate, and as a result, he has decided to reassess the membership of all Boards in a manner that will allow the mandate given by the people to be expedited in a transparent and accountable manner. Furthermore, the Premier stated that he would be recommending a policy that the membership on Boards would extend for the duration of the Administration’s term in office”</i>.</p> <p>A further reason given for revocation was <i>“to allow for the right mix of new innovative and progressive minded members to be appointed that would include representation of youths on each board”</i>.</p> <p>It appears from the evidence that:</p> <p>(1) The reasons given for immediate revocation of the membership of the BVI Tourist Board were insufficient and contrary to advice given by the Attorney General.</p> <p>(2) The revocation of the membership of the BVI Tourist Board failed to adequately provide for independent expertise and oversight of the Board.</p> <p>(3) The policy of revoking the membership of statutory boards with every new administration fails to adequately provide for independent expertise and oversight of all suchboards.</p> <p>(4) The decision to replace all of the members of the Board failed adequately to take into account legal advice indicating that the policy of replacing the membership of</p> | <p>COI003463, COI003179, COI003358, COI002895 COI003105</p> |

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| | statutory boards with every new administration may be unconstitutional. | |
| | <p>RESPONSE</p> <p>The policy pursued by the Cabinet of renewing the membership of the statutory boards after the new government had come in was a perfectly good and lawful reason for revocation of the board of the BVITB. The Attorney General did not advise otherwise. He advised that it would be “better” to give individual reasons and the Cabinet should do so if it wished to be “consistent with public administration” (sic). When asked if there were precedents for legal challenge and if individuals would have legal recourse for being removed, he replied, “anyone could go to court whether they had legal recourse or not.” His advice was at best equivocal. The Cabinet took the view that the advantages of the policy of renewing and reinvigorating the membership of this and other boards, which nevertheless envisaged the possibility of reappointment of some of the existing members if needed in the interests of achieving a balance of experience, outweighed the legal risks. It is a non-sequitur to assert that the revocation of the existing board meant that the new board could not exercise independent expertise and effective oversight of the Tourist Board’s activities, as indeed they have done since their appointment. The Attorney General’s advice on the constitutionality of the policy was also equivocal and in any event the revocation was not discriminatory or unconstitutional.</p> | |

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| 2 | <p>In July 2019, a new board membership was recommended to Cabinet to come into effect on August 1st 2019. It appears from the evidence that:</p> <ul style="list-style-type: none"> (1) No competency profile was compiled. (2) None of the Board positions were advertised. (3) There was no independent or transparent process by which a suitable pool of candidates was identified. (4) There was no independent or transparent process by which proposed candidates were selected. (5) None of the candidates were interviewed at any stage prior to appointment. (6) No due diligence was carried out in respect of any of the proposed appointees. (7) No fit and proper test was applied. (8) None of the candidates had been asked to submit their resumes/CVs prior to the Cabinet in July 2019 at which these individuals were identified and the Cabinet was asked to approve their appointment. (9) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the BVI Tourist board. <p>Moreover, It appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <ul style="list-style-type: none"> (1) No conflict checks were carried out, and; (2) The procedures in paragraph 6.8 of the Handbook were not followed. <p>You have stated in evidence that Bevis Sylvester is a good friend.</p> <ul style="list-style-type: none"> (1) In proposing Bevis Sylvester and in his subsequent appointment to the BVI Tourist Board you failed formally to declare your association with him and failed formally to bring to the attention of the Cabinet a potential conflict of interest. | <p>COI002895, COI003044, COI003190, COI009723 COI010416</p> <p>174</p> |
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| | <p>(2) Furthermore, you failed to seek legal advice as to any potential conflicts of interest.</p> <p>(3) It follows from (1) and (2) that deliberations and decision-making within Cabinet were not fully informed in respect of the appointment of this individual.</p> | |
| | <p>RESPONSE</p> <p>Reference is made to the Premier's earlier responses.</p> | |
| 2 (cont) | <p>You have stated in evidence that Bevis Sylvester is a good friend.</p> <p>(1) In proposing Bevis Sylvester and in his subsequent appointment to the BVI Tourist Board you failed formally to declare your association with him and failed formally to bring to the attention of the Cabinet a potential conflict of interest.</p> <p>(2) Furthermore, you failed to seek legal advice as to any potential conflicts of interest.</p> <p>(3) It follows from (1) and (2) that deliberations and decision-making within Cabinet were not fully informed in respect of the appointment of this individual.</p> | Day 6 transcript, pages 209- 215 |
| | <p>RESPONSE</p> <p>The evidence given by the Premier has been misunderstood. The Premier gave evidence to the Commissioner that Mr. Bevis Sylvester was a good friend in the same way (as a leading politician) that "everyone is my good friend". Properly understood, the Premier was indicating that he had no special relationship with Mr. Sylvester that would give rise to an obligation to declare an association with him.</p> <p>For the avoidance of doubt, many years ago, Mr. Sylvester was a pupil at the school of which the Premier was Assistant Principal, but the Premier did not teach</p> | |

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| | <p>him. While, in common with many people and with local politicians of all parties, the Premier knew Mr. Sylvester's family, who were very well known and respected in the community, he only infrequently meets him, invariably at public functions and events such as his father's funeral, which both the Premier and the Leader of the Opposition attended.</p> <p>However, Mr. Sylvester is known for his very successful regional management of Delta Petroleum (Caribbean) Limited over many years, building it up to one of the leading locally run businesses in the Virgin Islands with operations in Montserrat, St Kitts, Nevis and Anguilla. He and the company are active in providing support to community causes. He is well qualified to serve on the BVI Tourist Board.</p> <p>Finally, while the Premier would not rule out the need for such a disclosure in an appropriate case, the Cabinet Handbook does not mention friends in describing those relationships that give rise to an obligation on a Cabinet member to declare it or to recuse himself.</p> | |
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| BVI Airports Authority | | |
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| | Potential criticism | Evidence |
| 1 | <p>In April 2019, all of the previous members of the BVIAA Board (apart from ex-officio members) resigned. On 23 May 2019, Cabinet decided to appoint new members of the BVIAA Board. It appears from the evidence that:</p> <p>(1) None of the board positions had been advertised.</p> <p>(2) There was no process by which a suitable pool of candidates were identified.</p> <p>(3) There was no process by which proposed candidates were identified.</p> <p>(4) None of the candidates were interviewed at any stage prior to appointment.</p> <p>(5) No due diligence was carried out in respect of any of the proposed appointees.</p> <p>(6) Some of the candidates failed to submit CVs/resumes</p> <p>(7) prior to their proposed membership.</p> <p>(8) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the Board.</p> <p>Moreover, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out, and;</p> <p>(2) The procedures in paragraph 6.8 of the Handbook were not followed.</p> | <p>COI013151</p> <p>COI013156</p> <p>COI037053</p> <p>COI010416</p> |
| | <p>RESPONSE</p> <p>Please see earlier responses on the long-standing approach and practice of the public service and successive governments in appointing members of statutory boards.</p> | |

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| 2 | <p>It appears from the evidence that Nathaniel Isaac was appointed to the Board retroactively. The fact that Mr Isaac acted as a Board member and was able to exert influence without being properly appointed in accordance with the relevant legislation is inconsistent with the principles of good governance.</p> | <p>COI013582 COI013583 COI013584</p> |
| | <p>RESPONSE</p> <p>Mr Isaac was the Chairman of the BVI Ports Authority. In the implementation of the Government’s policy to renew the membership and ensure greater coordination and effectiveness in the operation of boards in related spheres of activity, it was intended, where appropriate, that the Chairmen of the BVIPA, BVIAA and BVITA should sit as members of each other’s boards. In preparing the submission to the Cabinet for its meeting of 23 May 2019, Mr Isaac was, by oversight, left off the list of recommended candidates.</p> <p>However, the status of Mr. Isaac prior to his appointment was well known to the Board. There is no evidence that he voted or “exerted influence” inappropriately over the Board, which is responsible for ensuring the propriety of its own procedures. His appointment was made on 7 January 2021.</p> | |
| 3 | <p>You have stated in evidence that Patsy Lake and the Chairman of the PSC are both your first cousins, and that Bevis Sylvester is a good friend.</p> <p>(1) In proposing these individuals and in their subsequent appointment to the BVIAA Board, you failed formally to declare your association with them and failed formally to bring to the attention of the Cabinet a potential conflict of interest.</p> <p>(2) Furthermore, you failed to seek legal advice as to the conflict of interest arising.</p> | <p>Day 6 transcript, pages 209- 215</p> |

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| | <p>(3) It follows from (1) and (2) that deliberations and decision-making within Cabinet were not fully informed in respect of the appointment of these individuals.</p> | |
| | <p>RESPONSE</p> <p>As to Mr. Sylvester, reference is made to the earlier response.</p> <p>Mrs. Patsy Lake is a respected, successful, and celebrated businesswoman in the Virgin Islands who has been much lauded for her contribution to the development and community life of the Territory. In 2015, she was the official “honoree” (nominated by the then Government) of the Emancipation Festival. The former Premier, Dr Orlando Smith, attended her 70th birthday party in 2015, and politicians of all parties, the Deputy Governor, as well as the then Financial Secretary, attended her 75th birthday party in 2020.</p> <p>Her relationship as a first cousin of the Premier was and is a widely known fact of which the Cabinet was perfectly well aware. The Cabinet Handbook at ¶2.23 and ¶2.24 does not specify who is “immediate family” or “a close relative” for the purposes of giving rise to an obligation to declare. He was not advised at the time by the then permanent secretary, the Cabinet Secretary, or by the Attorney General to declare an interest. Consistently with section 49 (3) of the Constitution, it is doubted that the Premier may excuse himself from attendance at a Cabinet meeting.</p> <p>Further, the Cabinet Handbook does not prescribe or advise taking legal advice when a member of the Cabinet</p> | |

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| | <p>considers that he might have to declare an interest. However, ministers have suggested that the Cabinet Office should include a Propriety and Ethics Unit to develop written guidance and policies and to advise ministers on such matters.</p> | |
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| BVI Ports Authority | | |
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| | Potential criticism | Evidence |
| 1 | <p>On March 27th 2019, Cabinet decided to revoke the entire membership of the BVI Ports Authority board (save for ex officio members) with immediate effect at the instigation of the Premier.</p> <p>The justification for the revocation was as follows: <i>“a new government has assumed office with a new mandate, and as a result, [the Premier] has decided to reassess the membership of all Boards in a manner that will allow the mandate given by the people to be expedited in a transparent and accountable manner. Furthermore, the Premier stated that he would be recommending a policy that the membership on Boards would extend for the duration of the Administration’s term in office”</i>⁶.</p> <p>It appears from the evidence that:</p> <p>(1) The reasons given for immediate revocation of the membership of the BVI Port Authority Board were insufficient.</p> <p>(2) There was insufficient or no regard given to the application of the First Schedule of The Ports Authority Act and/or the advice of the Attorney General in relation to its application: <i>“in appointing the members of the Board, Cabinet should take into account “the desirability of such interest as are affected by the Authority’s activities being represented”...Cabinet...should consider the competence and capability of potential members against the backdrop of the objectives of the BVI Port Authority and in particular its functions under section 4 of the Act”</i>.⁷</p> | <p>COI013074, COI003003, COI013074 COI003312 COI003105</p> |

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| <p>(3) The revocation of the membership of the BVI Port Authority Board failed to adequately provide for independent expertise and oversight of the Board.</p> <p>(4) The policy of revoking the membership of statutory boards with every new administration fails to adequately provide for independent expertise and oversight of all such boards.</p> <p>(5) The decision to replace all of the members of the Board failed adequately to take into account legal advice indicating that the policy of replacing the membership of statutory boards with every new administration may be unconstitutional.</p> | |
| <p>RESPONSE</p> <p>Reference is made to earlier responses on these matters. The policy was lawful and within the legitimate scope of the political government to decide. The First Schedule was not relevant to the revocation and, as far as the Premier is aware, the Attorney General did not advise it was. The Attorney General certainly did not advise the Cabinet that there was no respectable argument that its policy was a lawful basis for the Cabinet's decision, or even that, in his opinion, the decision was likely to be held unlawful.</p> | |

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| 2 | <p>In May 2019, prospective members of the BVI Port Authority Board were contacted to be informed that they had been nominated for membership of the Board.</p> <p>It appears from the evidence that:</p> <ul style="list-style-type: none"> (1) No competency profile was compiled. (2) None of the board positions were advertised. (3) There was no independent or transparent process by which a suitable pool of candidates was identified. (4) There was no independent or transparent process by which proposed candidates were selected. (5) None of the candidates were interviewed at any stage prior to appointment. (6) No due diligence was carried out in respect of any of the proposed appointees. (7) No fit and proper test was applied (8) None of the candidates had been asked to submit their resumes/CVs prior to the Cabinet meeting of the 6th May 2019 at which these individuals were identified and the Cabinet was asked to approve their appointment. (9) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the BVI Port Authority board. <p>Moreover, It appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <ul style="list-style-type: none"> (1) No conflict checks were carried out, and; (2) The procedures in paragraph 6.8 of the Handbook werenot followed. | <p>COI002932, COI002965, COI002976, COI003003, COI003312, COI002955, COI010416</p> |
| | <p>RESPONSE</p> <p>Reference is made to the earlier responses on these matters.</p> | |

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| 3 | <p>You have stated in evidence that Patsy Lake is your first cousin, and that Bevis Sylvester is a good friend.</p> <p>(1) In proposing Patsy Lake and Roxane Sylvester (sister of Bevis Sylvester) and in their subsequent appointment to the BVI Ports Board you failed formally to declare your association with them and failed formally to bring to the attention of the Cabinet a potential conflict of interest.</p> <p>(2) Furthermore, you failed to seek legal advice as to the conflict of interest arising.</p> <p>(3) It follows from (1) and (2) that deliberations and decision-making within Cabinet were not fully informed in respect of the appointment of these individuals.</p> <p>RESPONSE</p> <p>Please see earlier responses. The Premier has no relationship with either Bevis Sylvester or Roxane Sylvester that would warrant a declaration of interest regarding them.</p> | Day 6 transcript, pages 209-215 |
| 4 | <p>At a cabinet meeting on 6 May 2020, the resignation of Mr Nathaniel Isaac as Chairman of the BVI Ports Authority was discussed. The minutes record that the Chairman was of the view that there should be a shift to a more transparent process for the appointment of critical leadership positions such as Chairman of Boards and that the required skills set should be advertised. You responded that <i>“the captioned appointment was being made in accordance with the requisite legislation; hence it was in keeping with transparency and good governance”</i>.</p> <p>The failure to advertise these positions is neither fair nor transparent and it is inconsistent with the principles of good governance.</p> | COI011652 (p2; Memo No.129/2020) |

RESPONSE

The Premier's statement made in discussion in Cabinet simply sought to point out that the appointment complied with the law since no observation to the contrary had been made by the Attorney General.

The Chairman's remarks, broached for the first time in Cabinet, had been made without notice to the Premier. A single comment made during confidential Cabinet discussions and debate, often incompletely recorded, is not a judicial pronouncement and is, in principle, not an appropriate or fair basis for criticism by the Inquiry.

Indeed, the minute shows the quoted response to have been taken out of context and that the above summary fails to reflect the Premier's true position in those discussions, which was readily to agree that all such appointments should be advertised including the Chairman of the PSC. In addition, immediately after the quoted comment, the minute records, "further discussion ensued". It is clear that the Premier agreed with the Chairman's suggestion and that his remark was not intended to imply that improvements were unnecessary.

The Premier has explained in evidence to the Inquiry that the Government supported the need for a change in the practice of the Government, which it has begun to implement.

| Telecommunications Regulatory Commission (“TRC”) | | |
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| | Potential criticism | Evidence |
| 1 | <p>On 5 February 2020, the cabinet decided that a) Mr Vance Lewis be appointed as Commissioner and Chairman of the TRC for a period of 3 years with effect from 1 February 2020 and b) Mr Vincent Wattley be appointed as Commissioner and Deputy Chairman of the Board, also for a period of 3 years with effect from 1 February 2020. It appears from the documents that have been disclosed that:</p> <p>(1) No competency profile was compiled for either nominee.</p> <p>(2) The positions were not advertised.</p> <p>(3) There was no independent or transparent process by which a suitable pool of candidates was identified.</p> <p>(4) There was no independent or transparent process by which proposed candidates were selected.</p> <p>(5) None of the candidates were interviewed at any stage prior to appointment.</p> <p>(6) No due diligence was carried out in respect of any of the proposed appointees.</p> <p>(7) None of the candidates appear to have been asked to submit their resumes/CVs prior to the Cabinet meeting of 5 February 2020 at which these individuals were identified and the Cabinet was asked to approve their appointment.</p> <p>(8) No fit and proper test was applied.</p> <p>(9) No steps were taken to establish that Mr Lewis or Mr Wattley were not disqualified for appointment under section. 7(5) of the Telecommunications Act 2006</p> | <p>COI009754</p> <p>COI009758</p> <p>Paragraph 7(c) of COI036644</p> <p>Section 7, Telecommunications Act 2006.</p> |

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| | <p>despite this apparently being standard practice and despite legal advice to this effect.</p> <p>(10) Accordingly, it appears from the evidence that (1) no effort was made to identify and select the most suitable and qualified candidates as commissioners of the TRC; and (2) the appointments were ultra vires the Telecommunications Act 2006.</p> | |
| | <p>RESPONSE</p> <p>Reference is made to earlier responses about the informal processes used to identify suitable candidates. Both Mr Lewis and Mr Wattley were consulted about the terms of section 7(5) of the Telecommunications Act 2006 and made the necessary statutory declarations. Their appointments were not ultra vires the Act.</p> <p>A copy of Mr Lewis's statutory declaration is enclosed. A search is underway for a copy of Mr Wattley's statutory declaration, and this will be provided to the COI Team if found.</p> | |
| 2 | <p>The Cabinet extract authorising the above appointments made it clear that the authorisation was dependent on the approval of the House of Assembly which is a requirement of the Telecommunications Act 2006. However, there is nothing in the disclosure that has been made to date to suggest that this approval was forthcoming or that a resolution was ever tabled. If that is the case, the appointments would contravene section 7(3) of the Telecommunications Act 2006.</p> | <p>COI009758</p> <p>Section 7(3), Telecommunications Act</p> |

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| | <p>RESPONSE</p> <p>The resolution was laid before the House and approved on 27 February 202. A copy of the Hansard record of the House of Assembly is being sought from the Clerk and will be furnished to the Inquiry.</p> | |
| 3 | <p>In relation to the appointment of Mr Lewis and Mr Wattley, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out, and;</p> <p>(2) The procedures in paragraph 6.8 of the Handbook were not followed.</p> | COI010416 |
| | <p>RESPONSE</p> <p>Reference is made to earlier responses. Both were consulted about any possible conflicts of interest and there is no basis for the assertion that there was “no compliance” with the Cabinet Handbook requirements for the submission of candidates for statutory board appointments to the Cabinet.</p> | |
| 4 | <p>The TRC had no chairman from August 2019 until February 2020 (and no deputy chairman from March 2016). It therefore had no quorum and was unable to perform its statutory functions for approximately 6 months.</p> | COI009754 |
| | <p>RESPONSE</p> <p>Appointments to the senior posts at the TRC require knowledge of the telecommunications industry. As is often the case with roles that warrant a level of</p> | |

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| | <p>technical or professional expertise, it was difficult to find suitable persons willing to take on the onerous responsibilities. Once individuals are found, there must be consultation with the Leader of the Opposition about the candidates. In addition, no advance “succession” planning had been undertaken in anticipation of the expiry of the former Chairman’s tenure on 12 August 2019.</p> | |
| 5 | <p>On 16 February 2020, the cabinet decided that a) Ms Joycelyn Murraine and b) Mr Bevis Sylvester be appointed as Commissioners for a period of 2 years commencing 20 February 2020. The criticisms in 1 and 3 above apply equally to these appointments.</p> | <p>COI009750 COI013540</p> |
| | <p>RESPONSE</p> <p>Reference is made to earlier responses. Ms Murraine is well qualified for her role on the Commission. She was a senior figure in the Virgin Islands Banking Industry, having been the Managing Director of Scotia Bank and a director of the Bank of Asia. She possesses proven leadership abilities.</p> | |
| 6 | <p>You have stated in evidence that Bevis Sylvester is a good friend.</p> <p>(1) In proposing Bevis Sylvester and in his subsequent appointment to the TRC you failed formally to declare your association with him and failed formally to bring to the attention of the Cabinet a potential conflict of interest.</p> <p>(2) Furthermore, you failed to seek legal advice as to the conflict of interest arising.</p> <p>It follows from (1) and (2) that deliberations and decision-making within Cabinet were not fully informed in respect of the appointment of this individual.</p> | <p>Day 6 transcript, pages 209-215</p> |

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| | <p>RESPONSE</p> <p>Reference is made to the earlier responses about Mr Sylvester. There is no foundation for any such criticism.</p> | |
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| Climate Change Trust Fund | | |
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| | Potential criticism | Evidence |
| | <p>On 23 April 2019, Cabinet decided to revoke the entire membership of the Climate Change Trust Fund Board (save for ex officio members) with immediate effect and at your instigation.</p> <p>The justification for the revocation was the “<i>Administration's new policy that Board memberships would not extend beyond the term of this Administration</i>”.</p> <p>There is nothing in the disclosure that has been made to date to suggest that, in deciding to revoke the entire membership of the Board, you turned your mind to section 16 of the Virgin Islands Climate Trust Fund Act 2015 and satisfied yourself that the requirements of that provision had been met. This was despite the Attorney General so advising.</p> <p>It follows that:</p> <p>(1) The reasons given for immediate revocation of the membership of the Climate Change Trust Fund Board were insufficient.</p> <p>(2) The revocation of the members of the Climate Change Trust Fund Board without satisfying the conditions in s.16(2) of the Virgin Islands Climate Change Trust Fund Act 2015 was a direct infringement of that Act and therefore ultra vires.</p> <p>(3) The revocation of the membership of the Climate Change Trust Fund Board failed adequately to provide for independent expertise and oversight of the Board.</p> <p>(4) The policy of revoking the membership of statutory boards with every new administration fails adequately to provide for independent expertise and oversight of all such board.</p> <p>(5) The decision to replace all of the members of the Board failed to take into account legal advice indicating that the policy of replacing the membership of statutory boards</p> | <p>COI013105</p> <p>COI003336</p> <p>Virgin Islands Climate Change Trust Fund Act 2015</p> |

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| | with every new administration may be unconstitutional. | |
| | <p>RESPONSE</p> <p>Reference is made to earlier responses about the matters repeated in respect of each board.</p> <p>The Attorney General advised the Cabinet that it must consider the effect of section 16 of the Act in which the reasons for the removal of members of the board were clearly stated. There is no basis for the assertion that the Cabinet did not do so. The Attorney General advised the Cabinet of his “concern” that the conditions for removal were not fulfilled. The Cabinet considered his advice and decided it was nevertheless in the interests of consistent application of its policy to accept the risk, to which the Cabinet Paper referred, that judicial review proceedings would be taken against the decision. The Cabinet was entitled to make this decision. Ministers frequently make decisions to which a high or very high legal risk is attached. In such circumstances, it is for the courts to determine whether their actions are unlawful.</p> | |
| 2 | <p>You have confirmed that no new members have been appointed to the Board since 23 April 2019, rendering the Board defunct.</p> <p>In allowing the Board to become defunct, you have prevented it from carrying out the functions for which it was originally set up.</p> <p>You were asked by the Commission of Inquiry to explain the reasons for dissolving the Board. Your response was as follows:</p> <p><i>(i) “it is common practice that some or all membership of</i></p> | <p>COI013105 COI009374</p> <p>Virgin Islands Climate Change Trust Fund Act 2015</p> |

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| | <p><i>boards are revoked, and new members appointed to the respective boards”</i></p> <p><i>(ii) “The desire is also to reshuffle the membership of each statutory board to include the appointment of a youth to each board”</i></p> <p><i>(iii) The new policy of the new government administration is for the terms of each board should not extend beyond the tenure of the government administration that appointed them.”⁹</i></p> <p>The above fails to explain why a new Board has not been appointed from 23 April 2019 to present.</p> | |
| | <p>RESPONSE</p> <p>The Board has not been reconstituted partly because the Government has faced unprecedented challenges since the date of its revocation, which have placed acute strain on its capacity to maintain and service the growing complexity and number of its statutory and other functions. The Ministers have, in their position statements on Governance, set out those strains to which the considerable burden imposed by the Inquiry must be added. Further, the Government is considering what its policy should be in connection with the Virgin Islands Climate Change Trust Fund Act and whether it should be amended, and it has not yet completed those discussions.</p> | |
| 3 | <p>You were asked by the Commission of Inquiry to explain who dissolved the Board and what powers were used. Your response was as follows:</p> <p><i>“The Board was dissolved through the powers of Cabinet-Memo No. 122/2019: Revocation of the Appointments of the Membership of the Virgin Islands Climate Change Trust Fund Board...”</i></p> | <p>Virgin Islands Climate Change Trust Fund Act 2015</p> <p>COI009374</p> |

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| | <p><i>Further, Memo No. 155/2019: Amendment to the Virgin Islands Climate Change Trust Fund Act, 2015 sought approval to amend section 16 subclause 2 of the Climate Change Trust Fund Act to give Cabinet discretionary powers to revoke the appointment of any member of the Board of Trustees”.¹⁰</i></p> <p>Memo 155/2019 (COI040632) reads as follows: “Approval is being sought to add an additional sub clause that gives Cabinet discretionary powers to revoke the appointment of any member of the Board of Trustees...”. The AG unequivocally advised (COI040633) against this amendment.</p> <p>The evidence suggests that you may have attempted to amend the Act in order to legitimise your earlier, ultra vires, removal of the Board members.</p> | <p>COI013122</p> <p>COI040632</p> <p>COI040633</p> |
| | <p>RESPONSE</p> <p>The suggested potential criticism is far-fetched. No judicial review proceedings were brought against the decision of the Cabinet and no court had determined it to be ultra vires. Further, the proposed amendment could not have “legitimised” the revocation of the board since it would not have had retroactive effect. The Premier did not “attempt” to amend the Act. He proposed to the Cabinet such an amendment, and the addition of a permanent secretary as an ex officio member, but he agreed after discussion to consult further with the Attorney General.</p> <p>In fact, Ministers have been considering whether to bring these amendments to the House before reconstituting the Board to put beyond doubt the power to revoke appointments in the interests of the policy pursued by the Government. They have also been considering more generally the policy towards the revocation of statutory</p> | <p>194</p> |

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| | <p>boards. These matters lie perfectly properly within the scope of the political government. The Attorney General's views on the desirability of the amendment, of course, carry weight, and have prompted the Government to further reflection, but they are not decisive.</p> | |
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| Social Security Board | | |
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| | Potential criticism | Evidence |
| 1 | <p>You have stated in evidence that Patsy Lake is your first cousin.</p> <p>(1) When Pasty Lake was appointed as deputy chairman of the Social Security Board, you failed to formally declare your association with her and failed formally to bring to the attention of Cabinet a potential conflict of interest. This was despite Mr Rymer declaring he would not participate in the appointment process due to “close family ties”.</p> <p>(2) Furthermore, you failed to seek legal advice as to the conflict of interest arising.</p> <p>(3) It follows from (1) and (2) that deliberations and decision-making within Cabinet were not fully informed in respect of the appointment of this individual.</p> | COI013386 |
| | <p>RESPONSE</p> <p>Again, reference is made to the earlier relevant responses herein to the same criticism.</p> | |

31 August 2021

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION
OF INQUIRY 2021**

AND THE COMMISSION OF INQUIRY ACT (CAP 237) (THE 'ACT')

**WRITTEN RESPONSE OF CABINET TO WARNING LETTER DATED 24
AUGUST 2021**

This is the Written Response of the Cabinet to potential criticisms as set out in Appendix A of the letter dated 24 August 2021 sent to her by Andrew King, Senior Solicitor to the Territory of the Virgin Islands Commission of Inquiry 2021.

| BVI Electricity Corporation | | |
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| | Potential criticism | Evidence |
| 1 | <p>On 25th March 2019¹ the membership of the Board of the BVI Electricity Corporation was revoked by Cabinet decision, effective on 22nd April 2019.</p> <p>The justification for the revocation was as follows: <i>“The British Virgin Islands Electricity Corporation has achieved its goal of completing Phase V Development and divesting to renewable sources of energy. The Government now has a new mandate which necessitates revamping the Board membership coupled with a new strategic goal of ensuring that there is adequate and consistent supply of electricity for homes and business 24/7. Cabinet Members are asked to consider and concur with the decision sought”</i>² and a broader policy set out in the following terms by the Premier; <i>“a new government has assumed office with a new mandate, and as a result, he has decided to reassess the membership of all Boards in a manner that will allow the mandate given by the people to be expedited in a</i></p> | <p>COI002823, COI002954 COI002959 COI003007 COI013074 COI003105</p> |

¹ Date taken from COI002823

² COI002823

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| | <p><i>transparent and accountable manner. Furthermore, the Premier stated that he would be recommending a policy that the membership on Boards would extend for the duration of the Administration's term in office"</i>³.</p> <p>It appears from the evidence that:</p> <ol style="list-style-type: none"> (1) The reasons given for immediate revocation of the membership of the BVI Electricity Board were insufficient. (2) There was insufficient or no regard given to the application of section 4 (b) of the BVI Electricity Ordinance, 1978 (Act No. 7 of 1978) , namely, that appointments should be made "having taken into account the desirability of such interests as are affected by the Corporation's activities being represented". (3) The revocation of the membership of the BVI Electricity Board failed to adequately provide for independent expertise and oversight of the Board. (4) The policy of revoking the membership of statutory boards with every new administration fails to adequately provide for independent expertise and oversight of all such boards. (5) The decision to replace all of the members of the Board failed adequately to take into account legal advice indicating that the policy of replacing the membership of statutory boards with every new administration may be unconstitutional. | |
| | <p>RESPONSE</p> <p>There was nothing to stop the Cabinet from adopting the policy. It was common practice on the assumption</p> | |

³ COI013074

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| <p>of office of a new government for some or all the membership of statutory boards to be changed. The legal advice was couched in equivocal terms and referred to a risk of conflict with the constitution. In any event, the revocation was not carried out in a discriminatory manner. Consistent with its programme of comprehensive modernisation and reform, the new Government wanted to make radical changes to ensure greater coherence and cooperation between the Boards in related sectors and that the exercise of the functions of the BVI Electricity Board was reinvigorated and pursued with greater urgency by the inclusion of “new, innovative and progressive minded members” including young persons. The policy envisaged the possible reappointment of some of the existing members in the interests of achieving a balance of expertise in the new Board. While advising that the Cabinet must act in good faith and rationally in the light of the statutory purpose, the Attorney General did not advise that the proposed revocation would be unlawful based on that policy. The Cabinet was not advised that Section 4 (b) of the BVI Electricity Ordinance, 1978 (Act No. 7 of 1978) was relevant to its considerations. In any event, it was not relevant to the revocation of the appointments. Furthermore, there was no reason to suppose that new members, with the inclusion of some of those who had previously served or otherwise, could not provide effective and independent oversight of its management and activities. Indeed, that is precisely what they have done.</p> | <p>Memo 103/2019 at ¶4,5</p> <p>Memo 110/2019</p> |
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| 2 | <p>On 7th November 2019, save for the position of Chair, the cabinet approved the appointment of new members of the BVI Electricity Corporation Board. It appears from the evidence that:</p> <p>(1) No competency profile was compiled.</p> <p>(2) None of the Board positions were advertised.</p> <p>(3) There was no independent or transparent process by which a suitable pool of candidates was identified.</p> <p>(4) There was no independent or transparent process by which proposed candidates were selected.</p> <p>(5) None of the candidates were interviewed at any stage prior to appointment.</p> <p>(6) No due diligence was carried out in respect of any of the proposed appointees.</p> <p>(7) None of the candidates appear to have been asked to submit their resumes/CVs prior to the Cabinet meeting of the 7th November 2019 at which these individuals were identified and the Cabinet was asked to approve their appointment.</p> <p>(8) No fit and proper test was applied.</p> <p>(9) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the BVI Electricity Corporation Board.</p> <p>Moreover, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out, and;</p> <p>(2) The procedures in paragraph 6.8 of the Handbook were not followed.</p> | COI003026 COI002900 COI003103 COI003238 COI011009 COI010416 |
| | <p>RESPONSE</p> <p>During successive governments, over many years, it</p> | |

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| | <p>had not been the practice in the Virgin Islands Government to advertise vacancies on statutory boards or to hold a formal interview process (other than for executive posts). The ministries and departments have invariably applied the criteria specified in the relevant statute. Given the small size of the Virgin Islands and of the suitable pool of possible candidates, desk officers and permanent secretaries in the ministries and departments have been used to holding informal discussions both internal and external to identify willing candidates of appropriate standing and discussing them with the minister, as did ministers with their colleagues. Officials researched, considered and discussed with the minister the known credentials of possible appointees in the light of the functions they were to exercise. By these informal means, officials and ministers sought in good faith to find fit and proper persons to serve in these capacities on this and other Boards. All candidates were asked to submit their CVs prior to the decision of the Cabinet.</p> <p>There is no basis for the assertion that the steps contemplated by ¶6.8 of the Cabinet Handbook were ignored. Candidates are asked, at the time they are approached to ascertain their willingness to serve, if they might have any conflict of interest, and officials are mindful of the need to avoid such conflicts when considering the suitability of a candidate. The Cabinet Memorandum sets out the information required by the Handbook and the considerations ¶6.8 mandates were part of the informal process of discussion and decision-making that led to the proposals to the Cabinet.</p> <p>It has always lain within the responsibility and power of the Governor to instigate a change in the standard</p> | |
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| | <p>practice of public officers and the advice given to ministers on this subject. The newly elected and appointed Cabinet was not then (in March and April 2019) advised by the Attorney General, the Governor or the Deputy Governor that all appointments should be advertised, and candidates interviewed, or that the long-standing approach of the public service they inherited, and the advice to ministers in making such appointments, should be replaced by a wholly new system, or that it was or might be unlawful.</p> <p>It was only in May 2020, that the Governor, who was well aware of the existing practice, suggested a “shift to a more transparent process” for critical leadership posts such as the Chairmen of Boards. It is notable that even then, the Governor did not extend his recommendation to the appointment of ordinary board members.</p> <p>As the Premier has explained in his evidence before the Commissioner, the Government fully accepts that the appointments process requires modernisation and has encouraged measures to change Government practice by developing a properly recorded process of advertising, interviewing, and “ranking” candidates for the membership of boards. For example, that process was followed in connection with recent appointments to the Recovery and Development Agency. The Cabinet has suggested the publication of cross-departmental written guidance for public officers in advising ministers on making such appointments similar to the UK Cabinet Office’s Governance Code on Public Appointments.</p> | |
| 3 | <p>A position on the Board became vacant following the death of a member. On 18th May 2020, Violet de Castro was recommended to the Cabinet for appointment. At a</p> | <p>COI003291 COI002952 COI003195</p> |

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| | Cabinet meeting on 3 rd June 2020, the Cabinet approved Ms de Castro's appointment effective from 25 th May 2020. The criticisms at 2 above apply equally to this appointment. | |
| | RESPONSE Reference is made to the Cabinet's earlier responses. | |

| BVI Tourist Board | | |
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| | Potential criticism | Evidence |
| 1 | <p>On March 27th 2019, Cabinet decided to revoke the entire membership of the BVI Tourist Board (save for ex officio members) with immediate effect.</p> <p>The justification for the revocation was as follows: <i>"a new government has assumed office with a new mandate, and as a result, he has decided to reassess the membership of all Boards in a manner that will allow the mandate given by the people to be expedited in a transparent and accountable manner. Furthermore, the Premier stated that he would be recommending a policy that the membership on Boards would extend for the duration of the Administration's term in office"</i>⁴.</p> <p>A further reason given for revocation was <i>"to allow for the right mix of new innovative and progressive minded members to be appointed that would include representation of youths on each board"</i>.⁵</p> <p>It appears from the evidence that:</p> <p>(1) The reasons given for immediate revocation of the membership of the BVI Tourist Board were insufficient</p> | <p>COI003463</p> <p>COI003179</p> <p>COI003358</p> <p>COI002895</p> <p>COI003105</p> |

⁴ COI003463

⁵ COI003179

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| | <p>and contrary to advice given by the Attorney General.</p> <p>(2) The revocation of the membership of the BVI Tourist Board failed to adequately provide for independent expertise and oversight of the Board.</p> <p>(3) The policy of revoking the membership of statutory boards with every new administration fails to adequately provide for independent expertise and oversight of all such boards.</p> <p>(4) The decision to replace all of the members of the Board failed adequately to take into account legal advice indicating that the policy of replacing the membership of statutory boards with every new administration may be unconstitutional.</p> | |
| | <p>RESPONSE</p> <p>The policy pursued by the Cabinet of renewing the membership of the statutory boards after the new government had come in was a perfectly good and lawful reason for revocation of the board of the BVITB. The Attorney General did not advise otherwise. He advised that it would be “better” to give individual reasons and the Cabinet should do so if it wished to be “consistent with public administration” (sic). When asked if there were precedents for legal challenge and if individuals would have legal recourse for being removed, he replied, “anyone could go to court whether they had legal recourse or not.” His advice was at best equivocal. The Cabinet took the view that the advantages of the policy of renewing and reinvigorating the membership of this and other boards, which nevertheless envisaged the possibility of reappointment of some of the existing members if needed in the interests of achieving a balance of</p> | |

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| | <p>experience, outweighed the legal risks. It is a non-sequitur to assert that the revocation of the existing board meant that the new board could not exercise independent expertise and effective oversight of the Tourist Board's activities, as indeed they have done since their appointment. The Attorney General's advice on the constitutionality of the policy was also equivocal and in any event the revocation was not discriminatory or unconstitutional.</p> | |
| 2 | <p>In July 2019, a new board membership was recommended to Cabinet to come into effect on August 1st 2019. It appears from the evidence that:</p> <ul style="list-style-type: none"> (1) No competency profile was compiled. (2) None of the Board positions were advertised. (3) There was no independent or transparent process by which a suitable pool of candidates was identified. (4) There was no independent or transparent process by which proposed candidates were selected. (5) None of the candidates were interviewed at any stage prior to appointment. (6) No due diligence was carried out in respect of any of the proposed appointees. (7) No fit and proper test was applied. (8) None of the candidates had been asked to submit their resumes/CVs prior to the Cabinet in July 2019 at which these individuals were identified and the Cabinet was asked to approve their appointment. (9) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the BVI Tourist board. <p>Moreover, It appears from the documents that have been disclosed that there was no compliance with the</p> | <p>COI002895</p> <p>COI003044</p> <p>COI003190</p> <p>COI009723</p> <p>COI010416</p> |

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| | <p>procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out, and;</p> <p>(2) The procedures in paragraph 6.8 of the Handbook were not followed.</p> | |
| | <p>RESPONSE</p> <p>Reference is made to the Attorney General's earlier responses.</p> | |

| BVI Airports Authority | | |
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| | Potential criticism | Evidence |
| 1 | <p>In April 2019, all of the previous members of the BVIAA Board (apart from ex-officio members) resigned. On 23 May 2019, Cabinet decided to appoint new members of the BVIAA Board. It appears from the evidence that:</p> <p>(1) None of the board positions had been advertised.</p> <p>(2) There was no process by which a suitable pool of candidates were identified.</p> <p>(3) There was no process by which proposed candidates were identified.</p> <p>(4) None of the candidates were interviewed at any stage prior to appointment.</p> <p>(5) No due diligence was carried out in respect of any of the proposed appointees.</p> <p>(6) Some of the candidates failed to submit CVs/resumes prior to their proposed membership.</p> <p>(7) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the Board.</p> <p>Moreover, it appears from the documents that have been</p> | <p>COI013151</p> <p>COI013156</p> <p>COI037053</p> <p>COI010416</p> |

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| | disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular: (1) No conflict checks were carried out, and; (2) The procedures in paragraph 6.8 of the Handbook were not followed. | |
| | <p>RESPONSE</p> <p>Please see earlier responses on the long-standing approach and practice of the public service and successive governments in appointing members of statutory boards.</p> | |
| 2 | It appears from the evidence that Nathaniel Isaac was appointed to the Board retroactively. The fact that Mr Isaac acted as a Board member and was able to exert influence without being properly appointed in accordance with the relevant legislation is inconsistent with the principles of good governance. | COI013582 COI013583 COI013584 |
| | <p>RESPONSE</p> <p>Mr Isaac was the Chairman of the BVI Ports Authority. In the implementation of the Government's policy to renew the membership and ensure greater coordination and effectiveness in the operation of boards in related spheres of activity, it was intended, where appropriate, that the Chairmen of the BVIPA, BVIAA and BVITA should sit as members of each other's boards. In preparing the submission to the Cabinet for its meeting of 23 May 2019, Mr Isaac was, by oversight, left off the list of recommended candidates.</p> <p>However, the status of Mr. Isaac prior to his appointment was well known to the Board. There is no</p> | |

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| | evidence that he voted or “exerted influence” inappropriately over the Board, which is responsible for ensuring the propriety of its own procedures. His appointment was made on 7 January 2021. | |
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| | BVI Ports Authority | |
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| | Potential criticism | Evidence |
| 1 | <p>On March 27th 2019, Cabinet decided to revoke the entire membership of the BVI Ports Authority board (save for ex officio members) with immediate effect at the instigation of the Premier.</p> <p>The justification for the revocation was as follows: “a new government has assumed office with a new mandate, and as a result, [the Premier] has decided to reassess the membership of all Boards in a manner that will allow the mandate given by the people to be expedited in a transparent and accountable manner. Furthermore, the Premier stated that he would be recommending a policy that the membership on Boards would extend for the duration of the Administration’s term in office”⁶.</p> <p>It appears from the evidence that:</p> <p>(1) The reasons given for immediate revocation of the membership of the BVI Port Authority Board were insufficient.</p> <p>(2) There was insufficient or no regard given to the application of the First Schedule of The Ports Authority Act and/or the advice of the Attorney General in relation to its application: “in appointing the members of the Board, Cabinet should take into account “the desirability of such interest as are affected by the Authority’s activities being</p> | <p>COI013074</p> <p>COI003003</p> <p>COI003312</p> <p>COI003105</p> |

⁶ COI013074

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| | <p><i>represented"...Cabinet...should consider the competenceand capability of potential members against the backdrop of the objectives of the BVI Port Authority and in particular its functions under section 4 of the Act".⁷</i></p> <p>(3) The revocation of the membership of the BVI Port Authority Board failed to adequately provide for independent expertise and oversight of the Board.</p> <p>(4) The policy of revoking the membership of statutory boardswith every new administration fails to adequately provide for independent expertise and oversight of all such boards.</p> <p>(5) The decision to replace all of the members of the Boardfailed adequately to take into account legal advice indicating that the policy of replacing the membership ofstatutory boards with every new administration may be unconstitutional.</p> | |
| | <p>RESPONSE</p> <p>Reference is made to earlier responses on these matters. The policy was lawful and within the legitimate scope of the political government to decide. The First Schedule was not relevant to the revocation and as far as Cabinet is aware the Attorney General did not advise it was. The Attorney General certainly did not advise the Cabinet that there was no respectable argument that its policy was a lawful basis for the Cabinet's decision, or even that, in his opinion, the decision was likely to be held unlawful.</p> | |

⁷ COI003312

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| 2 | <p>In May 2019, prospective members of the BVI Port Authority Board were contacted to be informed that they had been nominated for membership of the Board.</p> <p>It appears from the evidence that:</p> <ul style="list-style-type: none"> (1) No competency profile was compiled. (2) None of the board positions were advertised. (3) There was no independent or transparent process by which a suitable pool of candidates was identified. (4) There was no independent or transparent process by which proposed candidates were selected. (5) None of the candidates were interviewed at any stage prior to appointment. (6) No due diligence was carried out in respect of any of the proposed appointees. (7) No fit and proper test was applied (8) None of the candidates had been asked to submit their resumes/CVs prior to the Cabinet meeting of the 6th May 2019 at which these individuals were identified and the Cabinet was asked to approve their appointment. (9) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the BVI Port Authority board. <p>Moreover, It appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <ul style="list-style-type: none"> (1) No conflict checks were carried out, and; (2) The procedures in paragraph 6.8 of the Handbook were not followed. | <p>COI002932 COI002965 COI002976 COI003003 COI003312 COI002955 COI010416</p> |
| | <p>RESPONSE</p> <p>Reference is made to the earlier responses on these matters.</p> | |

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| 3 | <p>At a cabinet meeting on 6 May 2020, the resignation of Mr Nathaniel Isaac as Chairman of the BVI Ports Authority was discussed. The minutes record that the Chairman was of the view that there should be a shift to a more transparent process for the appointment of critical leadership positions such as Chairman of Boards and that the required skills set should be advertised. You responded that “<i>the captioned appointment was being made in accordance with the requisite legislation; hence it was in keeping with transparency and good governance</i>”. The failure to advertise these positions is neither fair nor transparent and is inconsistent with the principles of good governance.</p> | <p>COI011652 (p2; Memo No.129/2020) Doc 37</p> |
| | <p>RESPONSE</p> <p>The comments quoted were made by the Premier. The Premier has explained in evidence to the Inquiry that the Government supported the need for a change in the practice of the Government, which it has begun to implement.</p> | |

| Telecommunications Regulatory Commission (“TRC”) | | |
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| | Potential criticism | Evidence |
| 1 | <p>On 5 February 2020, the cabinet decided that a) Mr Vance Lewis be appointed as Commissioner and Chairman of the TRC for a period of 3 years with effect from 1 February 2020 and b) Mr Vincent Wattley be appointed as Commissioner and Deputy Chairman of the Board, also for a period of 3 years with effect from 1 February 2020. It appears from the documents that</p> <p>have been disclosed that:</p> | <p>COI009754 COI009758 Paragraph 7(c) of COI036644 Section 7, Telecommunications Act 2006.</p> |

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| | <p>(1) No competency profile was compiled for either nominee.</p> <p>(2) The positions were not advertised.</p> <p>(3) There was no independent or transparent process by which a suitable pool of candidates was identified.</p> <p>(4) There was no independent or transparent process by which proposed candidates were selected.</p> <p>(5) None of the candidates were interviewed at any stage prior to appointment.</p> <p>(6) No due diligence was carried out in respect of any of the proposed appointees.</p> <p>(7) None of the candidates appear to have been asked to submit their resumes/CVs prior to the Cabinet meeting of 5 February 2020 at which these individuals were identified and the Cabinet was asked to approve their appointment.</p> <p>(8) No fit and proper test was applied.</p> <p>(9) No steps were taken to establish that Mr Lewis or Mr Wattley were not disqualified for appointment under section 7(5) of the Telecommunications Act 2006 despite this apparently being standard practice and despite legal advice to this effect.</p> <p>(10) Accordingly, it appears from the evidence that (1) no effort was made to identify and select the most suitable and qualified candidates as commissioners of the TRC; and (2) the appointments were ultra vires the Telecommunications Act 2006.</p> | |
| | <p>RESPONSE</p> <p>Reference is made to earlier responses about the informal processes used to identify suitable candidates. Both Mr Lewis and Mr Wattley were consulted about the terms of section 7(5) of the</p> | |

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| | <p>Telecommunications Act 2006 and made the necessary statutory declarations. Their appointments were not ultra vires the Act.</p> <p>A copy of Mr Lewis's statutory declaration is enclosed. A search is underway for a copy of Mr Wattley's statutory declaration, and this will be provided to the COI Team if found.</p> | |
| 2 | <p>The Cabinet extract authorising the above appointments made it clear that the authorisation was dependent on the approval of the House of Assembly which is a requirement of the Telecommunications Act 2006. However, there is nothing in the disclosure that has been made to date to suggest that this approval was forthcoming or that a resolution was ever tabled. If that is the case, the appointments would contravene section 7(3) of the Telecommunications Act 2006.</p> | <p>COI009758</p> <p>Section 7(3), Telecommunications Act</p> |
| | <p>RESPONSE</p> <p>The resolution was laid before the House and approved on 27 February 202. A copy of the Hansard record of the House of Assembly is being sought from the Clerk and will be furnished to the Inquiry.</p> | |
| 3 | <p>In relation to the appointment of Mr Lewis and Mr Wattley, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out, and;</p> <p>(2) The procedures in paragraph 6.8 of the Handbook were not followed.</p> | COI010416 |
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| | <p>RESPONSE</p> <p>Reference is made to earlier responses. Both were consulted about any possible conflicts of interest and there is no basis for the assertion that there was “no compliance” with the Cabinet Handbook requirements for the submission of candidates for statutory board appointments to the Cabinet.</p> | |
| 4 | <p>The TRC had no chairman from August 2019 until February 2020 (and no deputy chairman from March 2016). It therefore had no quorum and was unable to perform its statutory functions for approximately 6 months.</p> | COI009754 |
| | <p>RESPONSE</p> <p>Appointments to the senior posts at the TRC require knowledge of the telecommunications industry. As is often the case with roles that warrant a level of technical or professional expertise, it was difficult to find suitable persons willing to take on the onerous responsibilities. Once individuals are found, there must be consultation with the Leader of the Opposition about the candidates. In addition, no advance “succession” planning had been undertaken in anticipation of the expiry of the former Chairman’s tenure on 12 August 2019.</p> | |
| 5 | <p>On 16 February 2020, the cabinet decided that a) Ms Joycelyn Murraine and b) Mr Bevis Sylvester be appointed as Commissioners for a period of 2 years commencing 20 February 2020. The criticisms in 1 and 3 above apply equally to these appointments.</p> | <p>COI009750</p> <p>COI013540</p> |

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| | <p>RESPONSE</p> <p>Reference is made to earlier responses. Ms Murraine is well qualified for her role on the Commission. She was a senior figure in the Virgin Islands Banking Industry, having been the Managing Director of Scotia Bank and a director of the Bank of Asia. She possesses proven leadership abilities.</p> | |
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| | Climate Change Trust Fund | |
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| | Potential criticism | Evidence |
| 1 | <p>On 23 April 2019, Cabinet decided to revoke the entire membership of the Climate Change Trust Fund Board (save for ex officio members) with immediate effect and at the Premier's instigation.</p> <p>The justification for the revocation was the "<i>Administration's new policy that Board memberships would not extend beyond the term of this Administration</i>"⁸.</p> <p>There is nothing in the disclosure that has been made to date to suggest that, in deciding to revoke the entire membership of the Board, there was any or adequate consideration of section 16 of the Virgin Islands Climate Trust Fund Act 2015 and any or adequate regard as to whether the requirements of that provision had been met. This was despite the Attorney General so advising.</p> <p>It follows that:</p> | <p>COI013105</p> <p>COI003336</p> <p>Virgin Islands Climate Change Trust Fund Act 2015</p> |

⁸ COI013105

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| | <p>(1) The reasons given for immediate revocation of the membership of the Climate Change Trust Fund Board were insufficient.</p> <p>(2) The revocation of the members of the Climate Change Trust Fund Board without satisfying the conditions in s.16(2) of the Virgin Islands Climate Change Trust Fund Act 2015 was a direct infringement of that Act and therefore ultra vires.</p> <p>(3) The revocation of the membership of the Climate Change Trust Fund Board failed adequately to provide for independent expertise and oversight of the Board.</p> <p>(4) The policy of revoking the membership of statutory boards with every new administration fails adequately to provide for independent expertise and oversight of all such board.</p> <p>(5) The decision to replace all of the members of the Board failed to take into account legal advice indicating that the policy of replacing the membership of statutory boards with every new administration may be unconstitutional.</p> | |
| | <p>RESPONSE</p> <p>Reference is made to earlier responses about the matters repeated in respect of each board.</p> <p>The Attorney General advised the Cabinet that it must consider the effect of section 16 of the Act in which the reasons for the removal of members of the board were clearly stated. There is no basis for the assertion that the Cabinet did not do so. The Attorney General advised the Cabinet of his “concern” that the conditions for removal were not fulfilled. The Cabinet</p> | |

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| | <p>considered his advice and decided it was nevertheless in the interests of consistent application of its policy to accept the risk, to which the Cabinet Paper referred, that judicial review proceedings would be taken against the decision. The Cabinet was entitled to make this decision. Ministers frequently make decisions to which a high or very high legal risk is attached. In such circumstances, it is for the courts to determine whether their actions are unlawful.</p> | |
| 2 | <p>It has been confirmed that no new members have been appointed to the Board since 23 April 2019, rendering the Board defunct.</p> <p>In allowing the Board to become defunct, it has been prevented from carrying out the functions for which it was originally set up.</p> | <p>COI013105</p> <p>COI009374</p> <p>Virgin Islands Climate Change Trust Fund Act 2015</p> |
| | <p>RESPONSE</p> <p>The Board has not been reconstituted partly because the Government has faced unprecedented challenges since the date of its revocation, which have placed acute strain on its capacity to maintain and service the growing complexity and number of its statutory and other functions. The Ministers have, in their position statements on Governance, set out those strains to which the considerable burden imposed by the Inquiry must be added. Further, the Government is considering what its policy should be in connection with the Virgin Islands Climate Change Trust Fund Act and whether it should be amended, and it has not yet completed those discussions.</p> | |

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| Social Security Board | | |
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| | Potential criticism | Evidence |
| 1 | <p>In May 2020 the cabinet approved the appointment of new members of the Social Security Board ("the May 2020 Appointments"). It appears from the documents that have been disclosed that:</p> <p>(1) No competency profile was compiled.</p> <p>(2) None of the board positions were advertised.</p> <p>(3) There was no independent or transparent process by which a suitable pool of candidates was identified.</p> <p>(4) There was no independent or transparent process by which proposed candidates were selected.</p> <p>(5) None of the candidates were interviewed at any stage prior to appointment.</p> <p>(6) No due diligence was carried out in respect of any of the proposed appointees.</p> <p>(7) It follows that no effort was made to identify and select the most suitable and qualified candidates for membership of the Social Security Board.</p> | <p>COI003244</p> <p>COI013380</p> <p>COI013386</p> |
| | <p>RESPONSE</p> <p>Reference is made to the Attorney General's earlier responses.</p> | |
| 2 | <p>In relation to the May 2020 Appointments, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out on potential appointees</p> | <p>COI003244</p> <p>COI013380</p> <p>COI013386</p> <p>COI010416</p> |

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| | (2) Some of the appointees were relatives of Cabinet Members but these relationships were not described in the cabinet papers and on at least one occasion the relevant cabinet member did not excuse himself when the nomination was being considered (see below). | |
| | <p>RESPONSE</p> <p>All efforts are made in the selection process to avoid any potential conflicts in the persons selected for these roles.</p> <p>The reference to a Cabinet Minister not excusing himself is not particularized.</p> | |
| 3 | In December 2020, Cabinet removed the Director of the SSB, Antoinette Skelton and appointed Mrs Jeanette Scatliffe-Boynes as Director for a period of 18 months. It appears from the evidence that a) the appointment was not subject to a negative resolution of the Legislative Council and b) no steps were taken to ascertain whether Mrs Skelton was a "fit and proper person. The appointment was therefore made in breach of Section 7 of the Ordinance. | COI009054 COI009055 Section 7 Social Security Ordinance |
| | <p>RESPONSE</p> <p>This potential criticism is not understood: Ms Skelton became the director of the Social Security Board in 1990.</p> | |
| 4 | The criticisms in (1) and (2) above also apply to the appointment of Jeanette Scatliffe Boynes. | COI009054 COI009055 |

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| | <p>RESPONSE</p> <p>Ms Scatliffe-Boynes has been Deputy Director of the SSB since 1991.</p> <p>Ms Scatliffe-Boynes has been the Deputy Director for many years, she had the experience and was educationally competent to hold the post. Given that experience, the suggestion that she might not be a fit and proper person is unrealistic. Similarly, given Ms Scatliffe-Boynes' role as Deputy Director, the criticism about conflict checking appears to be misplaced.</p> <p>Again, the reference to a Cabinet Minister not excusing himself is not particularized.</p> | |

| | Health Services Authority Board | |
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| | Potential criticism | Evidence |
| 1 | <p>On 30 April 2019, Cabinet decided to revoke the memberships of all but one of the Health Services Authority Board (save for ex officio members) with immediate effect at the instigation of Carvin Malone, Minister for Health and Social Development.</p> <p>It appears from the evidence that this was done for the following reasons (at COI013129):</p> <p><i>(a) "Three of the aforementioned members... were appointed to the Board in January 2019 by the then Minister for Health and Social Development (now the Leader of the Opposition). At present, the Leader of</i></p> | <p>COI013129</p> <p>BVI Health Services Authority Act, 2004 – this is at pages 1-29 of Exhibit TB-2 (COI036641) to the Second Affidavit of Tasha Bertie (COI036642).</p> |

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| | <p><i>the Opposition is entitled to appoint two persons to serve on the Board. As such, in an effort to conform with Section 5(3) of the Act, revocation of these appointments is necessary to allow for the balance envisaged by the Act...</i></p> | COI013122 |
| | <p><i>(b) "Additionally, Professor Joseph Federick is stationed overseas and to date has been unable to physically attend meetings of the Board. In an effort to allow the Board to function at maximum efficiency, the preference is to have members who are in a position to physically attend meetings and actively participate on the various committees of the Board as stipulated in the Act..."</i></p> <p><i>(c) "Ms. Alva McCall was first appointed to the Board while employed by a Statutory Body. However, now that she is working as a Public Officer in a capacity where decisions are made that could impact the Health Services Authority, it would be best that she no longer serve as a member on the Board..."</i></p> <p>It appears from the evidence that the reasons given for immediate revocation of the membership of the Health Services Authority Board were insufficient:</p> <p>i. The Act deals with the possibility of changing governments through the imposition of term limits for Board members (Schedule 1 section 1), meaning that revocation on the basis described at [a] above is unnecessary. Further, Section 5(5)(1) specifies that the Leader of the</p> | COI013108 |

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| | <p>Opposition is entitled to nominate two Board members. This is not the same as the Leader of the Opposition being entitled to have two of his or her preferred members on the Board at all times;</p> <p>ii. The reason given at [b] above is at odds with the fact that Dr Joel Stevens was appointed as Chairman of the Board in May 2019 despite working overseas in Washington DC (COI013108);</p> <p>The removal of five members of the Board appears not to have been for any of the reasons specified in Schedule 1 section 3. Therefore, this removal appears to be contrary to the Act.</p> <p>In general, the revocation of almost all of the members of the Health Services Authority Board with insufficient justification gives rise to the following criticisms:</p> <p>a. The revocation of the membership of the Health Services Authority Board failed adequately to provide for independent expertise and oversight of the Board;</p> <p>b. The policy of revoking the membership of statutory boards with every new administration fails adequately to provide for independent expertise and oversight of all such boards.</p> | |
| | <p>RESPONSE</p> <p>It was Government policy to reinvigorate board appointments generally. The Health Services Authority Board (BVIHSA Board) illustrates the flexible approach</p> | <p>See Memo No.160/2019</p> |

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| | <p>taken with that policy, as demonstrated by the re-appointment of some members of the BVIHSA Board. As set out in Memo 160/2019 changes were made in an effort to maintain an effective and well balanced board in furtherance of the aims of the Act. The Attorney General advised that the reasons in the Cabinet Paper appeared to be a good basis for the exercise of the discretion to revoke.</p> <p>As well as the <i>ex officio</i> members, the following members were re-appointed:</p> <ol style="list-style-type: none"> 1. Dr Yvonne Renee Venzen 2. Mrs Kishelle Blaize <p>The practical effect of this was that the BVIHSA Board was not revoked on a wholesale basis. Rather, particular BVIHSA Board members' appointments were revoked for reasons that were set out in Cabinet Paper.</p> <p>The reappointment of the existing members was consistent with achieving a balance of expertise in the new Board.</p> <p>While advising that the Cabinet must act in good faith and reasonably and for the purposes of the Act, the Attorney General did not advise that the proposed revocation would be unlawful. To the contrary, the Attorney General advised in <i>positive</i> terms that the reasons provided in the Cabinet Paper would appear to be a good basis for the exercise of the discretion to revoke. Cabinet was entitled to place reasonable reliance on that advice.</p> <p>Moreover, there was no reason to suppose that new</p> | |
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| | <p>members, with the inclusion of some of those who had previously served or otherwise, could not provide effective and independent oversight of its management and activities. Seasoned former members of the Board, Dr Joel Stevens and Lemuel Smith were appointed. There is no evidence that any of the appointees are not independent or that they lack expertise. The resumes of the nominees are exemplary, and it is not understand from the potential criticism to be suggested that any nominee is not well-qualified to carry out the role.</p> <p>On the issue of availability to attend meetings: Dr Stevens is a Virgin Islander who visited the Territory very regularly, and no difficulties were anticipated in his attending meetings. Historically he has visited the BVI on a monthly basis for work purposes, so no issues were foreseen in relation to his attendance as Chairman of the BVIHSA Board. He was not merely a visitor.</p> | |
| 2 | <p>In May 2019 Cabinet approved the appointment of new members of the Health Services Authority Board. It appears from the documents that have been disclosed that:</p> <ul style="list-style-type: none"> (1) No competency profile was compiled. (2) None of the board positions were advertised. (3) There was no independent or transparent process by which a suitable pool of candidates was identified. (4) There was no independent or transparent process by which proposed candidates were selected. (5) None of the candidates were interviewed at any stage prior to appointment. (6) No due diligence was carried out in respect of any of the proposed appointees. | <p>COI013173 COI013179</p> |

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| | <p>(7) No mention was made in the relevant Cabinet paper or minutes of the fact that Dr Venzen and Mrs Blaize-Cameron's appointments were revoked less than a month earlier.</p> <p>(8) It follows that no reasonable effort was made to identify and select the most suitable and qualified candidates for membership of the Health Services Authority Board.</p> | |
| | <p>RESPONSE</p> <p>Reference is made to the Attorney General's earlier responses.</p> <p>As stated above, the reappointment of and Dr Yvonne Renee Venzen and Mrs Kishelle Blaize members was consistent with achieving a balance of expertise in the new Board. The Cabinet Paper specifically mentioned that each of them had served on the BVIHSA Board until 16 May 2019. No confusion or misapprehension was likely to be caused by the fact that the Cabinet Paper did not specifically mention that those appointments had been revoked.</p> | |
| 3 | <p>In relation to the May 2019 appointments, it appears from the documents that have been disclosed that there was no compliance with the procedures in the Cabinet Handbook. In particular:</p> <p>(1) No conflict checks were carried out, and</p> <p>(2) The procedures set out at paragraph 6.8 of the Handbook were not followed.</p> | COI010416 |
| | <p>RESPONSE</p> <p>There is no basis for the assertion that the steps contemplated by ¶6.8 of the Cabinet Handbook were ignored. Candidates are asked, at the time they are</p> | |

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| | <p>approached to ascertain their willingness to serve and officials are mindful of the need to avoid such conflicts when considering the suitability of a candidate..The Cabinet Memorandum sets out the information required by the Handbook and the considerations ¶6.8 mandates were part of the informal process of discussion and decision-making that led to the proposals to the Cabinet.</p> <p>As is plain from the Cabinet Minute, Cabinet noted that Mr Lemuel Smith was employed at a private company owned by the Minister for Health and Social Development, thereby identifying and considering the potential conflict. No such conflict was deemed to have existed as a result of the appointment of Mr. Lemuel Smith. His appointment was on the basis of his exemplary services rendered on previous BVIHSA Boards</p> | |
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5 September 2021



GOVERNMENT OF THE
VIRGIN ISLANDS

RECRUITMENT AND SELECTION PROCEDURES MANUAL

Membership of Statutory Boards

This manual is a working draft that is still being edited, proofread and tested and should not in any way be considered or referred to, as a final document

1. Purpose of Manual

The purpose of this Manual is to provide the Ministry with strategic guidance to recruit and select competent members to achieve the Board's objectives and to ensure that recruitment and selection activities comply with applicable laws and regulations.

2. Identify the Need

- a) The recruitment process begins when the need for an appointment is identified within the Board.
- b) An internal tracking system alerts the Ministry on an upcoming vacancy, three (3) months in advance.
- c) This need could vary from filling a vacated, expired, revoked position, or intention to vacate or not renew membership (if applicable).

3. Develop A Recruitment Plan

- a) Once the Board identifies the need for an appointment, due diligence is done by the Ministry to review instrument of appointment in the Ministry's files.
- b) The Board clearly identifies how the vacant role affects its operational goals.

4. Advertise the Position

- a) The Ministry will instruct the Information and Public Relations to publicise the vacancy.
- b) Publicity of any vacancy within a Board will include official announcement and advertisement on Government's website (www.bvi.gov.vg) and governmental social media platforms, statutory agency communication platform and a combination of other media platforms.
- c) Adverts for membership will be prepared by the Information and Public Relations (GIS) for release to be public for their information once approved by the Permanent Secretary/Financial Secretary.

5. How to Apply

- a) All advertisement will include the type of documents to be submitted along with the address to which it must be submitted and a deadline.
- b) All applicants will send a cover letter and Resumé/Curriculum Vitae to the address provided on the advertisement.
- c) All applications must be submitted by the given deadline indicated.
- d) All applications submitted must be acknowledged.

6. Review Applications

- a) The Ministry receives applications via email or hand delivery.
- b) An internal application review committee assesses each application to ensure that they meet the criteria as stipulated in the advertisement.
- c) Review the applications to eliminate any candidate who does not meet the minimum requirements for the vacancy.

7. Shortlisting of Applicants

- a) Shortlisting should be done by a minimum of two (2) persons in the interest of objectivity and fairness.
- b) One (1) of the persons participating in the shortlisting process should be from the Ministry under which the relevant board falls.
- c) A short list of candidates will be compiled using a uniformed methodology consisting of shortlisting matrix of the requirements advertised.
- d) Strong emphasis is to be placed on the information supplied in each candidate's Curriculum Vitae/Resume' and relevant application forms, as measured against the advertised requirements.

8. Identify and Select the Interview Panel

- a) The selection panel would be structured to ensure balance and objectivity in the selection process.
- b) A selection panel should comprise of at least three (3) and no more than five (5) members.
- c) The members of the panel, collectively, should possess the knowledge and competence to assess candidates against the selection criteria for the position.
- d) Up to two (2) members can be invited from the private sector.
- e) Every effort should be made to ensure that the most suitable recruitment committee members are identified to facilitate the recruitment and selection process.
- f) There must be at least one independent panel member. This person may be from any of the following:
 - i. Another Public Sector organisation;
 - ii. Outside the Public Sector in a specialised position. These prospective members from outside the Public Sector should be informed beforehand that they will not be paid for their participation.

R E S T R I C T E D

- g) Where prospective panel members are likely to have personal or professional knowledge of applicants, care should be taken to ensure that his/her knowledge is not shared and does not influence the selection panel/process in anyway.
- h) If there is any conflict, panel members are to voluntarily recuse themselves or be asked to do so.

9. Interviews

Depending on the size of the Board and the recruitment committee, an interview is scheduled for those remaining candidates.

- a) Interviews can be conducted as one-on-one, in-person interviews between the applicants and the recruitment manager.
- b) Interviews may be formal or casual; on-site, off-site, or online via virtual platforms such as; Webex, Zoom, etc.
- c) Any additional interview should be more in-depth; for example, in interviews between a candidate and multiple members of the recruitment committee interviewer, each member of the recruitment committee is to focus on a specific topic or aspect of the job to avoid redundancy and ensure an in-depth conversation about the role and the candidates qualifications and experience.
- d) Note: Candidates who were not selected for an interview should be informed that the recruitment process has moved forward and they are no longer under consideration.
- e) Final interviews should be extended only to a very small pool of top candidates, if necessary.

10. Applicant Assessment

- a) All candidates are subject to a background check.
- b) Background checks review candidates' criminal record, verify employment history and eligibility, and run credit checks (if necessary).
- c) Reference checks should verify any pertinent information shared by the candidate about previous employment--job performance, experience, responsibilities, workplace conduct, etc.

11. Making a Selection

- a) Selecting the best candidate is one of the most important functions of the interview panel.
- b) This process must ensure that candidates are only assessed according to their capability to carry out a given task, based on justifiable, objective criteria that are clearly related to the membership responsibilities.

R E S T R I C T E D

- c) The recruitment committee chair is responsible for ensuring that the assessments and interviews are chaired and conducted effectively, and that all candidates are subjected to the same selection process.
- d) Each member of the interview panel is required to complete the relevant score sheets before the closure of the interview.
- e) In instances where the interview is the final method of assessment, the panel should come to a consensus on the selected candidate before closing the interview.
- f) A candidate should be considered for selection if he/she possesses the competencies necessary to meet the inherent requirements of the vacancy.
- g) Where the candidate with the highest score is not selected justification should be clearly made on the score sheet.
- h) The candidate with the highest amalgamated score from the various selection instruments used should be considered for the position pending the completion of the vetting process.
- i) Selection should be final only after the relevant checks have been made (security, qualification, reference, experience etc.).
- j) Where two or more candidates have obtained identical total scores, a differentiation has to be made between those candidates with reasons justifying the decision clearly stated on the score sheet/outcome report.
- k) Depending on the strength of the competencies displayed by the candidates another assessment may have to be conducted.
- l) Where the candidate with the highest score is not available, the second best candidate may be selected if he/she is suitable.

12. Decision

- a) After conducting background and reference checks, the recruitment committee identifies their top choice.
- b) The recruitment committee should also select a backup candidate; in case the top choice declines the offer or negotiations fail to produce a signed offer letter.
- c) In the event that no candidates meet the hiring criteria, the recruitment committee should determine whether or not to start the hiring process over.
- d) If so, the recruitment committee should discuss whether or not to adjust or alter the hiring process in order to invite more favourable candidates.

13. Outcome Report/Recommendation

R E S T R I C T E D

- a) At the end of the interview process, an outcome report should be prepared by the manager of the recruitment committee.
- b) This report should clearly outline the selection methods used and their respective selection criteria/competencies and corresponding scores for each candidate.
- c) This report should provide an overview of the interview process and make it easy to identify the top candidate.
- d) The outcome report along with the relevant decision Cabinet paper and supporting documents to be presented to the Cabinet of the Virgin Islands will be drafted, indicating the recruitment committee recommendations for the selection of the most suitable candidate(s) based on the number of board vacancies being filled.
- e) Shortlisted candidates from the interview process should be informed of the outcome after a decision has been made by the Cabinet of the Virgin Islands.
- f) Both the successful and unsuccessful candidates should be advised of the selection decision at the same time.

14. Membership Offer

- a) Once the necessary candidate(s) is identified, the Ministry will extend an initial offer. The offer letter should include the conditions and other terms of the appointment.

15. Appointment

- a) Once the candidate accepts the membership offer, an acceptance letter is to be prepared. Forms and paperwork presented to the new member should include:
 - i. Appointment Letter
 - ii. Instrument of Appointment
 - iii. Declaration Form
 - iv. Relevant Act(s) and Regulations

16. Onboarding

- a) The relevant Chair will be responsible for onboarding of any new members in a welcoming and professional way will help integrate in a manner that lays the groundwork for a long-term productive relationship between the new member and the Board.
- b) A welcome letter is encouraged.
- c) If a Chair is appointed, the Ministry will be responsible for the official welcoming him/her to the Board.
- d) If a member is appointed, the Chair will be responsible for the official welcoming of members to the Board.

R E S T R I C T E D

- e) If an orientation is part of the onboarding process, the Chair will make sure the new member has a clear understanding of the expectations and scheduling of meetings, etc.

DRAFT

Internal Audit Department

Ashley Ritter Building
Wickham's Cay 1
Road Town, Tortola, BVI

MEMORANDUM

CONFIDENTIAL

REF.: IA/FAR1/8

TO: Ag. Permanent Secretary,
Ministry of Communication & Works

FROM: Director of Internal Audit

DATE: July 3, 2014

RE: Final Internal Audit Report: Wickham's Cay Development Authority

The Final Internal Audit Report on the Wickham's Cay Development Authority, March 2014 is attached for your record and action.

As part of the audit reporting process, you were given an opportunity to acknowledge the audit findings, advised to take note of the various recommendations and additionally asked to provide this office with a written response. Your management response was received on June 26, 2014 and is attached to this final draft of the report.

Management responses are crucial in the audit reporting process because it offers a balanced view to the content of the report. Furthermore, it forms part of the final report and demonstrates your commitment to taking corrective action towards resolving the issues identified. In your response, you indicated your full agreement with all of the audit recommendations and also provided your timetable for implementation. Therefore, you have accepted the responsibility for taking corrective action in resolving the issues and concerns identified in the report.

To ensure that the issues articulated in the report are resolved in a reasonable timeframe, a follow-up review will be conducted to which further communication will be provided to you.

Phone: (284) 468-3701 Ext. [REDACTED] Fax: (284) 468-2558

"Your Management Specialist"

The Internal Audit Department thanks you for the opportunity to provide this value added service and looks forward to providing the same in the future. Please feel free to contact me if you require further services.

Regards,
Ministry of Finance


Dorcas P. Lawrence (Mrs.)
Director of Internal Audit

JO/jmg

Enclosure - on Archive

cc: Deputy Governor
Financial Secretary
Estate Manager, Wickham's Cay Development Authority

INTERNAL AUDIT DEPARTMENT

CONFIDENTIAL



GOVERNMENT OF THE VIRGIN ISLANDS

WICKHAM'S CAY DEVELOPMENT AUTHORITY

MARCH 2014

FINAL REPORT

TABLE OF CONTENTS

| | | |
|-------------|------------------------------------|-----------|
| 1.0 | INTRODUCTION..... | 2 |
| 2.0 | AUDIT SCOPE..... | 2 |
| 3.0 | AUDIT OBJECTIVES..... | 3 |
| 4.0 | STATEMENT OF ASSURANCE..... | 3 |
| 5.0 | METHODOLOGY..... | 3 |
| 6.0 | AUDIT CRITERIA..... | 4 |
| 7.0 | AUDIT LIMITATION..... | 4 |
| 8.0 | PRIOR AUDIT COVERAGE..... | 4 |
| 9.0 | FACT AND FINDINGS..... | 4 |
| 10.0 | AUDIT CONCERN..... | 17 |
| 11.0 | CONCLUSION..... | 19 |
| 12.0 | RECOMMENDATIONS..... | 20 |
| 13.0 | APPENDICES..... | 22 |
| | MANAGEMENT'S RESPONSE | |

1.0 INTRODUCTION

AUDIT MANDATE

- 1.1 The Internal Audit Department is mandated by the Internal Audit Act, 2011 (Act No.1 of 2011) to evaluate and report on the adequacy and effectiveness of internal controls of public authorities to provide assurance that risk is identified and managed, and the operations of the public authority are performed in accordance with policies, procedures and the law.

BACKGROUND

- 1.2 The Wickham's Cay Development Authority was established on March 14, 1975 to promote and manage the development of Wickham's Cay under CAP 281 of the Laws of the Virgin Islands. The Authority has the power to investigate, formulate and implement plans and projects for the physical layout and development of Wickham's Cay; to negotiate, approve and revoke leases of land and other property on Wickham's Cay; and to arrange for any construction or engineering work which may be required to achieve the objectives of the Authority.
- 1.3 The Ministry of Communications and Works provides oversight of the Authority as of June 27, 2012 when it was reassigned from the Premier's Office.

INTERNAL CONTROLS

Definition

- 1.4 Internal control is a processeffected by an entity's board of directors, management, and other personnel designed to provide reasonable assurance regarding the achievement of objectives in the following categories: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.
- 1.5 The management of the payroll function is responsible for the development, implementation and monitoring of control activities. The deployment of appropriate policies and procedures, while providing adequate supervision of the functionare some common types of control activities.

2.0 AUDIT SCOPE

- 2.1 The audit primarily focused on the operations of the Wickham's Cay Development Authority. Audit testing was limited to transactions and activitiesperformed in the fiscal years 2010through 2013.

3.0 AUDIT OBJECTIVES

3.1 The objectives of the audit included:

- 3.1.1 To determine whether revenues were properly collected, deposited and reported in accordance with prescribed procedures and to identify the reasons for non-compliance.
- 3.1.2 To determine if existing enforcement procedures were being followed to ensure the timely and accurate payment of rents and other fees
- 3.1.3 To determine whether internal controls were in place to ensure the effective and efficient operations of the Authority.

4.0 STATEMENT OF ASSURANCE

- 4.1 In accordance with *Section 13 (b)* and *Schedule 2 (i)* of the *Internal Audit Act, 2011*, an audit report shall include a statement as to whether or not the audit was conducted in accordance with generally accepted auditing standards.
- 4.2 The Internal Audit Department cannot declare at this time that the Internal Audit activity (the operations of the Department) conforms to any internationally recognized auditing standard due to the fact that this declaration can only be made after the results of a quality assurance and improvement programme (external review) that supports this statement.
- 4.3 However, we can provide reasonable assurance that this audit was planned, adequately supervised, and that sufficient work was performed and evidence gathered to support the findings and conclusions in this report. The conclusions were based on a comparison of the situations as they existed at the time of the audit against the audit criteria.

5.0 METHODOLOGY

- 5.1 In order to fulfill the requirements of the audit objectives, our audit methodology was developed to provide reasonable assurance that our evidence gathering or audit documentation was adequate and supports the objectives of the audit. To this end, a summary of these methodologies included:
 - 5.1.1 Interviewing staff members responsible for performing various functions related to the operations of the Authority.
 - 5.1.2 Reviewing applicable policies and procedures and relevant laws and regulations applicable to the Wickham's Cay Development Authority.
 - 5.1.3 Other documentary evidence was derived from files and records of the Wickham's Cay Development Authority.

- 5.1.4 Refer to Appendix I for the Audit Methodology related to the Internal Controls checklist utilized to conduct Objective 3.

6.0 AUDIT CRITERIA

| | |
|-----|--|
| 6.1 | The roles and responsibilities of stakeholders should be defined. |
| 6.2 | Operating policies and procedures should be communicated to employees responsible for the administration of the function. |
| 6.3 | Transactions should be performed in accordance with legal, regulatory and other requirements. |
| 6.4 | A comprehensive management control framework should be in place to ensure that operational activities are adequately monitored and supervised. |
| 6.5 | Internal controls should be in place to ensure that the Authority achieves its operational, financial and compliance objectives. |
| 6.6 | Relevant records should be maintained to support all actions taken by the Authority. |

7.0 AUDIT LIMITATION

- 7.1 For some tests related to receipt and deposit books, source documentation could not be presented due to the unavailability of the documents. The documents were stated to be with the Office of the Auditor General and efforts to retrieve them from that Office proved unsuccessful. However, the years that were able to be reviewed were tested and the findings are stated in this report.

8.0 PRIOR AUDIT COVERAGE

- 8.1 No prior audit of this extent has been performed on Wickham's Cay Development Authority by this Office within the past five (5) years.

9.0 FACT AND FINDINGS

General

- 9.1 The Wickham's Cay Development Authority was established to promote and manage the development of Wickham's Cay. Under its legislation, the Authority was to be self-sustaining and capable of managing its affairs. However, the intended structure was never established and as a result, the Authority has lacked the much needed oversight and guidance to accomplish its legislative mandate. In the absence of an Authority (a Board), the Minister assigned the function, serves as the Authority (Board). As a result of this structure, the Authority has been plagued with numerous challenges that affect its effectiveness and efficiency.

- 9.1.1 The Authority lacks documented policies and procedures in the form of a comprehensive manual to guide its operations and processes. As a result, most decisions are made on a discretionary basis. In addition, because of the potential political involvement, with a Minister being assigned the function in the absence of an Authority (a Board), the current administrative staff is not empowered to make pertinent decisions.
- 9.1.2 The staff tasked with executing the administrative functions of the Authority is inadequate to manage the dynamics of the operations such as implementation of increases in rental fees, managing all areas of the lease arrangement and recovering outstanding fees from delinquent lessees. In addition, due to the absence of a supporting governance structure, the staff is hesitant and unsure as to how to exercise the authority provided in the law. As a result, necessary and corrective actions are not taken or pursued.
- 9.1.3 The administration and monitoring of lease agreements is poor and in some cases non-existent. As a result, lessees have been delinquent in fulfilling the obligations of their respective lease agreements. Some breach of contractual obligations include the non-development of leased properties within the stipulated time frame and the non-payment of lease premiums and ground rent. Additionally, the Authority has been lax in performing some of their obligations under the lease agreements in their favour. For example, provisions are made in the lease agreements for the Authority to increase rental fees over the life of the lease, however, since its inception the Authority has not increased rental fees. A recent rent appraisal undertaken by the BVI Development Consultants, at the request of the Authority, revealed that rental fees are grossly undervalued. However, no decision has been made by Cabinet, as to when and if the new rates will be implemented. The lack of an adequate methodology for rent increases poses a problem as this will hamper the ability of the Authority to implement the new rates and the leaseholders in accepting the increased fees.
- 9.1.4 The Authority has not been able to achieve its objective of becoming self-sustaining due to the lack of enforcement of contract terms and its ineffective collection efforts. This has resulted in a financial situation that affects all facets of its operations. Consequently, as this has a direct bearing on financial resources; it hampers their ability to function successfully. For most of the months reviewed, the Authority has been operating at a deficit, and in 2012 the Authority incurred excess penalty fees and bank overdraft fees on their account at the First Caribbean International Bank in the amount of seven thousand eight hundred and four dollars and fifty-four cents (\$7,804.54).

- 9.1.5 The Authority has never operated based on the structure prescribed in its legislation. Since its establishment, successive Government administrations have failed/neglected to appoint a Board in which to provide a sound governing structure. As a result, decisions made pertaining to leaseholders are made by Cabinet or the Minister assigned to the function; creating an environment where political interference has the potential to materialize and impede on the Authority's operations.
- 9.1.6 The Craft Alive Village, although part of Wickham's Cay properties, was not in previous years managed in the same manner as other properties under the Authority. The Village was created from an initiative of the Department of Trade and Consumer Affairs and now sits under the oversight and management of the City Manager's Office under the Ministry of Communications and Works. The Wickham's Cay Development Authority who has direct control of the area in which the Craft Alive Village is situated has had no direct oversight over it. In having the City Manager assume management of the Village when legislation outlines that the Estate Manager is responsible for the management of all properties belonging to Wickham's Cay Development, subordinates the Estate Manager's role to that of the City Manager.
- 9.1.7 No criterion was developed to approve applications for lease properties on Wickham's Cay or how leases would be revoked. These decisions were left to the discretion of Cabinet, thus creating an environment where transparency and equity of the process can become questionable, as some members of past and present Cabinets are party to and owners of properties and are delinquent in fulfilling their lease agreements.
- 9.1.8 Due to the lack of an appropriate governance structure to oversee and direct the administration of various processes and functions under the Authority, the control environment is plagued with numerous deficiencies and weaknesses. These will be highlighted throughout the report.

These issues have directly affected the ability of the Authority to function effectively and efficiently and in the manner for which it was created.

Objective 1: To determine whether revenues were properly collected, deposited and reported in accordance with prescribed procedures and to identify the reasons for non-compliance.

The effective operations of the Wickham's Cay Development Authority (WCDA/the Authority) are largely dependent on the revenue paid by leaseholders occupying property on Wickham's Cay. Lease agreements require that premium payments be paid in installments during the initial years of the agreement. In addition to premium payments, rental fees are to be paid twice a year on June 24 and December 24. These amounts together encompass the revenue base of the Authority and their collection is critical to the Authority's on-going operations.

The audit found the following issues pertaining to the revenue collection function of the Wickham's Cay Development Authority.

- 9.2 As the collection of revenue is paramount to the operations of the Authority, documented policies and procedures to guide the collection, safeguarding and accounting of revenue collection for such an essential function should be established. However, the audit found that there are no documented formal policies and procedures in place to govern the collection of revenue at the Authority. The audit observed that there are verbal policies and procedures in place, such as payment for rental fees and premiums are to be made by cheque, as the Authority does not possess a safe to secure any cash collected. The lack of adequate documented policies to guide staff in performing their duties has the potential to create an environment in which employees rely on their judgment in collecting revenue.
- 9.3 The Wickham's Cay Development Authority utilizes receipt and deposit books in accounting for the collection of revenue. For each payment collected, a receipt is to be issued to the leaseholder making the payment. The following were discovered in reference to the revenue collection process and procedures of the Authority:
 - 9.3.1 Best practices dictate that receipt counterfoils be used as proof of payment for the entity issuing the receipt. They enable the entity to have a copy of the exact receipt that was issued to the customer. The audit found that receipt counterfoils of the Wickham's Cay Development Authority are written in ink after the original receipt has been issued. The use of counterfoils in this manner diminishes their reliability as customers can challenge their authenticity and can claim that they were tampered with or altered. Therefore, making their balances questionable and diminishing the ability of the Authority to recover the actual balance of amounts owed.
 - 9.3.2 It was revealed through interviews and substantiated with the deposit books reviewed that deposits are not made daily. The Authority does not own a safe and therefore funds collected that are not immediately deposited are secured in a drawer that is kept locked. In addition, in the absence of established policies and procedures for revenue collection related to deposits of revenue collected, the audit team was also informed that if cash is received it is deposited the same day, however; if checks are received they may not be immediately deposited. It is left to the discretion of the Authority's staff to determine whether the deposit should be made the same day. Although any payment received, that is not immediately deposited is secured in a drawer, the risk for checks to be stolen or loss is increased.

- 9.3.3 It was also discovered that receipt books were not being used sequentially. This results possibly from the lack of communication and handover when officers are leaving the office for whatever reason. The effect is that two receipt books are used at the same point in time. Although, we understand the reason why such occurrences would happen, the use of receipt books in this manner increases the risk of fraud and for funds to go unaccounted, lost, stolen or converted for personal use.
- 9.3.4 Rental Ledger Sheets are utilized to monitor transaction activities (payments made and charges applied) for leaseholders' accounts. The sheets are maintained both manually and electronically via Quickbooks, an accounting software. This current practice of maintaining leaseholders account signifies a duplication of efforts and makes the work of one officer redundant, thereby creating inefficiencies as the two step process can be sufficiently achieved in one step.
- 9.3.5 Rental fees are due in June and December of each year. However, statements for leaseholders are prepared and mailed out quarterly in an effort to remind them of their outstanding balances. Although this current method is used to get leaseholders to settle their balances, it is clear from the accounts receivable balance that this process has not proven to be the most effective method of collecting outstanding balances, as the balance to be collected remains high.
- 9.3.6 Reconciliations of bank statements are done monthly by the Estate Manager through the use of the Quickbooks Accounting Software used by the Authority. The reconciliations are accurately done and are kept current.
- 9.4 Based on a recent appraisal/assessment requested by the Authority and performed by BVI Development Consultants, the properties currently managed by the Wickham's Cay Development Authority are grossly undervalued. This is as a direct result of no revision and implementation of revised fees being undertaken since its establishment in 1974. The table below shows some examples of a few properties for which the rate at which rent is currently charged compares to the assessment undertaken by the Appraiser. The table below also shows that some properties have been undervalued by as much as ninety-seven percent (97%).

Table 1: Comparison of Current Rental Fees to Revised Rental Fees.

| Lessee Name | Acreage | Current Annual Ground Rent | Revised Rent | Difference | Percent Difference |
|-------------|-----------------|----------------------------|--------------|---------------|--------------------|
| [REDACTED] | 7187.40 sq. ft. | \$504.00 | \$16,785.00 | (\$16,281.00) | -97% |
| [REDACTED] | 15025 sq. ft. | \$1,202.00 | \$41,199.00 | (\$39,997.00) | -97% |
| [REDACTED] | 443 sq. ft. | \$26.58 | \$1,096.64 | (\$1,070.06) | -98% |
| [REDACTED] | 1005 sq. ft. | \$120.60 | \$2,773.80 | (\$2,653.20) | -96% |
| [REDACTED] | 480 sq. ft. | \$28.80 | \$1,190.15 | (\$1,161.35) | -98% |
| [REDACTED] | 17688 sq. ft. | \$1,238.16 | \$53,858.00 | (\$52,619.84) | -98% |
| [REDACTED] | 11694 sq. ft. | \$818.58 | \$27,112.00 | (\$26,293.42) | -97% |
| [REDACTED] | 443 sq. ft. | \$26.58 | \$1,096.64 | (\$1,070.06) | -98% |
| [REDACTED] | 3465 sq. ft. | \$243.94 | \$8,039.00 | (\$7,795.06) | -97% |
| [REDACTED] | 8602 sq. ft. | \$596.05 | \$20,044.00 | (\$19,447.94) | -97% |

Note: The names of leaseholders have been redacted for confidentiality purposes.

- 9.5 From analysis conducted on information submitted pertaining to one hundred and twenty-three (123) properties belonging to the Authority and for which revenue should be collected, it was estimated that the annual revenue collection for the Authority could amount to approximately one hundred and sixty thousand, three hundred and three dollars (\$160,303.00). This amount pertains, however, to only the ground rent that is to be collected twice yearly from leaseholders and does not include premium payments that have not been paid. As this amount is the only constant revenue source for the Authority, the current rates charged cannot cover the expenses of the Authority when compared to the average annual expenses of three hundred and nine thousand four hundred and twenty-seven dollars and fifty-seven cents (\$309,427.57). Therefore, making the continued operations of the Authority unsustainable with the current rates in place.
- 9.6 Additionally, considering the recent appraisal/assessment performed by BVI Development Consultants, for the same one hundred and twenty-three (123) properties considered in 9.5 above, the potential revenue generation determined from the assessment was estimated to be one million nine hundred and forty-two thousand five hundred and fifty-nine dollars and six cents (\$1,942,559.06). This amount reflects, when compared to the current revenue potential, a one million seven hundred and eighty-two thousand two hundred and fifty-six dollars and six cents (\$1,782,256.06) short fall or one thousand one hundred and twelve percent (1112%) short fall.

- 9.7 The table below summarizes the Authority's actual revenue collection verses its actual expenses paid for the past four (4) years as derived from bank statements. From the information depicted below, it can be concluded that the Authority was unable to meet its expenses in 2010 and 2011 and in the remaining two (2) years, it was barely able to cover its expenses. This highlights the grave financial challenge the Authority currently operates under and the need for active efforts to bring solutions to address it.

Table 2: Actual Revenue and Expenses - Wickham's Cay Development Authority

| Total Revenue Collected 2010-2013 | | | |
|--|---------------------------------|-----------------------------|----------------------|
| Year | Actual Revenue Collected | Actual Expenses Paid | Difference |
| 2010 | \$253,363.77 | \$273,605.62 | (\$20,241.85) |
| 2011 | \$271,279.10 | \$299,599.09 | (\$28,319.99) |
| 2012 | \$275,564.72 | \$262,732.44 | \$12,832.28 |
| 2013 (as of Oct) | \$405,945.81* | \$401,733.21** | \$4,212.60 |
| Total | \$1,206,153.40 | \$1,237,710.36 | (\$31,556.96) |

* Amount includes a check received from Government amounting to \$220,698.75 in payment for works done by a leaseholder that was to be paid by the Authority. This amount reflects a onetime occurrence.

** Amount includes payment of \$146,043.57, made to a leaseholder for works done. The funds to cover this payment were provided by a check from the Government of the Virgin Islands. This amount reflects a onetime occurrence.

- 9.8 As of January 17, 2014, the Authority has an accounts receivable balance of one million three hundred and thirty-three thousand four hundred and eighty-five dollars and one cent (\$1,333,485.01). When compared to the amount stated as outstanding Accounts Receivable of the Authority, it is clear that the current revenue potential of the Authority is not being realized. Some of these amounts have been outstanding for over five (5) years and relates to lease premium amounts that should have already been settled. Of the eighty-one (81) accounts receivable accounts, approximately thirty-seven percent (37%) of them accounts for premium payments. The table below outlines the amounts and the periods for which they have been outstanding.

Table 3: Wickham's Cay Development Authority Accounts Receivable Aging Report

| Current | 1-30 days | 31-60 days | 61-90 Days | > 90 days |
|----------------|------------------|-------------------|-------------------|---------------------|
| \$0.00 | \$0.00 | \$18,871.20 | \$19,436.11 | \$1,293,493.30 |

- 9.9 Based on our assessment of records reviewed, it was determined that of the one hundred and twenty-three (123) units and properties for which rent and fees are charged eighty-one (81) customers were delinquent more than thirty (30) days as of January 17, 2014. This indicates that the Authority's ability to collect revenue when it is owed is about thirty-four percent (34%), which results in a sixty-six percent (66%) delinquency rating.

Table 4: Number of Delinquent Customers over Aging Period

| Period Delinquent | Number of Customers |
|--------------------------|----------------------------|
| Current | 0 |
| 1-30 days | 0 |
| 31-60 days | 1 |
| 61-90 days | 75 |
| > 90 days | 59 |

Objective 2: To determine if existing enforcement procedures were being followed to ensure the timely and accurate payment of rents and other fees.

9.10 The Wickham's Cay Development Authority Act Cap. 281 along with clauses within lease agreements provide the necessary enforcement procedures that can be pursued by the Authority and by extension, the Government, in the event a breach occurs. However, the enforcement of these procedures has been lackadaisical and non-existent, thereby, resulting in an ever increasing accounts receivable balance and the inability of the Authority to effectively carry out its functions.

9.10.1 The legislation provides the Authority with the right to approve and revoke leases. However, in the absence of an Authority, the Minister assumes the powers and functions of the Authority. Cabinet, although not mentioned in the legislation, is the ultimate authority that approves requests for properties belonging to the Wickham's Cay Development Authority. In the same vein, Cabinet is also the authority that revokes leases. Officers of the Authority function as facilitators of information and decisions made by the Minister and Cabinet, and not as a corporate body endowed with certain rights and powers. Presently, the Authority serves as administrative support rather than administrators of the function. They provide the necessary background information for decisions to be made. From a review of records, it was found that although information pertaining to the challenges in the collection of lease payments is communicated to the parent Ministry, nothing has been done to address the challenges faced with respect to delinquent leaseholders. In 2011, letters were prepared by the Attorney General in an effort to get leaseholders to settle their balances but a decision was made by the then Government to delay sending out the letters because of the economic situation that was affecting the Virgin Islands and the world. The resulting effect continues to be delinquent leaseholders and an ever growing accounts receivable balance, some of which may be classified as uncollectible due to the length of time they have been outstanding.

- 9.10.2 Lease agreements also provide at least two (2) procedures through which the Authority can hold leaseholders accountable for their obligations. An arbitration process detailed in the Arbitration Ordinance 1976 of the Virgin Islands is available to settle any dispute or difference arising between the lessor and lessee as to their respective rights or obligations. The lease provides that the lessor can sue the lessee for failing to make the requisite payments within the established timeframe outlined in the agreement. However, this also is not enforced. This again is possibly due to the lack of the necessary oversight of its operations and the diminished role that the Authority is subjugated to its own functioning. Additionally, if the outstanding premiums or rents are unpaid for twenty-one (21) days after becoming due, the lessor may determine his right to sue the lessee for breach of the covenants. Interest penalties are to also be applied at a rate of nine percent (9%) and twelve percent (12%) after twenty-one (21) days when the amount becomes due by the Authority. Again, these terms and conditions are not enforced.
- 9.11 Although the lease agreement, a binding document, and the Act gives the Authority the legal right to pursue these actions to collect outstanding fees, the current governance structure does not provide or support for timely and necessary decisions on such issues to be made and be properly addressed. Staff at the Authority is of the view that directives to pursue legal action have to come from the Minister or Cabinet. This viewpoint is possibly as a result of the political involvement in having a Minister assuming functional and operational control of the Authority. This further points to the issue of how the operations of the Authority are not controlled by the Estate Manager, to whom the legislation gives the right (*Cap. 281 Section 11*). As such, the Authority continues to be confined in the administration of its mandate because of the political arena that apparently plays a major role in what decisions and actions are taken.
- 9.12 Instead of utilizing the procedures mentioned in 9.9 above to pursue collection of fees, the audit observed three (3) methods, (demand letters, telephone calls and lessee statements) being used by the Authority to get lessees to fulfill their obligations. However, from files reviewed, it was discovered that the 'Payment of Outstanding Sum' letters are not prepared consistently and were prepared by the Ministry who had oversight for the function at that point in time. Based on the balance that remains outstanding to date at the Authority and the interviews conducted, it is apparent that these methods have been non-effective, as an outstanding balance of one million three hundred and thirty-three dollars four hundred and eighty-five dollars and one cent (\$1,333,485.01), as of January 17, 2014 is yet to be collected. In addition, included in this amount are fees that have been outstanding since the inception of most lease agreements.
- 9.13 The lease guides the relationship of both parties and holds them accountable for their obligations. Lease administration of the Authority has been poor and inadequate. The Authority has been lax in ensuring that they enforce clauses within the agreement, even those that are in their favour. The following issues were discovered as a result of poor lease administration processes by the Authority:

- 9.13.1 Lessees were allowed to occupy property without first having the requisite documents in place to govern the arrangement. At least two (2) instances were identified where persons occupied property without having a fully executed lease in place. This was found to have resulted from an oversight on the part of the Authority to ensure that the appropriate steps and documents were effected as per Cabinet's decision. Despite the absence of a fully executed lease, initial payments (deposits) were made to secure the property and some subsequent payments, but, the full amount of the premium and annual ground rents were not paid as required. As a result, these individuals have accumulated huge balances in unpaid rent and premium fees.
- 9.13.2 The lease provides for an increase in rental fees after the first eight years into the life of the lease. However, an increase in rental fees has never been implemented. The Authority recently conducted an appraisal review of rental fees and the appraisal revealed that properties are grossly undervalued. For example, where a lessee is currently paying twenty-seven dollars (\$27.00) the appraisal's review revealed that the revised rent should be one thousand one hundred and seventeen dollars (\$1,117.00). This is possibly one of the contributing factors to the financial woes of the Authority. Where inflation and business environments have changed the Authority has failed to adjust and change in order to remain current with rates that are comparable to the market environment in which it operates.
- 9.13.3 Deceased lessees – At least three (3) instances were identified where lessees were deceased but the necessary actions to transfer the property to relatives have not occurred and some of these situations have been outstanding for at least two to three years.
- 9.13.4 The lease provides a two-year grace period to leaseholders within which construction should occur on the leased property and if the lessee does not comply with this commitment, a request for an extension to build should be sought and granted by the Authority or the lessee will forfeit the lease and any payments made in its connection. The audit found that there were at least seven (7) instances where lessees have failed to build on the leased property, extensions have not been sought and no action has been taken by the Authority to forfeit the lease and regain ownership of the properties. Again, this highlights the lack of monitoring and enforcement of the lease terms and agreement.
- 9.14 In addition, it is also evidenced by the 'Payment of Outstanding Sum' letters found on files that the Ministry (Premier's Office) took an administrative and management role of the Authority instead of the oversight and governance role it should have taken. Furthermore, while the law vested authority in the Estate Manager to have control over all the operations of the Authority, it is apparent that this is not occurring, as much of the operational directives and actions taken were given from the Permanent Secretary under whose Ministry had oversight for the Authority at the time. The role of the Estate Manager is observed to be that of facilitator rather than a Manager.

Craft Alive Village

Background

The Craft Alive Village began as an entrepreneurial initiative of the Department of Trade and Consumer Affairs to give local vendors the opportunity to start their own business and sell locally made crafts. In its initial stage, the Village was managed by the Department of Trade and Consumer Affairs and funds from tenants occupying the units were paid into the Department. The Village was recently transferred to the Ministry of Communications and Works under the Office of the City Manager.

- 9.15 The audit found that an outstanding accounts receivable balance remains at the Department of Trade and Consumer Affairs in the amount of one hundred and seventy-nine thousand six hundred and fifty dollars (\$179,650.00) for twenty-one (21) tenants. Of the twenty-one (21) tenant accounts, only sixteen (16) have made arrangements to settle the outstanding amounts through a payment plan with the Department. The remaining five (5) have not initiated any arrangement to have the outstanding amount settled. The Department has taken no further action to recover the outstanding amounts. Bearing this in mind, coupled with the length of time the amounts have remained uncollected (almost ten (10) years), it is possible that Government may have to write-off these balances as uncollectible amounts and thereby absorb the cost of the bad debt.
- 9.16 The Village currently operates under the Ministry of Communications and Works and functions as the other properties belonging to the Wickham's Cay Development Authority, where revenue collected is paid into the Authority's bank account. However, leases for units within the Village are not executed in the same manner as those under the Authority. Unlike the Authority, where Cabinet approves leases, the City Manager administers, approves and signs lease agreements for tenants of the Village. The manner, in which this approval process is conducted, highlights an issue in that it subordinates the authority of the Estate Manager of the Authority, a legislated position, to that of the City Manager, as the Manager with responsibility for all properties belonging to the Authority.
- 9.17 Lease administration as it pertains to the Craft Alive Village was also found to be inadequate and some practices are potentially risky and places the Authority and by extension the Government in a precarious position. There also appears to be a lack of enforcement action on the part of the management of the Village to hold lessees accountable for delinquent practices.

- 9.17.1 In all leases reviewed under the Craft Alive Village, it was observed that these agreements are only notarized and are not registered with any other Government agency. In addition, it was observed that the majority of the leases reviewed were incomplete in that they were not signed and not notarized. In at least one (1) instance, it was found that a lease was signed by an employee of the renter of the unit and not the renter themselves, due to their unavailability. While it is understood the reason why this action was taken, leases should be signed by the individuals who has the requisite authority to operate such units and not their employees and who can be held accountable for any breach to the agreement.
- 9.17.2 It was also discovered that some tenants are non-compliant with the terms and conditions of their agreement. It was discovered that some tenants are occupying units within the Village but have not met the requisite requirement of paying the deposit and subsequent rental payments. Of the sixty (60) tenants occupying the Village, all tenants have outstanding amounts which exceeds two thousand dollars (\$2,000.00) and includes their deposit and monthly rental fees; and the amounts outstanding has been owed since the inception of the agreement. If this situation is not controlled in its early stage, it can escalate into the same situation that exists at the Wickham's Cay Development Authority, where the outstanding balance is so exorbitant that the risk of non-collection is high.
- 9.17.3 In awarding tenants units, the authorizing officer requires a number of documents in assessing their eligibility to rent. As part of the process, the tenants should have a valid trade license or company license, and their Employment and Immigration status within the country should be legitimate. From testing done, it was found that at least one (1) vendor's document on file indicated that employment was prohibited by the Immigration Department; however, the individual was still awarded a unit within the Craft Alive Village. This issue highlights a possible deficiency within the approval process where the one officer charged with administering the function is unable to perform the necessary due diligence required and as such the potential for such situations to occur is heightened.

Objective 3: To determine whether internal controls were in place to ensure the effective and efficient operations of the Authority.

The Internal Controls of the Authority were evaluated utilizing the principles and components of the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control- Integrated Framework (*Refer to Appendix 1- Audit Methodology for more details*). This internal control framework has gained broad acceptance and is widely used around the world. It is recognized as a leading framework for designing, implementing and conducting internal control and for establishing requirements of an effective system of internal controls.

- 9.18 *In addition to the risk events and control weaknesses discussed earlier in this report, the audit found the internal controls of the Authority to be inadequately designed and for the most part non-existent, which renders the system of internal controls ineffective. During testing, management did not provide any evidence to demonstrate the presence of and functioning of any of the principles of an effective internal control framework.*
- 9.19 Specifically, the absence of a board of directors and a functioning senior management team has resulted in the following conditions related to the principles evaluated:
- 9.19.1 The control environment is the set of standards, processes, and structures that provide the basis for carrying out internal control across the organization. The board of directors and senior management establish the tone at the top regarding the importance of internal controls including expected standards of conduct. The principle evaluation of the Control Environment of the Authority revealed significant weaknesses such as a lack of commitment to integrity and ethical values. For example, based on COSO, a commitment to integrity and ethical values can be demonstrated through the use of code of conduct, training employees on the code, and through the establishment of an ethical tone from senior management and the board of directors (zero-tolerance for integrity violations). As such, the Authority lacks the necessary hallmarks that would support the facts that efforts are being made to establish an ethical and professional environment as no Board has been established and senior management has not demonstrated the necessary actions that would promote such an environment.
- 9.19.2 The principle evaluation also revealed that the Authority lacks adequate oversight and organizational structure. In the absence of an Authority (board), the subject Minister is to assume oversight responsibility, which was also found to be minimal. Similarly, the principle evaluation found a lack of adequate performance assessment and management. In order for the Authority to adequately assess and measure its performance, the criteria (goals and objectives) must first be developed. Presently, the Authority does not have any strategic plan with developed goals and objectives to guide its operations for the short or long term.
- 9.19.3 Risk, is defined as the possibility that an event will occur and adversely affect the achievement of objectives. Risk assessment involves a process of identifying and assessing risks (impact and likelihood) to the achievement of objectives. The principle Evaluation of Risk Assessment Activities revealed that the Authority does not manage organizational risk. As a result, the likelihood of achieving organizational goals and objectives are diminished likely resulting in organizational failure. Had the Authority practiced risk management, the present situation where a large amount of accounts receivables are significantly past due, would have potentially been averted, through the development of adequate risk responses. In the case of the outstanding receivables, an appropriate risk response would be to control the risk, which would entail deploying appropriate enforcement actions.

- 9.19.4 Control activities are the actions established through policies and procedures that help ensure that management's directives to mitigate risks to the achievement of objectives are carried out. The principle evaluation of Control Activities revealed that there are significant gaps between the development and achievement of objectives and the implementation of controls to prevent and detect adverse risks or control weaknesses that affect the achievement of planned objectives. For example, the magnitude of the outstanding receivable could have been mitigated by implementing appropriate controls such as policies establishing the timeframe before enforcement actions would commence and what type (civil action).
- 9.19.5 Information is necessary for the entity to carry out internal control responsibilities to support the achievement of its objectives. Management obtains or generates and uses relevant quality information from both internal and external sources to support the functioning of internal controls. The principle evaluation of Information and Communication revealed that both internal and external communication is ineffective, as the communication is broken on the part of respondents or stakeholders, usually through inaction. Information needed to make sound decisions is sometimes incomplete or unavailable. Additionally, in the past, from files reviewed, information appears to have been one directional, from the Authority to the parent Ministry, as much of the issues reported have remained unaddressed and unresolved.
- 9.19.6 The current proposed structure of the City Manager assuming responsibility and oversight for the Authority on behalf of the Ministry has brought a much more direct approach to communicating the Ministry's direction for the Authority and to addressing some of the issues that plague the Authority. However, as the structure is new, there is still much that has to be accomplished to rectify the numerous issues that hamper the advancement and success of the Authority.

10.0 AUDIT CONCERN

- 10.1 When the Authority was transferred from the Premier's Office to the Ministry of Communications and Works, a number of issues were highlighted in a Briefing Report that was prepared. The issues highlighted related to outstanding issues with current leaseholders, the non-compliance of lessees, the need of adequate staff to manage the Authority adequately and the need for a revision in rental rates. During the course of the engagement no clear plan was observed as being implemented to resolve and address these issues. These issues need to be addressed urgently to bring the much needed financial stability and efficiency needed for the Authority to operate effectively.
- 10.2 Although, it would appear that the issue of the loan provided by the United Kingdom Government to purchase Wickham's Cay has been settled and paid in full, as there are no notices for payment from the United Kingdom Government being received by the Government of the Virgin Islands, it is important that this be validated. Efforts to verify such, during the course of this engagement proved futile as the Ministries under which the Authority has operated over the years could not accurately verify the status of the loan.

- 10.3 The Authority has not obtained property insurance since 2012 due to the lack of funds to meet the cost associated with this expense. As a result, the current Palm Grove Shopping Center is not insured. As such, we are concerned as to the possible financial risk this situation poses to the Government of the Virgin Islands should the building sustain severe damages.
- 10.4 At least one (1) tenant was identified as not having a lease fully effected and consequently subletting the 'proposed' leased property to another individual. While the lease agreement provides for lessees to sublet properties, the subletting of properties cannot occur without prior approval and consent from the Authority. This situation would then indicate that there are two issues here that need to be addressed and rectified as they are in breach of the lease agreement and of the general rules of the Authority.
- 10.5 Based on interviews conducted, financial audits of accounting statements of the Authority that are mandated as outlined in their legislation, Cap 281 Section 16, have not been conducted since 2004. This situation again has resulted due to the lack of funding to secure the services for these audits to be conducted. While we understand the obstacles in fulfilling this requirement, it is a grave concern that these audits have remained outstanding for this length of time and no active steps have been taken to try to have them completed.
- 10.6 The City Manager is currently charged with providing oversight for Wickham's Cay Development Authority on behalf of the Ministry of Communications and Works. As such, the officer functions as the supervisor of the Estate Manager and the staff of the Wickham's Cay Development Authority. Bearing this in mind, and the fact that the position of the Estate Manager of the Wickham's Cay Development Authority is a legislated position, we are concerned that the current structure subordinates the position of the Estate Manager, a legislated position to that of an unlegislated position.

11.0 CONCLUSION

- 11.1 The audit has concluded that the Wickham's Cay Development Authority lacks the necessary structure to effectively carry out its mandate. Since its inception, the Authority has functioned outside the intended structure under which it was established. As such, the Authority has become a neglected organization which lacks the necessary support and guidance from various stakeholders to make pertinent decisions. As a result of the non-enforcement of various aspects of the lease agreement and the Authority not exercising the power vested in them under the law, Wickham's Cay Development Authority is not given the level of respect due from its leaseholders and is possibly perceived as 'weak' in carrying out their functions. Consequently, the Authority is being taken advantage of by its leaseholders as there are no consequences being enforced for non-compliance to agreements signed.
- 11.2 The non-establishment of an adequate governance structure and a lease administration process has worked against the Authority. In addition, the non-enforcement of various aspects of the lease agreement has created an environment where leaseholders have become lax and non-complaint, balances have grown drastically and the financial stability of the Authority is compromised. Enforcement processes available to the Authority have not been pursued in the collection of outstanding fees as it appears this course of action is possibly undesirable. In addition, the requisite authorities have also failed to ensure that they support and establish the controls necessary to support the mandate of the Authority. Processes and procedures are not guided by sound documented policies and procedures but instead staff discretion is applied.
- 11.3 Without the Authority assuming and exercising its governing authority, no accountability on the part of leaseholders will occur. It is in the Government's and the Authority's best interest to protect its interest in the properties belonging to the Wickham's Cay Development Authority, by ensuring that the required and pertinent structures are put in place and the crucial decisions that must be made are made and carried out. The current operational environment of the Authority is detrimental to its on-going functioning and success. Failure to take and make the essential and urgent decisions to restore financial stability and implement sound controls will leave the future of the Authority uncertain and unsustainable.

12.0 RECOMMENDATIONS

The following recommendations are provided to address the issues and concerns articulated in this report.

- 12.1 It is recommended that the Authority develops a comprehensive policy and procedural manual that encompasses all areas of their operations, lease administration, revenue collection, etc.
- 12.2 It is recommended that receipt books be used in sequential order to maintain consistency and accountability and the proper use of receipt counterfoils be practiced. If the counterfoil is unreadable then a copy of the original receipt should be taken and affixed to the counterfoil.
- 12.3 It is recommended that the Authority considers implementing a control framework and develops controls to ensure that the goals and objectives of the organization are achieved and significant risks are managed. The framework chosen should address risk management, controls and governance processes.
- 12.4 It is recommended that active steps be taken to set the direction for the Wickham's Cay Development Authority. Initial steps should be taken to determine the intent of Government where the Authority is concerned as its current structure is not aligned with the legislation. Once the decision is made, then the necessary steps should be taken to amend the legislation to reflect the intended structure. A clear mandate must be established and an appropriate structure should be created to fulfill that mandate.
- 12.5 It is recommended that the Authority undergoes an organizational restructuring to bring the much needed structure where a lease administration function along with other pertinent functions can be properly established. The function should include processes for proper lease administration and the administration of other areas of its operations for all properties belonging to the Wickham's Cay Development Authority which includes the Craft Alive Village. The role of the City Manager should also be considered when developing this structure.
- 12.6 It is recommended that active efforts be taken by the Authority to recover all outstanding amounts owed to them by lessees. This should be done by the enforcement of the terms and conditions outlined in the lease agreements and according to the legislation, as these documents are legally binding and protects the interest of the parties.
- 12.7 It is recommended that each issue highlighted in the Premier's Office Briefing Report that was submitted when the Authority was transferred to the Ministry of Communications and Works be addressed and active steps be taken to ensure that the issues noted do not reoccur.

- 12.8 It is recommended that a plan be developed for the implementation of the revised fee structure. Although the drastic increase in some fees may be difficult to implement immediately, a plan of increasing the fees over time should be pursued as the current structure is unrealistic for the market and environment in which the Authority operates.
- 12.9 In an effort to reduce/remove the political involvement in the operations of the Authority, it is recommended that a Board be established to set the direction and provide the governance structure needed to bring transparency, equity and accountability to the Authority.
- 12.10 It is recommended that active steps be taken to have all outstanding audits conducted.
- 12.11 It is recommended that active steps be taken to have all leases for tenants of the Craft Alive Village fully executed, that is, signed by tenants of units, signed by Government, notarized and registered.
- 12.12 It is recommended that a documented criterion be developed for the approving of leaseholders before granting properties or units within the Craft Alive Village. This will help to bring transparency and consistency within the approval process.
- 12.13 It is recommended that steps be taken to have all owners of units within the Craft Alive Village settle their outstanding amount within an adequate timeframe. If management of the Village continues on its current course, tenants that are unable to pay the current balance owed, which is low, may not be able to pay the amount that will continue to grow and may eventually become an uncollectible debt for the Government.

13.0 APPENDICES

Wickham's Cay Development Authority - Audit Methodology

The Internal Controls of the Wickham's Cay Development Authority were evaluated utilizing the principles and components of the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control- Integrated Framework. The effectiveness of the Authority's internal controls was evaluated based on the presence and functioning of the principles:

1. The organization demonstrates a commitment to integrity and ethical values.
2. The board of directors demonstrates independence from management and exercises oversight for the development and performance of internal control.
3. Management establishes, with board oversight, structures, reporting lines, and appropriate authorities and responsibilities in the pursuit of objectives.
4. The organization demonstrates a commitment to attract, develop, and retain competent individuals in alignment with the objectives.
5. The organization holds individuals accountable for their internal control responsibilities in the pursuit of objectives.
6. The organization specifies objectives with sufficient clarity to enable the identification and assessment of risks relating to objectives.
7. The organization identifies risk to the achievement of its objectives across the entity and analyzes risk as a basis of determining how the risks should be managed.
8. The organization considers the potential for fraud in assessing risks to the achievement of objectives.
9. The organization identifies and assesses changes that could significantly impact the system of internal control.
10. The organization selects and develops control activities that contribute to the mitigation of risks to the achievement of objectives to acceptable levels.
11. The organization selects and develops general control activities over technology to support the achievement of objectives.
12. The organization deploys control activities through policies that establish what is expected and in procedures that put policies into action.
13. The organization obtains or generates and uses relevant, quality information to support the functioning of internal control.
14. The organization internally communicates information, including objectives and responsibilities for internal control, necessary to support the functioning of internal control.
15. The organization communicates with external parties regarding matters affecting the functioning of internal control.

MANAGEMENT'S RESPONSE



Ministry of Communications and Works

Government of the Virgin Islands

MEMORANDUM

OUR REF: CW/ED.5/48 Vol. 2

From: Acting Permanent Secretary, MCW
To: Director of Internal Audit
Date: 26th June, 2014



Draft Internal Audit Report – Wickham's Cay Development Authority

Please refer to your memorandum dated 20th May, 2014 with regards to the above subject matter.

We acknowledge the findings within the draft internal audit report and have responded to your various recommendations. This is attached for your review.

Should there be a need to further discuss my response to the report, please feel to contact me at the Ministry.

Regards,

[Redacted Signature]
Anthony McMaster
Acting Permanent Secretary

AM/msa

Attachment (1)

11.0 RECOMMENDATIONS

The following recommendations are provided to address the issues and concerns articulated in this report.

- 11.1 It is recommended that the Authority develops a comprehensive policy and procedural manual that encompasses all areas of their operations, lease administration, revenue collection, etc.

| | |
|--|---|
| Agree/Disagree | Agreed |
| Corrective action planned | The Ministry in consultation with WCDA will develop full procedural manual along with policy documents to guide the operations of the agency. |
| Anticipated completion date | 31 st December, 2014 |
| Names(s) of contact person(s) responsible for corrective action | Estate Manager, Wickham's Cay Development Authority |

- 11.2 It is recommended that receipt books be used in sequentially order to maintain consistency and accountability and the proper use of receipt counterfoils be practiced. If the counterfoil is unreadable then a copy of the original receipt should be taken and affixed to the counterfoil.

| | |
|--|--|
| Agree/Disagree | Agreed |
| Corrective action planned | Transactions will be recorded using one original receipt book and each bank deposit will include all supporting documents. |
| Anticipated completion date | Full implementation effective immediately. |
| Names(s) of contact person(s) responsible for corrective action | Estate Manager, Wickham's Cay Development Authority |

- 11.3 It is recommended that the Authority considers implementing a control framework and develops controls to ensure that the goals and objectives of the organization are achieved and significant risks are managed. The framework chosen should address risk management, controls and governance processes.

| | |
|--|---|
| Agree/Disagree | Agreed |
| Corrective action planned | An appropriate framework will be produced that outlines the objectives of the WCDA, risk management and governance as well as controls will be drafted for review. This will be drafted for review by 21 st June, 2014 |
| Anticipated completion date | 1 st October, 2014 |
| Names(s) of contact person(s) responsible for corrective action | City Manager, Office of the City Manager |

- 11.4 It is recommended that active steps be taken to set the direction for the Wickham's Cay Development Authority. Initial steps should be taken to determine the intent of Government where the Authority is concerned as its current structure is not aligned with the legislation. Once the decision is made, then the necessary steps should be taken to amend the legislation to reflect the intended structure. A clear mandate must be established and an appropriate structure created to fulfill that mandate.

| | |
|--|--|
| Agree/Disagree | Agreed |
| Corrective action planned | The WCDA will be subsumed under the Office of the City Manager |
| Anticipated completion date | 31 st December, 2014 |
| Names(s) of contact person(s) responsible for corrective action | Acting Permanent Secretary, Ministry of Communications and Works |

- 11.5 It is recommended that the Authority undergoes an organizational restructuring to bring the much needed structure where a lease administration function along with other pertinent functions can be properly established. The function should include processes for proper lease administration and the administration of other areas of its operations for all properties belonging to Wickham's Cay Development Authority which includes the Craft Alive Village. The role of the City Manager should also be considered when developing this structure.

| | |
|--|--|
| Agree/Disagree | Agreed |
| Corrective action planned | The WCDA will be subsumed under the Office of the City Manager |
| Anticipated completion date | 31 st December, 2014 |
| Names(s) of contact person(s) responsible for corrective action | Acting Permanent Secretary, Ministry of Communications and Works |

- 11.6 It is recommended that active efforts be taken by the Authority to recover all outstanding amounts owed to them by lessees. This should be done by the enforcement of the terms and conditions outlined in the lease agreements and according to the legislation, as these documents are legally binding and protects the interest of the parties.

| | |
|--|--|
| Agree/Disagree | Agreed |
| Corrective action planned | Updated correspondences will be sent to each lease holder about the outstanding dues and to re-establish a formal process to liquidate the outstanding sums. |
| Anticipated completion date | 31 st July, 2014 |
| Names(s) of contact person(s) responsible for corrective action | Estate Manager, Wickham's Cay Development Authority |

- 11.7 It is recommended that each issue highlighted in the Premier's Office Briefing Report that was submitted when the Authority was transferred to the Ministry of Communications and Works be addressed and active steps be taken to ensure that the issues noted do not reoccur.

| | |
|--|---|
| Agree/Disagree | Agreed |
| Corrective action planned | The City Manager will provide a copy of this to the Ministry to be update on this matter. |
| Anticipated completion date | Ongoing |
| Names(s) of contact person(s) responsible for corrective action | Acting Permanent Secretary, Ministry of Communications and Works |

- 11.8 It is recommended that a plan be developed for the implementation of the revised fee structure. Although the drastic increase in some fees may be difficult to implement immediately, a plan of increasing the fees over time should be pursued as the current structure is unrealistic for the market and environment in which the Authority operates.

| | |
|--|---|
| Agree/Disagree | Agreed |
| Corrective action planned | A Cabinet Paper will be sent forward to Cabinet requesting a phase implementation fee structure over the next three – five years to get in line with the market . |
| Anticipated completion date | 31 st December, 2014 |
| Names(s) of contact person(s) responsible for corrective action | Acting Permanent Secretary, Ministry of Communications and Works |

- 11.9 In an effort to reduce/remove the political involvement in the operations of the Authority, it is recommended that a Board be established to set the direction and provide the governance structure needed to bring transparency, equity and accountability to the Authority.

| | |
|--|--|
| Agree/Disagree | Agreed |
| Corrective action planned | This will be reduced through the introduction of the new management structure. |
| Anticipated completion date | 31 st December, 2014 |
| Names(s) of contact person(s) responsible for corrective action | Acting Permanent Secretary, Ministry of Communications and Works |

- 11.10 It is recommended that active steps be taken to have all outstanding audits conducted.

| | |
|--|--|
| Agree/Disagree | Agreed |
| Corrective action planned | Steps will be taken to undertake the first two years audits for the 2005 and 2006, as funds permit |
| Anticipated completion date | 31 st December, 2014 |
| Names(s) of contact person(s) responsible for corrective action | Acting Permanent Secretary, Ministry of Communications and Works |

- 11.11 It is recommended that active steps be taken to have all leases for tenants of the Craft Alive Village fully executed, that is, signed by tenants of units, signed by Government, notarized and registered.

| | |
|--|--|
| Agree/Disagree | Agreed |
| Corrective action planned | Over 50% of the leases have been executed and notarized. A few leases are being processed. The remaining leases are anticipated to be executed before the anticipated completion date. |
| Anticipated completion date | August 31, 2014 |
| Names(s) of contact person(s) responsible for corrective action | Estate Manager, Wickham's Cay Development Authority and the City Manager, Office of the City Manager |

- 11.12 It is recommended that a documented criterion be developed for the approving of leaseholders before granting properties or units within the Craft Alive Village. This will help to bring transparency and consistency within the approval process.

| | |
|--|--|
| Agree/Disagree | Agreed |
| Corrective action planned | A Draft Policy document which clearly outlines the process and evaluation criteria for the proposed leases will be developed and submitted to Cabinet for full implementation. |
| Anticipated completion date | 31 st October, 2014 |
| Names(s) of contact person(s) responsible for corrective action | City Manager, Office of the City Manager |

- 11.13 It is recommended that steps be taken to have all owners of units within the Craft Alive Village settle their outstanding amount within an adequate timeframe. If management of the Village continues on its current course, tenants that are unable to pay the current balance owed, which is low, may not be able to pay the amount that will continue to grow and may eventually become an uncollectible debt for the Government.

| | |
|--|--|
| Agree/Disagree | Agreed |
| Corrective action planned | The Office of the City Manager has been working with the Ministry of Finance and the Attorney general's chambers on the matter of collections as it relates to Craft Alive outstanding payments. |
| Anticipated completion date | 31 st December, 2014 |
| Names(s) of contact person(s) responsible for corrective action | Estate Manager, Wickham's Cay Development Authority and the City Manager, Office of the City Manager |

The Commission would have the power to suspend, terminate, amend and renew licences and frequency authorisations. The Commission would also be able to issue special licences where it determines that an emergency or other exigent circumstance exists.

The Act would require public telecommunications network operators and public telecommunications service providers to allow other such operators and service providers to make direct and indirect interconnection to their networks and services on terms specified by the Commission.

A requirement of universal service would apply to such public telecommunications services as the Commission determines in accordance with the policy established by the Minister. The Commission would also be able to regulate prices for telecommunications services.

Several criminal offences are provided for in Part X. Part XI makes provision for the finances and reports of the Commission. Part XII provides gateways for the disclosure of information by the Commission and empowers the Commission to request information and to apply for a search warrant. Part XIII contains special enforcement provisions for public telecommunications network operators and public telecommunications service providers.

Administrative, staffing, transitional and other general provisions are contained in Parts XIV to XVII.

This Act was introduced in the Legislative Council on the 25th day of May, 2006 and passed through its remaining stages on the 2nd day of June, 2006.

In my opinion, His Excellency the Governor may properly assent to this Act in the name and on behalf of Her Majesty.

Atto rn ey Gen
8th June, 2006

CHAPTER 281.

WICKHAM'S CAY DEVELOPMENT AUTHORITY.

(14th March, 1975.)

2/1975
11/1979

1. This Ordinance may be cited as the Wickham's Cay Development Authority Ordinance. Short title.
2. In this Ordinance— Interpretation.
 - "Authority" means the Wickham's Cay Development Authority;
 - "Minister" means the Minister for the time being charged with the subject and function of Wickham's Cay Affairs; 11/1979.
 - "Wickham's Cay" means the Wickham's Cay Land and the Marina as defined in the Deed recorded in the Record Office as Deed No. 613 of 1971 and delineated on the Plan A attached thereto.
3. There shall be established the Wickham's Cay Development Authority which shall, in that name, be a body corporate with perpetual succession and a common seal, and shall be capable of suing and being sued, and subject to this Ordinance of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer. Establishment of the Authority.
4. The Authority shall consist of such person or persons as may be appointed by the Governor. Until such appointment is made, the powers and functions of the Authority shall vest in the Minister. Appointments to the Authority.
5. The aims and objects of the Authority are to promote and manage the development of Wickham's Cay. Aims and objects.
6. Subject to the provisions of section 8 and for the purpose of achieving the objects specified in section 5, the Authority shall have the power— Powers of the Authority.

(a) to investigate, formulate and implement plans and projects for the physical layout and development of Wickham's Cay;

(b) to negotiate, approve and revoke leases of land and other property on Wickham's Cay; and

(c) to arrange for any construction or engineering work which may be required to achieve the objects of the Authority.

Functions of the Authority.

7. Subject to the provisions of section 8 the Authority may do all things necessary to be done for or in connection with or incidental or conducive to the discharge of its functions and in particular may—

(a) acquire, take on lease, purchase, hold, manage and enjoy any property and sell, let or otherwise dispose of the same;

(b) borrow money for the operations of the Authority;

(c) enter into any contract;

(d) make, draw, accept or endorse negotiable instruments.

Governor may give directions.

8. The Governor may give the Authority such general or special directions for the purpose of exercising the powers and achieving the objects specified in sections 5 and 6 and as to the exercise and performance of its functions under section 7 as he may think necessary.

Estimates to be submitted.

9. Not later than the 31st day of October in each year the Authority shall submit to the Governor estimates of its income and expenditure in the coming year for approval, together with a forecast of its financial operations in the triennium following.

Power to appoint committees.

10. (1) With the written approval of the Minister, the Authority may appoint committees for any general or special purpose as in the opinion of the Authority would be better regulated or managed by means of a committee.

(2) A committee may include persons who are not members of the Authority.

Power to appoint general manager.

11. (1) The Authority may, with the approval of the Governor, from time to time, appoint a general manager, who

shall be the chief executive officer of the Authority and of all its operations.

(2) The Authority may appoint a secretary to the Authority and such other officers and employees as it may consider necessary for the proper and efficient discharge of the functions of the Authority.

12. The funds and resources of the Authority shall consist of—

Funds and
resources of
Authority.

(a) such sums as may be appropriated from time to time to the Authority by a vote or resolution of the Legislature;

(b) all property and investments as may be acquired by or vested in the Authority, and all money earned or arising therefrom;

(c) any loan or grant made to the Authority;

(d) all sums from time to time received by or falling due to the Authority in respect of leases granted for land, jetties or property on Wickham's Cay;

(e) all other sums or property which may in any manner whatever be paid or payable to or vested in, the Authority.

13. The Governor may, upon such terms as he thinks fit, vest the use, occupation, management or control of any Crown property or of any interest in such property in the Authority where it appears desirable to do so to enable the Authority to achieve the objects specified in section 5.

Governor may
vest use etc. of
Crown property
in Authority.

14. (1) Save as otherwise provided in this Ordinance, the moneys of the Authority shall be applied only in; first the repayment of the loan made by the Government of the United Kingdom in 1971 to the Government of the Virgin Islands for the purchase of Wickham's Cay and any interest payable thereon and otherwise in payment or discharge of the expenses, charges and liabilities incurred or undertaken by the Authority in the exercise of its powers or the performance of its functions and duties under this Ordinance.

Power to
Authority to
apply money to
own use.

(2) Moneys of the Authority not immediately required for the purposes of the Authority may be invested on deposit with any bank as may be approved by the Governor or in accordance with such general directions as the Governor may give from time to time.

Authority to
keep accounts.

15. (1) The Authority shall keep proper accounts of all income and expenditure and shall maintain proper and adequate records thereof.

(2) As soon as may be convenient after the end of each calendar year, and not later than the 31st day of March, the Authority shall cause to be drawn up a statement of its income and expenditure during such calendar year and a statement of the assets and liabilities of the Authority on the last day thereof.

Audit and
Authority's
report.
11/1979.

16. (1) The Chief Auditor shall audit the statements drawn up under section 15 (2) as soon as possible and shall make a report thereon to the Authority and to the Governor, by the 30th day of June in each year.

(2) The Authority shall draw up a report of its activities up to the end of each calendar year and forward such statement together with the Chief Auditor's report under subsection (1) in respect of each year to the Minister not later than the 30th June of the ensuing year.

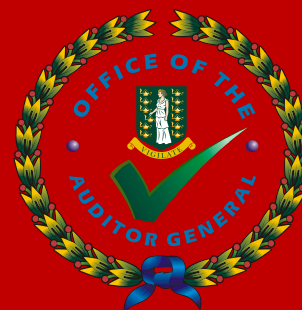
(3) The Minister shall within two months of the receipt of such report and statement, lay such report and statement before the Legislative Council.

Power to make
regulations.

17. (1) The Authority may make regulations governing the terms and conditions of service of the general manager and of its employees:

Provided that such regulations shall not come into force until approved by the Governor.

(2) The Governor may make regulations for carrying into effect the purposes of this Ordinance.



Port Development Project



Office of the Auditor General
Government of the Virgin Islands
31 January 2013

EXECUTIVE SUMMARY

1. In 2007 the BVI Port Authority approved plans for the expansion of the cruise ship pier on Wickhams Cay in order accommodate larger cruise ships that had become commonplace in the industry. The project was put to tender and a contractor was identified and recommended for approval. Approval for the works was not received by Cabinet.
2. In October 2011 the Authority and BVI Government executed Heads of Terms with Disney's Magical Cruise Company for a \$12,000,000 loan facility to expand the pier and construct a welcome center on the 4.1 acre upland. This was subsequently deemed insufficient for envisioned port development and was cancelled by the Government.
3. The pier extension project evolved to include a large scale development of the upland. There was no revised needs analysis, no comprehensive planning, and no public tendering. Three proposals were received for the development with estimated costs up to \$57,000,000. The process through which these were solicited was not documented.
4. Heads of Understanding for the expansion of the cruise ship pier and large scale development of the upland were executed between the Government and Tortola Port Partners in March 2012 for a 49 year public private partnership valued in excess of \$70,000,000.
5. The Port Authority was excluded from the process of reexamination and redefinition of the port development project and was not a party to the Heads of Understanding agreement executed for the proposed development.
6. A review performed by independent legal experts indicated that the legal documents (executed and proposed) for the private public partnership between the Government and Tortola Port Partners heavily favoured the developers.
7. The Heads of Understanding agreement with Tortola Port Partners was terminated in July 2012.
8. The project for pier extension and upland development was put to public tender in August 2012 in an expedited process. The limited timeframe and the detailed scope of works specified in the invitation may have limited the number of possible responses and provided a schematic advantage for the previously selected developer.
9. The new requirement of a local partner generated a partnership which presents a conflict of interest.

SCOPE AND METHODOLOGY

1. The audit comprised an assessment of the processes employed in procuring and assessing options for the development of the port facilities. It included interviews with key personnel, examination of files, records and documents and a review of other similar developments. The examination focused on compliance and regularity of the processes as they relate to public procurement and transparency.
2. The examination is not intended to assess or examine the merits or otherwise of the contents of the proposals and submissions received for the cruise pier development. This is deemed the role of the procurement assessment team.
3. The examination was restricted in the following ways:
 - i. Files examined at the Ministry of Finance were assessed as incomplete;
 - ii. Former consultant for the Ministry of Communications and Works, who was an integral part of the process from December 2011 to November 2012, was unavailable for audit interview.

BACKGROUND

4. The cruise ship pier located on Wickhams Cay I was officially opened in November 1994. This was constructed 555 feet long with one mooring dolphin which effectively extended its utility by 295 feet to 850 feet. The pier was extended in 1999 to 746 feet with two mooring dolphins (the furthest one situated 267 feet from the extended pier) for a total mooring facility of 1013 feet. The mooring dolphins are significant as they are used to secure larger ships which at times exceed the length of the pier. The facility as completed in 1999 could, it was estimated, service ships up to 265 meters (869 feet) but was being used for ships up to 295 meters (967 feet). The files indicate that even larger ships were at times accommodated at the pier.
5. The surrounding area (upland) comprises of approximately 4.1 acres of undeveloped reclaimed land which is fenced for security purposes. The area is largely without landscaping and lacking amenities.
6. Early in the millennia as cruise lines succumbed to economies of scale by investing in increasingly larger ships, it became clear that the existing pier was no longer adequate to service the industry. The Authority was put under pressure by cruise ship operators to improve the facility or risk losing its market share. As the industry continued to grow in the Caribbean, the territory saw a decline in the number of passenger arrivals from 2007 to 2010.
7. Fully forewarned, the Authority engaged engineers CH2MHILL in 2007 to perform a conceptual evaluation and recommend options for the expansion of the pier. Based on the results of this evaluation, approval was sought and obtained from Cabinet in April 2008 for the lengthening of the pier by 194.6 feet at a cost not to exceed \$7,000,000.
8. The project was put to tender by the Authority in June 2008. With the assistance of CH2MHILL, the Authority selected the lowest bidder Misener Marine Construction Inc. of Florida to be awarded a contract (for \$12,120,891) to extend the pier and perform related

repair works. This selection was forwarded to the Ministry of Communications and Works (the Ministry) to arrange for Cabinet ratification.

9. A paper seeking approval for the contract to be awarded to Misener Marine Construction Inc. was submitted to Cabinet in September 2008. This stipulated an expansion of the pier deck by 84 feet, together with the construction of two additional mooring dolphins and a list of other related works. There was no information in the paper to clarify the significance of the mooring dolphins which together with the pier expansion would extend the functionality of the pier by 207 feet in accordance with the CH2MHILL design. Without this information the proposal was rejected by Cabinet on the basis that 84 feet would be insufficient to service large ships.

10. Cabinet instead called for the establishment of a task force to examine the issues related to accommodating larger cruise ships in Road Town harbour (an alternative site) along with other requirements. In the end, no timeline was established and no definitive solution provided with respect to the urgently required pier extension.

Disney Proposal

11. *The proposal for the expansion of the pier and construction of a welcome center was deemed insufficient for envisioned port development.*

12. Having failed to address the salient issue of the cruise pier's growing inadequacy the Authority continued to receive pressure from carriers about the facility. Proposals were made by both Royal Caribbean and Disney in 2009 for the expansion of the pier and assistance with financing. In 2011 the Authority stepped up its talks with Disney's Magical Cruise Company for a construction loan to extend the pier.

13. The Disney proposal stipulated a \$12,000,000 loan facility which would be used to construct a two span pier extension at the cruise ship pier and a welcome center. The works would be performed by Misener Marine Construction Inc. with CH2MHILL as Project manager. The project duration, as indicated in an appendix to the Heads of Terms, would extend from 28 July 2011 to 14 November 2012. The loan would be amortized over a ten year period at an interest rate of 6%.

14. Upon completion, Disney would have preferential berthing privileges at one of the two berths for a fifteen year period. The company would also have the right of first refusal of any third party for the lease or development of the adjacent 4.1 acres owned by the Authority.

15. Heads of Terms were signed on 11 October 2011 between representative from Disney, the Premier and the Managing Director of the Authority. The financial impact of the agreement was limited to the Authority's ability to repay the loan and to cover any cost in excess of the loan sum incurred during the development.

16. The proposed works were based on advancing the CH2MHILL process that Cabinet had stopped in September 2008. In effect it endorsed the construction of an 84 feet deck extension with two additional mooring dolphins.

17. The nonbinding agreement was subsequently terminated by the Government.

The New Approach to the Development

18. *Pier expansion project evolved to include a comprehensive development of the pier and upland in an arrangement that required long term partnering with private sector entities. No public tendering was performed.*

19. With a change of the political directorate, the proposal presented by Disney was brought under new scrutiny and the process of reexamining possible options commenced.

20. A consultant was engaged by the Ministry of Communications and Works for the purpose of liaising with the Port Authority and advising on port related matters. Through a process that has not been adequately explained three proposals were received by the Ministry. These came from CaribInvest; Trident Development Enterprise LLC; and Tortola Port Partners. The proposals from the latter two included the pier and upland development whereas the former related only to the upland.

21. The submissions differed from the Disney proposal in significant ways:

- i. Major development of the upland;
- ii. Long term commitment by the Port Authority and the Government 49 – 50 years;
- iii. Long term commitment of the associated cruise lines in delivering passengers;
- iv. Amendment of the Port Authority's fees (passenger tax)
- v. Substantially excluded possibility for local involvement in the development;

22. Of the three proposals a decision was taken by the Ministry to accept the Tortola Port Partners submission which detailed a \$57,000,000 investment for the pier expansion and upland development on a 49 year marine and land lease arrangement.

Planning and Scope

23. Despite the magnitude of the newly proposed development, examinations of the records do not indicate any comprehensive planning or revised needs analysis to redefine the scope of the project and development of the upland. The provisions of the Public Finance Management Regulations (PFMR) with respect to public procurement were largely ignored. The Protocols for Effective Financial Management (PEFM) that were executed on 23 April 2012 between the Government of the Virgin Islands and the UK Minister for Overseas Territories were not in place during the early part of the project. The provisions of this document however, echo general good practice with respect to major project planning and financing that should have been considered and observed, in the development of the project. Both are therefore referred to herein.

24. The revised project was not suitably appraised prior to the procurement stage as required by PEFM 11.a. No analyses or other documentation was found supporting the desirability of an immediate and large scale development of the upland. No assessment was performed on the state of the market and how the development would likely impact other property owners, prospective developments and existing businesses on Wickhams Cay and in Road Town.

25. In the absence of a project plan, the format and scope of the development appears to have been driven by the developers' vision and interests as opposed to what was needed and beneficial for the territory.

26. Significantly, the Town and Country Planning Department which is the Government's primary advisor on development ideas, concepts and planning issues was notably absent from the cross agency consultations solicited for this major development scheduled to take place in central Road Town. The Department did however receive development plans for approval in March 2012 (submitted on behalf of the then Managing Director of the Authority Mr Vincent O'neal) that were limited to the pier expansion and welcome center.

27. The process of securing stakeholder consultations, to better define the project and gain support for the development, commenced after Heads of Understandings were executed with a developer, Tortola Port Partners. This should have taken place before tendering or otherwise securing a contractor. This process resulted in some significant amendments to the proposal:

- i. The proposed investment increased from \$57,000,000 to \$70,400,000 with an additional \$18,400,000 being allotted to community investments.
- ii. Four buyout options were incorporated into the proposal at years 15, 20, 30 and 39.
- iii. Rebate of passenger taxes would be granted to the two participating cruise lines for up to 15 years.

28. Subsequent to the selection of a developer a business appraisal was performed by PKF (BVI) Limited (dated 20 July 2012) and independent legal advice to review the existing agreement and pending legal documents was sought and received in July 2012.

Procurement Process

29. There was no transparency in the process by which the three submissions were received. Contrary to the provisions of PFMR173 and PEFM 11 b. the public tendering process was not engaged. This failure likely deprived the Government and the Authority from obtaining broader interest and possibly more favourable results.

30. It is also unclear what the companies were invited to submit a proposal on as the files contain no invitation for proposal and no project specifications.

Agency and Executive Approval

31. The BVI Port Authority is a body corporate charged with providing, operating and maintaining port and harbour services and facilities of the BVI.

32. The entity is specifically authorized to develop and manage all lands that have been leased or vested in the Authority (British Virgin Islands Port Authority Act 1990 section 4 (e)). It is in addition, empowered by section 5(d) of the Act to coordinate and execute any Government project in any specified port.

33. Throughout the period in which the prospects for the development were being pursued and assessed (November 2011 – July 2012) the project was directed and controlled by the

Ministry of Communications and Works, to the exclusion of the Port Authority and its Board. The project scope and costs were expanded representing a major shift in the development which received no prior approval from the Port Authority.

34. Heads of Understanding were executed on 27 March 2012 between the Government and the selected developer, Tortola Port Partners. These provided a basis for the Government and the Developer to continue negotiations to iron out relevant details and finalize the documents required to advance the project. The Heads of Understanding agreement stipulated a term of 90 days after which either party could terminate the agreement by giving 14 days written notice. The BVI Port Authority was not a party to the agreement.

35. The Board Members were however informed that the development was being pursued at a meeting on 26 January 2012, briefed at a meeting on 8 March 2012 that the Disney agreement had been cancelled and after execution of the Heads of Understanding the Minister of Communications and Works, and the Consultant attended a Board meeting on 3 May 2012 to provide information to the members about the selected proposal.

36. Subsequent to this, the Board received instructions from the Ministry on required actions and ratifications to ensure that the process was not hindered. These included:

- i. Requirement to execute an agreement with the Developer for a credit of \$3,043,880 to allow for ready mobilization of the pier work pending execution of the development contract. The proposed agreement stipulated that the sum would be reimbursed to the Authority once the contract was signed. The rationale was that the pier expansion was mandatory and the piles would be required for these works whether or not the contract was awarded to the Developer.
- ii. Requirement to issue a resolution for the Authority to enter into an agreement with Tortola Port Partners for the development of the pier.
- iii. Requirement to cover the costs of the presentation made by the Developer in conjunction with the Ministry in July 2012 at a cost of \$11,215.00.

37. The three million dollars for purchasing piles was approved by the Board but the transaction was not pursued for reasons not disclosed in the records. Despite the push to purchase piles for use by Tortola Port Partners, the Department of Trade advised that no application for a trade license had been received from the developer to do business in the BVI.

38. The resolution authorizing the execution of an agreement with Tortola Port Partners for development of the pier was passed by the Board on 5 July 2012 and signed by the Acting Chairman.

39. At the time of the audit the costs for the presentation in excess of eleven thousand dollars had not been paid by the Authority.

40. In effect, the role of the Port Authority was reduced to endorsing decisions already made by the Ministry. In excluding the Authority from the decision making process the Ministry failed to avail itself of the experience and knowledge residing in the management and Board of the Authority.

Independent Legal Review

41. *A review of the legal document by experts in the field of Public Private Partnerships indicated that the documents (executed and proposed) for the partnership heavily favoured the developers.*

42. Throughout the process the Attorney General's Chambers was consulted for clarification and legal advice with respect to the Government's interests. All of the legal documents, however, originated from the Developer's lawyers. In June 2012 the Financial Secretary sought independent legal advice from specialists in the field of Public Private Partnerships (PPP). A team of lawyers from the firm of Baker & McKenzie LLP in the UK reviewed the proposed Project Development Agreement (PDA), the Heads of Understanding (HOU) agreement and the Ground Lease that had been drafted for execution by the Authority and the Developer.

43. The review raised a number of concerns with respect to the Government's position in the partnership. Among these were:

- i. Absence of guarantees or a performance bond which would require the controlling entities for the developer to provide substantive support or security for its obligations should it be unable to perform as contracted;
- ii. Allocation of risk drafted in a manner to heavily favour the Developers;
- iii. Failure of the development documents to state how the project will be financed. Debt financing would require review of the documents by lenders and thereby cause time delays;
- iv. Absence of performance standards. These are especially desirable to regulate the operation of the Pier Park ensuring that it is operated and maintained to acceptable standards;
- v. Absence of a positive obligation on the Developer to carry out the Environmental Assessment, abide by its conclusions and carry out its works in accordance with strict environmental requirements and standards;
- vi. Failure of the agreements to give the Authority approval rights for the initial design and any changes;

- vii. Absence of a stipulation which would require the Developer to assume the risk for the performance of its subcontractors;
 - viii. Absence of a provision stipulating ownership of the pier;
 - ix. Absence of safeguards preventing the Developer from transferring shares at least until after the works are complete;
 - x. Absence of a provision which allows the Authority or the Government to step in to remedy situations or in case of a default;
 - xi. Existing ambiguity as to the nature and purpose of the HOU. The document is being referred to in the PDA in a manner which suggests that it is a full form agreement when usually an HOU is used simply to document key terms which would be embodied in detail in a more substantive agreement.
 - xii. Failure of the PPP Agreement to set out obligations of the cruise lines in detail. In particular, nature of their use of the pier (guaranteed passenger numbers and ships per year), whether the agreement is binding or contingent on other provisions, whether cruise lines are contributing to the cost of the project and consequences of the cruise lines failing to use the pier as agreed.
 - xiii. Failure to make provision for the Authority to be a party to the berthing agreement. This is desirable as the Authority will be continuing to operate the pier and the agreements are a major source of revenue for the project.
 - xiv. Failure of the HOU to stipulate whether the decisions of the Cruise Industry Planning Board are binding or simply advisory. Though this is likely to be the latter.
44. Other points raised were the need for the insurance provisions to be revised by an insurance adviser to ensure adequate coverage and appropriate assignment during the development and operation periods. The need to strengthen the warranties as the requirements and standards stipulated in the document provide only vague and poorly defined assurances.
45. The initial process which was being expedited contained several shortcomings which could function to the detriment of the Government and the Port Authority. Efforts to secure independent expert knowledge on the format, structure and provisions of PPP agreements was sought only after steps were in the advanced stages for drafting the terms of the parties legal relationship.

Implementation of the Procurement Process

46. The process was discontinued and the project put to public tender in an expedited process which may have limited the number of possible responses.

47. After execution of the Heads of Understanding and commencement of preliminary activity on the development, the project was halted.

48. Ministry of Finance then published on its website a request for “Expression of Interest” dated 31 July 2012.

49. The project outlined in the document included:

- i. Cruise pier which must at minimum accommodate vessels with minimum length of 1,300 feet, minimum deck width of 45 feet and rated for two 170,000 tons ships.
- ii. Development of approximately four acres of vacant reclaimed land in the immediate vicinity of the cruise pier for the use of cruise passengers. Must include a visitor center, shopping mall/village, recreation areas/green space; restroom facilities; staging area for transfer of passengers to taxis or tour operators on land or sea.
- iii. Construction schedule that would allow for readiness for use of pier and landside improvements by January 2014.

50. Additional requirements were:

- i. Submitted concept must be self-financing;
- ii. Involvement and partnership of a cruise line partner(s) which subscribe to a philosophy that is aligned with the Virgin Islands Brand and target market and having a medium to long term relationship with Virgin Islands as a destination or home port of choice in their itineraries;
- iii. The use of a local partner(s) (strongly encouraged);
- iv. Expectation that the project would be used to train, transfer technology to the local population to maximize the use of local resources.

51. The initial closing date for the Expression of Interest was 16 August 2012 which was extended twice. First to 28 August 2012 and later to 12 September 2012. Aside from the publication on the Ministry of Finance’s website, the request for Expression of Interest was published as indicated below:

| Publication | Dates Advertised | Stated Closing Date |
|--|---------------------------|---------------------------------|
| Daily Commercial News (Canadian based) | 22, 23 and 24 August 2012 | 28 August 2012 |
| BVI Beacon (Local) | 16 August 2012 | 28 August 2012 |
| Island Sun (Local) | 18 August 2012 | 28 August 2012 |
| Island Sun (Local) | 25 August 2012 | 16 ^(sic) August 2012 |
| Stand Point (Local) | 16 and 23 August 2012 | 28 August 2012 |

52. The publications above provided a submission period of less than two weeks for a project envisioned to cost between \$50,000,000 - \$75,000,000. The extended submission date of 12 September 2012 was not found in any of the publications examined. In addition, no evidence was found to support assertions that the tender was also advertised in the Wall Street Journal.

53. The process resulted in the submission of three proposals. These came from GLF Construction Corporation; Tortola Port Partners; and Royal Caribbean Cruises Ltd/Decco.

54. The submissions were reviewed for responsiveness by a committee chaired by the Deputy Financial Secretary and comprising of representatives from the Ministry of Natural Resources and Labour, Ministry of Communications and Works and the Public Works Department. After which all three developers were invited to submit tenders by 11 October 2012. Two were subsequently received. GLF Construction Corporation did not submit a tender.

55. The two tenderers were invited to make presentations to a committee formed for the purpose of negotiating the terms of a PPP agreement. The committee's membership included the Financial Secretary, the law firm of Baker and McKenzie of the United Kingdom (specialists in PPP arrangements), the accounting, audit and business strategy firm PricewaterhouseCoopers of Trinidad and Tobago, together with the Chairman of the BVI Port Authority and representatives of the Attorney General Chambers and the Ministry of Communication and Works.

56. At the time of the Audit Examination the assessment and negotiation process was being undertaken and not subject to audit review or comment.

57. The intention was to have the process expedited to accommodate an early construction schedule. However, the provisions in the invitation for expression of interest mirrored the previously accepted proposal from Tortola Port Partners to a considerable extent which may have created an unfair advantage. This opens the door whereby the impartiality of the process could be challenged. In particular the requirements that the developer be partnered with a cruise line; commitment from said cruise line to have the BVI as a medium to long term destination; requirement that the successful tenderer to provide training etc.

58. The tying together of the dock expansion to the development of the upland without making allowance for the possibility of separate submissions and assessment limited the government's ability to achieve value for money and precluded other parties that might have been qualified to perform one or the other engagement. In particular local developers and investors.

59. The additional requirement of the submissions that there be an opportunity for at least 20% of local ownership in the venture. This may have been in response to local criticism regarding the absence of locals' involvement in the previously endorsed Tortola Port Partner proposal. No details were incorporated as to the format in which this should take place (at the time of the submission, during the construction period or during the operating phase). In satisfying this requirement the Royal Caribbean Cruise Lines proposal partnered with the

local firm Romasco which has maintained an interest in the development before it became active. The subsequent submission by Tortola Port Partners named the BVI Investment Club as its local partner.

60. The involvement of BVI Investment club raises potential issues of conflict of interest in the following respects:

- i. The principal of PFK (BVI) Ltd., the firm engaged to prepare a business case for the initial Tortola Port Partner/ BVIG PPP is also a President of, and public figure for, the BVI Investment Club.
- ii. The declarations of interest for election candidates published and Gazetted on 10 October 2011 show more than one elected member with shareholding interests in subsidiary companies owned by the BVI Investment Club.

61. In terms of compliance it could be said that the minimum was applied to the procurement requirements stipulated in the PFMR. The process was not one that allowed for broad range involvement and may have limited the Government options.

Conclusion

62. The process of addressing the pier expansion needs commenced in 2007 with a professional project assessment and competitive tendering for a project which should have cost just over \$12,000,000. This ended in inaction due to insufficient information being provided to the Cabinet. The project was subsequently allowed to evolve into an undefined, large scale development which bypassed much of the planning and preliminary approval processes required for prudent and transparent management of public projects. Subsequent tendering of the works was performed to satisfy PFMR provisions on procurement but in a fashion which did not allow for broad scale participation of other qualifying developers. The highly specific nature of the project requirements created an advantage in favour of the previously selected developer (TPP).

Recommendation

1. All public agencies should apply the highest standards when seeking to engage contractors on public projects. This is particularly so on multi-million dollar projects which bind the Government for the long term. This must include competitive procurement procedures, full transparency and equitable terms. The procurement regulations of the Public Finance Management Act should be adhered to along with the standards for good practice present in most industries.
2. Expansion of the pier facility to accommodate large cruise ships and essential infrastructural and aesthetic works should be given priority to ensure that the territory's cruise industry is not further negatively impacted.
3. Major development of the upland should not be approved without the proper assessments as to need and appropriateness with input from required expert services and public agencies such as Port Authority, Town and Country Planning, and other stakeholders.

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



Public Accounts Committee's Final Report on the Cruise Ship Port Development Project



Laid on the Table of the
House of Assembly of the Virgin Islands
By Chairman, Honourable Ralph T. O'Neal, OBE

1. The Public Accounts Committee hereby submits its Final Report on the Cruise Ship Port Development Project. The Committee in its ongoing examinations has taken evidence from twelve persons indicated in the Committee's Interim Report (appended hereto) and from documents and records summoned and received through this process. These Persons include:

| | |
|-----------------------|---|
| Vincent O'neal | - Former Managing Director BVIPA |
| Claude Skelton-Cline | - Managing Director BVIPA (Former Consultant) |
| Gregory Adams | - Former Acting Chairman BVIPA |
| Edwards de Castro | - Chairman BVIPA |
| Arlene Smith-Thompson | - Former Acting Permanent Secretary |
| Mrythlyn Hodge | - Financial Controller BVIPA |
| Naomi Turnbull | - Board Member BVIPA |
| Clyde Chalwell | - Board Member BVIPA |
| Wendell Gaskin | - Ministry of Finance BVIPA Representative |
| Jeremiah Frett | - Former Ministry of Finance BVIPA Representative |
| Gene Creque | - Former Deputy Managing Director |
| Vareen Vanterpool | - General Council BVIPA |

Part I. - Usurpation of the Role of the Authority

2. The Public Accounts Committee's examinations have revealed the usurping of the duties and responsibilities of the BVI Port Authority's Board. The evidence presented to the Committee confirms that the Board was not participatory in vital decisions regarding this important Cruise Ship Port Development Project which was by law the Authority's responsibility.
3. The Committee establishes for the record that the BVI Port Authority (the Authority) is a body corporate established under by the British Virgin Islands Port Authority Act, 1990 with perpetual succession and common seal. As an independent legal entity the Authority may sue and be sued and perform such other acts and functions as bodies corporate perform.
4. The BVI Port Authority (the Authority) is governed by a Board whose members are appointed in accordance with its Constitution. The Authority is empowered to, among other things, make rules with respect to staffing and terms of employment, develop procedures for the administration of the Authority and coordinate and

execute any government project in any specified port. The Authority is also empowered to enter into contracts and borrow monies for the purpose of advancing its objectives.

BVI Port Authority Decision - Magical Cruise Company (Disney) Heads of Terms

5. Since 2007 the BVI Ports Authority has been developing plans to expand the Cruise Ship Pier in response to demands being made by cruise operators and others within the industry.
6. In 2011 the Authority engaged in talks with Magical Cruise Company (Disney) for a loan to develop the Cruise Ship Pier. The loan would be used to expand the cruise pier and to build a Welcome Center which would give the area a sense of arrival, provide an information hub and make available essential facilities to arriving passengers. Development of the upland was not included in the negotiations for the loan as the Authority had envisaged that this would be developed at a later stage by locals and leased to locals.
7. During the period that the Authority pursued discussion with Disney for the loan the then Premier O'Neal, under whom the subject was assigned, was kept informed and was participatory and supportive of the process as evidenced by his participation in a conference call with Disney and the Authority on 30 June 2011. The process was however managed, negotiated and driven by the Ports Authority Board.
8. As negotiations advanced, the parties executed a Heads of Terms on 11 October 2011 setting out the terms for future negotiations. This nonbinding agreement had been endorsed by Cabinet on 5 October 2011.
9. The Heads of Terms developed with Disney included groundwork for the provision of a \$12 million loan which would be used for expansion of the cruise ship pier and construction of a Welcome Center. In return, the loan would be repaid over a 10 year period at 6% and Disney would be given preferential berthing rights for 15 years after the works were completed.
10. The former Acting Chairman, Mr. Gregory Adams in his evidence to the Committee on 15 January 2014 confirmed that the Disney arrangement had been

negotiated by the Board and had been accepted by the Ministry through consultations with the Premier's Office, which led to the Board signing the Heads of Terms with Disney Cruise Lines. (Minutes of Public Accounts Committee Meeting dated 15 January 2014).

11. The former Managing Director, Mr. Vincent O'neal confirmed that the loan with Disney had been negotiated by the Board and that he had been involved in the project every step of the way. (Minutes of Public Accounts Committee Meeting dated 22 January 2014).
12. The Committee found that the process leading up to the signing of the Heads of Terms with Disney was one which allowed the Authority to exercise its statutory rights without interference with, or usurpation of its powers. The process allowed for full involvement of, participation from, and control by the Authority.

Change in Scope of the Development

13. The Committee examined the events leading up to the change in the scope and cost of the project and found that the process was one where the statutory rights of the Authority and the Government regulations for project management and procurement were at best overlooked and at worst completely disregarded.
14. After the November 2011 general elections the project was transferred from the Premier's Office to the Ministry of Communications and Works. Between the period November 2011 and January 2012, the scope of the Cruise Ship Port Development Project changed from one that would extend the pier, add a Welcome Center and encourage broad scale local involvement in the development of the upland, to one which included a full development of the upland and allowed for leasing of this valuable central property (4.1 acres of undeveloped area adjacent to the cruise pier) to foreign companies for up to 49 years.
15. The former Acting Permanent Secretary, Mrs. Arlene Smith-Thompson, advised the Committee on 29 January 2014 that if there was a conscious decision to change the scope of the project it was a verbal one by the Minister for Communication and Works, Honourable Mark Vanterpool (the Minister).
16. She further stated that the Minister would always remind her that when he made a decision he was not speaking alone, it would have been a collective decision taken

by his colleagues. The former Acting Permanent Secretary confirmed that she had not seen any Cabinet Paper or Cabinet Decision representing a collective decision of that body to change the scope of the project. (Minutes of Public Accounts Committee Meeting dated 29 January 2014)

17. Examination of the BVI Ports Authority Board minutes for the period November 2011 to January 2012 show no Board decision to change the scope of the project from a pier expansion and Welcome Center to a large scale, long term development of the upland that would preclude local ownership and investment.
18. In discussing the change in the project's scope, the former Acting Chairman stated that he had not been presented with anything that said that the original project (with Disney) had been revoked. If any closure had been made it came from the Ministry of Communications and Works and as far as the Board knew, the agreement with Disney was still on the table.
19. The former Managing Director of the Authority recounted that he first learned that the scope of the project was changed during a public presentation by the Minister for Communications and Works. At this presentation the Minister for Communications and Works informed the gathering that the project had been increased to \$75 million.
20. The former Managing Director further confirmed that he was never consulted about the new project and his input on the proposed new plans was never sought. He described the process as unusual because the scope of the project had changed and there was a substantial shift (in scope) and a substantial (increase in) amount from what he and the Board knew and most of what he learnt (about the new project proposal) was from the media or unofficially.

Conclusion

21. The Committee in considering the information before it concluded that the project was commandeered by the Minister for Communications and Works and the scope changed between November 2011 and January 2012 without consultation with the BVI Port Authority's Board and without a prior Cabinet Decision.

Solicitation of Proposals for Development of the Port

22. The Committee examined the process through which companies were solicited to render submissions for the Cruise Ship Port Development during the period November 2011 – March 2012. Public Finance Management Regulations require that any contract valued in excess of \$100,000 must be subject to competitive public tender. The Committee found that the public tender process had been completely disregarded by the process engaged by the Minister in late 2011 early 2012.
23. The Ministry engaged a Consultant in the person of Mr. Claude Skelton Cline on contract from 1 December 2011 at a salary of \$96,000 per annum to manage the Ministry's projects, hereinafter referred to as the former Consultant. The former Consultant in his evidence before the Committee on 20 February 2014 stated that he had signed a contract with the Permanent Secretary at the behest of the Governor. Examination of the contract document indicated that the former Consultant signed a contract with the Minister of Communication and Works and no mention of the Governor is made in the contract. (Minutes of Public Accounts Committee Meeting dated 20 February 2014).
24. The Minister would subsequently introduce Mr. Claude Skelton-Cline to the Board of the Authority (on 3 May 2012) as the Consultant who would be working along with the various groups regarding the negotiations for the Cruise Ship Port Development Project.
25. The former Consultant had previously been engaged by the immediate past Government as a Consultant for Youths and was an unsuccessful candidate for the ruling party in the recently concluded general elections. The Committee was not provided with evidence of Mr. Claude Skelton-Cline's experience as a port Consultant.
26. The evidence presented before the Committee showed that the Minister, with the assistance of the former Consultant, and to the exclusion of the permanent secretary and the BVI Port Authority Board embarked on a plan to develop the cruise ship dock and upland without engaging any essential preliminary processes such as a need assessment, cost benefit analysis, scope development and cost estimates.

27. The former Consultant, Mr. Claude Skelton Cline, told the Committee that he believed that companies were solicited for the development through an electronic bid-by-invitation process that, he believed, was issued regionally by the Ministry of Communications and Works.
28. This claim was not supported by evidence provided by the former Acting Permanent Secretary who told the Committee that the Ministry of Communications and Works did not send out any solicitations for bids. She advised that the Minister and former Consultant were the ones actively involved in this process and that her efforts to guide the Minister and former Consultant on the proper processes were largely disregarded.
29. Between January and March 2012 three proposals for the Cruise Ship Port Development project were received by the Minister and the former Consultant through a process that lacked transparency and did not involve any form of public tender or open solicitation for this multi-million dollar public project. These were assessed by the former Consultant and forwarded to the Minister for decision.

Conclusion

30. The Committee concluded that the unexplained and arcane manner in which the proposals were solicited (or otherwise received) by the Minister and the former Consultant:
 - a. precluded any prospect for broad scale local participation and investment in the development for periods up to 49 years, and
 - b. was contrary to Public Finance Management Regulations and best practice as:
 - i. there was no public request for proposal or tender either from the Authority or from the Government,
 - ii. there was no detailed development proposal,
 - iii. there was nothing in the minutes of the Port Authority to suggest its involvement,
 - iv. there was no prior public consultation on how the upland was to be developed.

BVI Port Authority Lack of Substantive Involvement

31. The Committee examined the process through which Tortola Port Partners was selected from the three proposals received between January and March 2012 for the Development of the Cruise Ship Pier and found that the decision was unilaterally taken by the Minister.
32. The former Acting Chairman in his evidence before the Committee explained that he understood the role of the Board to be one where they advised the Government on matters that pertained to the Ports as well as help the Government set guidelines and priorities for the management of the Authority. He opined that the responsibilities had been taken away from the Board by the way things had been done since November 2011.
33. The minutes of the Authority's Board meetings from January 2012 to June 2012 bear evidence of the Authority's exclusion from the selection process and from other decisions regarding the development as follows:
 - a. On 26 January 2012 the Minister attended a Board meeting of the Authority and informed the Board that he had decided a new direction for the Cruise Ship Port Development Project. The Minister also advised members that he had already received two proposals for the upland development and was expecting a third.
 - b. On 8 March 2012 the Minister attended a Board meeting of the Authority and informed the members that the Heads of Terms that they (the Authority) had signed with Disney had been cancelled.
 - c. At a Board meeting on 12 April 2012 the Members were informed that the Government had signed a Heads of Understanding on 27 March 2012 with Tortola Port Partners to enter into negotiations for the management and development of the Cruise Ship Development project.
 - d. At the meeting held on 12 April 2012, the Board was promised greater involvement in the details of the project under the guidance of the Minister for Communications and Works.

- e. In May/June 2012 the former Managing Director received an email from the former Consultant instructing the Authority to pay \$3.1 million for piles for the pier extension. Neither the Managing Director nor the Board Members had been involved in, or had prior knowledge of, the government's negotiations with TPP to purchase piles.
 - f. Despite the Authority's non-involvement in the decision making process for this project, a Resolution was purportedly passed by the Board and executed on 5 July 2012 by the Acting Chairman authorising the BVI Port Authority to enter into an agreement with Tortola Port Partners Limited for expansion of the Cruise Pier and the construction of the Tortola Pier Park. The Committee has not found any record of a Board meeting to support the passing of said resolution.
 - g. On 8 October 2013 the Minister for Communications and Works attended a Special Meeting of the Board and informed the members that the TPP arrangement had failed and that the government would be transferring the Cruise Ship Port Development Project back to BVI Port Authority. He advised the Board that their \$12 million project had grown to \$49.9 million and that he needed them to pass a resolution that he could take to Cabinet and forward on to the UK.
34. The Committee noted the frustration of Board Members with the manner in which the project had been progressed.
- a. In giving evidence, one member of the Board referred to the process as "disrespectful", another stated that the Board's functions were being "minimised" and yet another referred to the Board of the Authority as becoming a "fifth wheel."
 - b. The sentiment was succinctly summarized by one member who during a Board meeting on 22 October 2013 stated that "the Board should have a say in the decision making process...what was the point of having a Board if no one listens to it." The member was responding to news that the Minister had put other major projects that had been approved by the Board "on hold" to allow the Authority's resources to be focused on the Cruise

Ship Port Development Project. (Minutes of the BVIPA Board 22 October 2013 page 3 para 3)

35. The former Managing Director of the BVIPA in recounting the events stated that the instructions or requests he received (from the former Consultant, Claude Skelton Cline) were always communicated as coming from the Minister for Communications and Works and not the Ministry of Communications and Works.
36. He further stated that the most disturbing thing was that senior and management staff of the Authority felt that he (the former Managing Director) knew what was going on and was not telling them, but he had no knowledge.

Conclusions

37. The Public Accounts Committee concluded that the role and functions of the Board were overridden and usurped by the Minister and that the members of the Board of the Authority felt compelled to sign off on matters that had been decided without their input or consideration.
38. The Committee was concerned about the blatant lack of process whereby the Board was required to blindly approve \$3.1 million to purchase piles while being excluded from the negotiations and pertinent information regarding the development.
39. The Committee also questioned the statutory propriety of the Government to sign an agreement (HoU executed on 27 March 2012) over property that is owned, managed and controlled by an independent statutory entity.

Tendering by the Ministry of Finance

40. The Committee examined the process through which the project was tendered by the Ministry of Finance, after it was brought to a halt in August 2012, and the non-binding agreement with TPP terminated. The tendering process engaged by the Ministry of Finance was found to be lacking in transparency and fairness and serving as a further usurpation of the Authority's role. The areas of concern observed included:
 - a. Length of time provided to tenderers to prepare this complex, high value, long term project was insufficient to allow for adequate investigation,

technical evaluation and preparation of the comprehensive submissions required for this project. The initial notice allowed for a two week period ending on 16 August 2012. Two extensions were granted first to 28 August then to 12 September 2012 for a total of 6 weeks but the timeframe still fell short of that required for a project of this magnitude. By comparison the period stated for the expression of interest to develop Prospect Reef was 7 weeks in the first published request. There was a decided advantage to TPP which had been involved with the project since the beginning of the year.

- b. The project requirements that were put to public tender and subsequently amended by the Financial Secretary closely resembled the project details that were previously submitted by TPP and accepted by the Government. Striking similarities were noted in the required design, the exit provisions and training requirements. The Committee found this to be suspect as it would put other potential tenderers who entered the process at an immediate and severe disadvantage.
 - c. The team assessing the tenders included the former Consultant now Managing Director (Mr. Claude Skelton-Cline) who had by that time already established a relationship with TPP and its principals, having been involved with this team and participated in the selection, promotion and facilitation of their submittal in the prior process. This created a prima facie conflict of interest for the individual whose motivation and decision making could be compromised by the ongoing relationship.
41. In providing evidence to the Committee the former Acting Permanent Secretary expressed concern about Mr. Claude Skelton-Cline being on the Tender Board as "he was dealing with some of the same entities that he had been negotiating with earlier."
42. The entire process from tendering, to selection, to termination lasted from August 2012 to September 2013. During this period, despite the involvement of the former Consultant, now Managing Director of the Authority, Mr. Claude Skelton-Cline, the Authority was again largely left out of the process. This was demonstrated in the following events.

- a. On 17 October 2012 the Deputy Financial Secretary, Mr. Wendell Gaskin told the Board that the prior process (that had been undertaken by the Minister for Communications and Works) was not handled properly and that Ministry of Finance was now managing the tender process for the project.
 - b. Six months later on 16 April 2013 the Minister attended a meeting of the Board and informed the members that the "Cruise Pier Development is going forward despite the noise from the public."
 - c. On 3 May 2013 at a Special Meeting of the Authority's Board, the Financial Secretary, Mr. Neil Smith and the Managing Director, Mr. Claude Skelton-Cline made an elaborate presentation to the Board members asking them to pass a Resolution allowing the Authority to assume responsibility for expenditure incurred by TPP (up to \$1.7 million) should the arrangement that the Ministry of Finance was pursuing with this developer fail to solidify into an agreement.
43. The Public Accounts Committee considered the involvement of the Ministry of Finance in the procurement process for the Cruise Ship Port Development Project. The Committee ascertained that the BVI Port Authority as an independent statutory entity was fully capable of engaging the tender process for development works to be managed by that body. The Authority had in the past engaged the procurement process for projects involving the cruise pier and other port developments. No reason was provided to the Authority or to this Committee on why this process was not followed in August 2012 as appropriate.

Conclusion

44. The Committee concluded that the procurement process engaged by the Ministry of Finance for the Development of the Cruise Pier Project:
- a. Was flawed as it created an unfair bias towards TPP's submittal and rendered other prospective tenderers at an immediate and severe disadvantage.

- b. Excluded the Port Authority Board which was largely kept out of the process, notwithstanding the presence of its Managing Director on the Tender Assessment Committee.
- 45. The Committee also concluded that the Ministry of Finance infringed on the Authority's independence by engaging and controlling the tender process for a project which is properly under the control of the BVI Port Authority.
- 46. The Committee questions the efficiency of the Ministry of Finance's procurement process which after more than a year of assessment and negotiations resulted in failure to execute a contract for the project and a liability for the BVI Port Authority in excess of \$1.7 million.

Part II. - Absence of Transparency & Withholding of Information

47. From commencement of the expanded Cruise Ship Port Development Project in late 2011 the process has consistently lacked transparency in its processes and decision making.
48. Already discussed in this Report is the absence of transparency in the manner in which the project was changed from expansion of the pier and construction of a Welcome Center to include a large scale development of the upland with a pier park which included, among other things a retail village, chapel, Ferris Wheel and trolley. There was neither a Board Resolution nor a Cabinet Decision prior to the change in scope.
49. Also documented is the absence of transparency in the manner in which the initial three tenders were solicited and received. There were no public tenders, no open selection process and no involvement of key parties in the decision making process.
50. The Auditor General reported that in her examination of the project her office encountered an absence of transparency, withholding of information and lack of forthrightness from the Ministry of Finance when sourcing information on the Cruise Ship Port Development Project.
51. This lack of forthrightness was extended to the Public Accounts Committee where information was repeatedly requested from the Managing Director of the Authority, Mr. Claude Skelton Cline and those requests were initially either ignored or only partially fulfilled. Withholding of information and lack of forthrightness on any public project, but especially one of this magnitude raises great concern for the Committee.

Conclusions

52. The Committee found that there was a concerted effort on the part of the Minister (whether by intention or through lack of knowledge of Government processes) and later the Ministry of Finance to obscure information regarding the processes undertaken on this project.

53. The Committee also notes the persistent lack of information provided to the Honourable House of Assembly on this project to questions posed by Honourable Members on the basis that:
 - a. Negotiations were ongoing, and
 - b. Providing information would be contrary to public interest.
54. The Committee also found that any perceived fiduciary responsibility should not, and cannot preclude the public being aware of how public funds are being applied by the Government and the processes through which this is being done. Transparency is the keystone to democracy and when the Government fails to meet this requirement all transactions become suspect.

Part III - Engagement of Consulting and Contracting Companies

55. The Committee noted the growing number of consultants engaged by the Government and later the Port Authority on this project and is concerned firstly about whether Value for Money is being achieved on these assignments and secondly about the implied limitations of the Government's Ministry of Finance which must rely on a proliferation of outside experts on a continuous basis.
56. The Committee was also concerned about the lack of transparency in the process used in the engagement of companies and consultants for this project.
57. The Protocols for Effective Financial Management (the Protocols) require projects which take the form of Public Private Partnerships to undergo an appraisal process before the procurement stage and be subject to external and independent specialist advice in areas such as accounting, legal, financial and environmental implications. (Protocols 13 and 14)
58. In an expression of the excessive the Ministry of Communications and Works and the Ministry of Finance engaged a number of consultants over the two year period during the procurement phase of this project.
 - a. PKF Accountants and Business Advisors were engaged on 18 May 2012, after the Protocols were signed, by the Ministry of Communications and Works to, among other things, prepare a financial analysis and review of the Pier Parks Development and qualitative assessments of the economic impact of the project.
 - b. Baker & McKenzie, lawyers specializing in Public Private Partnerships were engaged to review the development proposal and legal documents submitted by TPP and provide legal advice and direction for the Government in the initial process that ended in July 2012. Baker & McKenzie were further retained to provide an assessment of the tenders received from the procurement process engaged by the Ministry of Finance in August 2012.
 - c. PricewaterhouseCoopers, independent accountants and business advisory services, were engaged on 15 November 2012 by the Ministry of Finance to

conduct a review of existing documentation and assist with negotiations of Public Private Partnership.

- d. Both Baker & Mackenzie and PricewaterhouseCoopers performed assessments of the tenders submitted to the Ministry of Finance from the process engaged in August 2012.
 - e. BDO, Accountants and Auditors, were retained in mid-2013 to perform a financial analysis and proposal showing the way forward for the project subsequent to terminating TPP from the process.
59. Additionally, after the process with TPP was terminated and the project transferred over to the Port Authority in November 2013, the Authority continued PricewaterhouseCoopers employment by engaging the company to assist in reviewing TPP's invoices submitted for reimbursement. This was to be done with the assistance of engineer John Boles and legal experts Baker & McKenzie.
60. PricewaterhouseCoopers was again retained by the Authority to assist in securing loan funding of \$35 million from local banks for the Cruise Ship Dock Development Project that had been dropped suddenly at the Authority's feet with tight timelines. The Board approved a fixed fee of \$62,190 and a success fee of 1.5% of the anticipated \$35 million loan computed at \$525,000.
61. The success fee was subsequently reduced by the Board from 1.5% to 0.75%, translating to payment of \$262,500 to PWC on the proposed loan sum of \$35 million plus the fixed portion of \$62,000.
62. The Board of the Authority also approved engaging other consultants and experts as indicated in the table that follows.

| Company | Position | Board Approved \$ | Contracted \$ |
|--------------------------|-----------------------|----------------------|------------------|
| IDEA Inc. (Hugh Darley) | Design Director | 120,000.00 | 100,000.00 |
| Moffatt & Nichol | Chief Marine Engineer | 137,619.00 | 137,619.00 |
| BCQS | Quantity Surveyor | 77,500.00 | 369,000.00 |
| Roger Downing & Partners | Architectural | 342,214.19 | 284,000.00 |
| Total | | 677,333.19 | 890,619.00 |

63. The Authority's Expenditure Control Policy requires that all contracts be signed by the Chairman of the Board. The contracts with IDEA, Moffatt & Nichol and Roger Downing were signed by Managing Director, Mr. Claude Skelton-Cline. The legitimacy of these contracts can therefore be called into question.
64. Despite the considerable amount of money spent on consultants there is no record of any competitive submissions being sought for these positions.
65. This is contrary to the Authority's Expenditure Control Policy which requires that Petty Contracts in excess of \$60,000.00 must be made through the BVI Ports Authority Tenders Committee and the Board. There is no provision in the Policy for a waiver. In addition, the Policy also requires two estimates for Capital Works items to ensure value for money is achieved.
66. The Committee noted the substantial increase in the Quantity Surveying costs issued to BCQS over and above that authorized by the Board. No Board ratification was found to support this change.
67. The Commission noted that the Authority's Expenditure Control Policy of is non-comprehensive and requires development for more effective management and control of the Authority's expenditure.

Conclusion

68. The Committee concluded that:
 - a. The rushed manner in which the project is being pushed and pursued will create significant risks to the achievement of value on the amounts being dispensed to consultants and others.
 - b. The payment of a success fee to PWC was an unnecessary expense and a burden to the Authority. Sourcing of loan funding for the Development is the one aspect of the process which should properly have been assisted or overseen by the Financial Secretary or his designate on the Board who were already armed with a mass of reports from the various consultancies previously engaged.

- c. Contracts issued in excess of \$60,000.00 without competitive submissions via the Tender Board are contrary to the Authority's Expenditure Control Policy.
- d. The Managing Director does not have authority to sign contracts on behalf of the Authority and the legitimacy of the contracts signed may be challenged.

Part IV. - Escalation of Costs

69. The Committee examined the escalating cost of the project from \$12 million to in excess of \$35 million as it relates to the change in scope of the project.

Port Authority 2011 - CH2MHILL and Welcome Center \$12,000,000 Accommodating Larger Ships

70. The design that the Port Authority was pursuing with the Disney loan in late 2011 was based on plans provided by the Authority's marine engineers CH2MHILL who were retained to design the expansion for the dock.
71. The resulting design included expanding the pier by 84 feet, modifying the two existing mooring/breasting dolphins and installing two additional mooring dolphins to extend the functionality of the pier. The 84 feet pier extension was needed to accommodate passenger access to the doors located at the aft third of the ship. Any pier extension beyond that would be only for mooring. The CH2MHILL design opted for mooring dolphins beyond the 84 feet extension as this served the same purpose (to stabilize the vessel) and was considerably more economical in terms of construction cost and time.
72. The relationship between CH2MHILL (formerly Gee & Jenson) and the Authority is one that is well established. This firm not only designed the dock expansion that was being considered in 2008 and the prior expansion but also performed periodic inspections of the facilities, carried out various studies for the development of the other Port facilities such as the West End and Road Town ports.
73. After the expansion design for the cruise pier dock was complete the Authority engaged CH2MHILL to assist with the 2008 tender and bid evaluation process.
74. Coming out of that process in June 2008, CH2MHILL recommend the lowest bidder, Misener Marine Construction Inc (Misener), as the best option for the pier expansion. At that time Misener's submission was \$12,120,891. The project was not, however advanced at that time.
75. In 2011 while negotiations were ongoing with Disney for the development loan, Misener was asked to resubmit a proposal for the works. The scope was amended

to exclude items including concrete repairs to the dock and trucking as these would be addressed under separate arrangements. The firm submitted a base bid of \$9,969,060 and a preliminary construction schedule of 18 months. This was accepted by the Authority (together with a contingency amount of \$500,000 recommended by CH2MHILL) and incorporated in the Disney/BVIPA plans to address the pier issues.

76. During the period that the Authority and Disney engaged in talks for the loan, CH2MHILL prepared schematic mooring analyses for the larger cruise ships against the proposed expanded dock for approval of the various cruise operators. This was done for Carnival Dream, Grand Princess, Royal Caribbean Cruise Lines (RCCL) Freedom Class, RCCL Voyager Class, Celebrity Solstice, Norwegian Cruise Lines (NCL) Epic, NCL Breakaway and Disney Dream. Copies of the berthing analyses prepared for the CH2MHILL design in October 2011 are attached.
77. This process was confirmed by the former Managing Director who stated that the CH2MHILL plan was meeting all the requirements and that the most important requirements, which were berthing and entering the channel, were all covered. He explained that CH2MHILL undertook berthing analyses using specs obtained from Norwegian, Carnival MSC and other cruise lines.
78. The information reviewed showed that by late October 2011 both Disney and NCL had reviewed and approved, in principle, the mooring analysis for their larger ships and CH2MHILL had completed and was preparing to forward the other analyses to the other cruise operators for their input and approval.
79. The Public Accounts Committee safely conclude that on a practical level the Disney Magical Cruise Company would not have approved a loan for a pier that could not accommodate its new line of larger ships.
80. The Public Accounts Committee in reviewing the history and details of the CH2MHILL pier expansion ascertained that:
 - i) The Minister for Communication and Works was either not properly informed or failed to communicate to the Honourable House of Assembly accurate information when he advised the Honourable House on 7 October 2013 that

the CH2MHILL design was incomplete. The design was completed and previously put to tender;

- ii) The Minister for Communications and Works was either not properly informed or failed to communicate to the Honourable House of Assembly accurate information, when he advised the Honourable House on 7 October 2013 that the CH2MHILL design did not take into consideration the width and length of the new cruise ship pier required to accommodate the new classes of cruise ships that have come on line.
- iii) The evidence reviewed by the Committee clearly showed that the CH2MHILL design to extend the pier was solely for the purpose of accommodating new and larger classes of ships. CH2MHILL in completing the design conferred with the major cruise operators and prepared mooring analyses to ensure that the expanded pier could accommodate the larger ships that were scheduled to come on line.
- iv) Both the Authority and CH2MHILL were mindful of the needs of the cruise operators and secured their input and approval for the design that was to be adopted in 2011 to accommodate the larger classes of ships.

**Minister for Communications & Works/TPP Plan – \$70,400,000
Blind Extravagance**

- 81. In November 2011 the Minister for Communications and Works took over the project and expanded the scope to include development of the upland and more dramatic expansion of the pier. The Minister failed to approach the Authority for advice and guidance on what the Authority's plans were and how his proposed expansion could be adopted to best satisfy the needs of the industry and the local populace. In so doing the Minister missed the opportunity to gain from the existing knowledge and experience of the Authority and its experts and learn of possible existing options.
- 82. This blind approach led to an informal engagement of TPP for a development cost/investment of over \$70 million which provided no verifiable level of cost detail and sought to tie up ownership of the central waterfront property for up to 49 years. This was done without any studies or assessments on the impact this

development would have on existing and prospective businesses. The summary of the TPP development cost/investment is in the table that follows.

| Detail | Amount |
|-----------------------------------|-------------|
| Construction of Pier and Landside | 50,000,000 |
| Community Investment | 2,000,000 |
| Community Investment | 400,000 |
| Investments over five years | 52,400,000 |
| Community Investment Over Life | 18,000,000 |
| Total Investment Over Life | 70,400,000, |

83. This process ended abruptly with an intervention that demanded greater transparency and public accountability.

Ministry of Finance's Procurement Process – \$74,551,672
Failure from a Public Tender

84. The tender and negotiation process, administered by the Ministry of Finance, extended for more than a year and resulted in failure to secure a contract for the development. Through this process TPP's proposal which was submitted with a project cost/investment of \$74,551,672 was selected for the project. The company's failure to meet preconditions would lead to termination of the process in September 2013 and return of the project to the BVI Port Authority.
85. The Committee was not provided with the TPP negotiated amount and terms after submission of their tender, these may have changed from the original amount of \$74,551,672.

BVI Port Authority with TPP Design \$35,000,000
Expedited Project with Increased Costs

86. Failure of the TPP arrangement for the second time in two years led to the project being turned back over to the Port Authority for tendering and execution. This process, which was based on the design proposed by TPP was divided into phases to be tendered separately.

87. A request for proposal for the first phase which addressed the pier expansion was issued in December 2013 and resulted in the signing of a contract between the BVI Port Authority and BVI-based Meridian Construction and Canadian-based IDL Projects Inc in the amount of \$30.7 million on 22 April 2014.
88. The Minister for Communications and Works in a statement on 17 April 2014 described the works to be undertaken to include lengthening the existing dock from 755 ft to 1299 ft; widening the existing dock from 32 ft to 45 ft; building additional mooring dolphins along both sides.
89. The Government had in two years, increase the cost of improving the pier from \$10.4 million to \$30.7 million. These amounts do not include the landside development.
90. In examining the difference in the scope of the project from the CH2MHILL design to the current proposal the following were noted:

Pier Expansion Proposal Only

| Detail | CH2MHILL Design | TPP Design |
|---------------------|--------------------|---------------|
| Cost | \$10,469,060 | \$30,700,000 |
| Length Expansion | 207 feet* | 544 feet** |
| Width Expansion | None | 13 feet |
| Landside Structures | Welcome Center | none |

* Includes the mooring dolphins to lengthen functionality of dock

** Solid dock extension (design does not include mooring dolphins)

91. The TPP design for the pier development would result in a much larger structure which is effectively 460 feet (544 feet – 84 feet) longer than the CH2MHILL design. The TPP design would not require and does not include mooring dolphins which serve to extend the functionality of the pier at a much reduced cost.
92. In effect, the much expanded length increased the cost threefold but added no functionality beyond that of the prior plan, which based on the schematic designs could accommodate the larger ships. Maintenance on this larger structure is also likely to be a more significant and ongoing factor.

93. In addition, in order to accommodate the extravagance of this development the Minister put on hold essential works that were needed at both the Virgin Gorda and West End docks so that the Authority's funding and resources could be focused on the Cruise Ship Port Development Project. The Board of the Authority was not consulted on this decision, they were simply informed at a meeting on 22 October, 2013.
94. The Virgin Gorda dock in particular has severe maintenance issues and was described by one senior member of the Authority's management team as "an accident waiting to happen." The Committee notes however that the loan funding approval sought from, and approved by the House of Assembly on 17 April 2014 included \$1.25 million for the Virgin Gorda Dock and \$1.8 million for the Road Town Ferry Terminal.
95. At the time of the Committee's deliberations tenders for the development of the upland had been issued and the award of contract was pending. This will place further demand on the resources of the Authority pushing other much needed projects further on the backburner.

Conclusion

96. The Committee concluded that the prior design prepared by CH2MHILL was adequate to meet the needs of the cruise industry's larger line of ships and if modifications were required to the design these could have been accommodated without an almost 300% increase in cost seen on this project.

Part V - Questionable Payments

TPP Overpayment - \$618,928.56

98. The Committee examined the amounts and circumstances under which payments of \$1.7million and other amounts were made to parties under agreements arising from the failure of the TPP arrangement and subsequent events.
99. Termination of the TTP arrangement in October 2013 kicked into effect other arrangements with that company for restitution of costs. On 14 May 2013 the parties executed a "*Letter of Authorisation for Certain Pre-Development Services in Advance of the Effectiveness of the Project Development Agreement*" (the LOA). The LOA was based on Heads of Terms, allegedly executed on 10 May which set out preconditions that TPP would have to satisfy prior to the parties signing a contract for the works. A copy of the Heads of Terms (executed on 10 May 2013) was requested by the Committee but not supplied.
100. The LOA authorized TPP to proceed with specified services in preparation for commencement of the works and provided that, if the arrangements failed to advance to the execution of an agreement, TPP would be entitled to claim compensation for an amount not exceeding \$1,772,450.
101. After the process was terminated in October 2013, TPP submitted a claim for reimbursement to the BVI Port Authority of \$2.1 million for works performed between 11 May 2012 and 30 September 2013. The Authority engaged PWC to review and verify the invoices submitted with the claim. All invoices that were dated prior to the 14 May 2013 signing of the LOA (totaling \$882,979.75) were rejected for payment. Additional invoices totaling \$164,467.02 could not be verified by PWC. The verified invoices which qualified for reimbursement totaled \$1,090,521.44.
102. The full amount of \$1,772,450 was paid out on the claim. Direct payments of \$110,335.03 and \$46,914.64 were made to Roger Downing & Partner and IDEA [REDACTED] respectively. The balance of \$1,615,200.33 was paid to Tortola Port Partners in accordance with the LOA and Close Out Agreement executed on 13 January 2014 between the Government, the Authority and TPP.

103. Based on PWC's audit of the invoices, the verified amount to be paid under the claim was \$1,090,521.44. In paying the full amount of \$1,772,450 TPP was paid \$618,928.56 in excess of the amount verified as due. The Authority's decision to make payments directly to two of the consultants does not mitigate this overpayment to TPP.

Table 1

| TPP COST REIMBURSEMENT UNDER THE LOA | | | | |
|--|--|--------------|----------------------------|----------------------|
| Consultant | Description | LOA Agreed | TPP Claim (per PWC Report) | PWC Verified Payable |
| ICE (Infrastructure Consulting & Engineering) | Pier & Dredging Design | 103,000.00 | | |
| | Civil Engineering Design | 335,000.00 | | |
| | ICE Total | 438,000.00 | 1,072,815.79 | 383,072.84 |
| IDEA | Vertical Plan Design and Concept Coordination | 390,000.00 | 613,719.45 | 330,000.00 |
| Roger Downing & Partners | Vertical Designs Architectural Plans MEP & Structural Engineering on buildings | 699,000.00 | 346,054.05 | 344,254.05 |
| Multiple Supplies that have not been selected | Long Lead Time Design Buildings Design and deposit for custom fabricated items | 160,000.00 | 0.00 | 0.00 |
| UIG | Provision of the job site Office | 60,450.00 | 79,790.97 | 33,194.55 |
| BVI Power | Site & vertical electrical supply | 25,000.00 | 0.00 | 0.00 |
| | Totals | 1,772,450.00 | 2,112,380.26 | 1,090,521.44 |

Table 2

| ACTUAL PAYMENTS UNDER LOA | |
|---------------------------|--------------|
| Paid To | Amount |
| Roger Downing & Partners | 110,335.03 |
| IDEA | 46,914.64 |
| TPP | 1,615,200.33 |
| Total Amount Paid | 1,772,450.00 |

104. The Committee is concerned about the unjustified overpayment of more than half a million dollars of public funds by the Authority which is currently experiencing cash flow issues.

PWC Success Fee \$262,500

105. Previously discussed in this Report is the Authority's contracting of PWC to assist with securing loan funding for the Development. The agreement provides payment of a fixed contractual sum of \$62,190.00 and in addition a "success fee" of 0.75% of the anticipated \$35 million loan amount computed at \$262,500. The total (maximum) payable to PWC under this agreement is \$324,690.00.
106. The Managing Director (former Consultant) Mr. Claude Skelton Cline explained that the success fee would be paid if PWC was able to successfully identify and secure the funds on the best terms for the Authority. No satisfactory explanation was given as to why the Committee considered it necessary to supplement the fixed fee that was already being paid to this firm.

Conclusion

107. The Committee concluded that the payment of \$324,690 is excessive and unwarranted and recommends that the success fee portion of this agreement be rescinded or substantially reduced.

VI. - Ongoing and Recurring Parties, Alliances and Interests

Ongoing and Recurring Associations

108. The Committee examined the ongoing and recurring relationships between the parties and individuals throughout the failed process (that took place from November 2011 to October 2013) and thereafter.
109. The Committee acknowledges that a process, such as this, in its infancy benefits from continuity in expertise but is concerned with the Government's insistence on continuing relationships with parties which have, over a two year period, failed to yield a positive result and have led to the dramatic increased in the project's cost.
110. This concern is fueled by the ongoing associations between these private parties (IPP, IDEA)and public officers who served in multiple capacities on this project (Consultant, Managing Director, Board Members, Tender Committee, Negotiating Committee among others) lending themselves and the process to the possibility corrupting the decision making process and improperly influencing the project's outcome.

Conclusion

111. Impartiality in decision making can be compromised or otherwise adversely affected when individuals are allowed to serve in multiple capacities at various stages of the project. This presents potential for conflict of interest and motivation, particularly if the association between the parties is ongoing as was the situation with the Cruise Ship Port Development Project.

Recommendation

112. Steps must always be taken on public projects to ensure that procedures are followed to prevent occurrence of conflict of interests and motivation which compromises the decision making process and the outcome of the project.
113. The Committee is concerned about the implications of these associations and recommends a forensic review of the activities as they relate to the parties and the transactions that occurred from December 2011 to present.

Local Participation

114. One of the requirements of the tender request issued by the Ministry of Finance in August 2012 was for prospective contractors to include a provision for local ownership of up to 20%.
115. The Deputy Financial Secretary, Mr. Wendell Gaskin, who served as the Chairman of the Tender Board for the Port Development procurement process, was asked by a member of the Public Accounts Committee whether the Tortola Port Partners tender reflected an association with the BVI Investment Club. Mr. Gaskin replied in the negative and stated that "there was nothing to suggest a connection." (Minutes of Public Accounts Committee Meeting dated 15 January 2014 para 248).
116. The tender assessment report prepared by PricewaterhouseCoopers dated 25 November 2012 (provided to the Committee by the Ministry of Finance) specifically named the BVI Investment Club as the prospective local partner for Tortola Port Partners. The report stated:

"As regards initial investment, TPP has engaged with local BVI Investment Club to participate in up to 20% via a bond or equity offering." (Excerpt of Report Attached).
117. The Deputy Financial Secretary, as Chairman of the Tender Board, would have had access to the PWC report and the tender submissions on which the report is based and would have known from one or the other of those documents of the clearly stated proposed relationship between TPP and the BVI Investment Club.

Conclusion

118. The Committee concluded that the Deputy Financial Secretary, Mr. Wendell Gaskin, deliberately and knowingly furnished false information to the Public Accounts Committee regarding the BVI Investment Club's proposed association with TPP with the intention to mislead and corrupt the PAC process and its outcome. This brings into question the integrity of his testimony before this Body.
119. The Committee shares the concern stated in the Auditor General's report dated 31 January 2013 regarding the potential for conflict of interest presented by the involvement of BVI Investment Club. Where Members of the House of Assembly or their close family members are listed as investors in the BVI Investment Club and stand to benefit from this multimillion dollar public project, full and public disclosure should be made of these interests so that the process not corrupted.

VII. - Insubordination of the Public Accounts Committee Process and Institution

120. The Committee puts on record its admonition of the Deputy Financial Secretary, Mr. Wendell Gaskin who appeared before the Committee on 15 January 2014 to present evidence pertaining to his knowledge and involvement of the Cruise Ship Dock Development Project.
121. Mr. Wendell Gaskin, Deputy Financial Secretary, in his presentation to the Committee defiled the Constitutional process of the Committee, and the Office of the Auditor General with remarks which were neither provoked nor relevant to the matter for which he was summoned.
122. Mr. Wendell Gaskin, Deputy Financial Secretary, exhibited a demeanor which was lacking in decorum and respect and which was both unbecoming for a senior public servant and a poor reflection of the office he represents.
123. The Committee underscores the gravity of this affront and considers that the public officer, Mr. Wendell Gaskin, who serves at the privilege of Her Majesty the Queen, should be subject to disciplinary action. No public officer is above the Constitution and none should be permitted to think otherwise.

Recommendation

124. The Committee recommends that the offices of the Governor and Deputy Governor which bear ultimate responsibility for public service and public servants take steps to institute disciplinary action against the Deputy Financial Secretary Mr. Wendell Gaskin in the form of a suspension or other suitable form.

VIII. - Conclusions and Recommendations

Conclusions

125. The Public Accounts Committee makes reference, and draws attention to the conclusions previously outlined in this Report.
126. The Committee further concludes that:
1. The Government spent two years and countless resources engaging processes that were contrary to Public Financial Management Regulations, in contravention of the BVI Ports Authority Act, non-transparent and untenable. This resulted in the selection of a contractor that was unable to meet the requirements of the project even before the contract was signed.
 2. The Minister's failure to confer with the Authority on the Cruise Ship Port project in November 2011 and to gain an understanding of the plans that were being pursued at that time led to a costly redesign for the Government and the Authority both in terms of time and resources.
 3. The Public Accounts Committee agrees with the findings of the Auditor General Report which were substantiated by the evidence furnished to the Committee during the Committee's investigations of the project.
 4. The Public Accounts Committee supports the Cruise Ship Port Development Project which is necessary for the territory to maintain competitive involvement in the industry. The development should however be performed in a manner which allows for full transparency, adequate planning and due involvement of stakeholders with a view to ensuring that value for money is achieved on the public resources expended. However, the evidence furnished during the Committee's investigation of the project does not support that the development allowed for full transparency, due process and value for money.

Recommendations

127. The Public Accounts Committee makes reference, and draws attention to the recommendations previously outlined in this Report. In addition the Committee recommends the following:

1. Statutory Authorities should be allowed to perform their mandated duties provided by legislation without undue interference or usurpation of their role by the Minister or Ministry.
2. All projects should be properly planned, costed and evaluated before any invitation is made for contractors. Any change in scope should be made in consultation with the parties required to oversee, manage or otherwise control the changed project.
3. The tender process should be fair and transparent and perceived to be so by persons seeking to respond to a public solicitation for bids. Failure to keep the process transparent and fair can subject the government to negative publicity and to litigation.
4. A company's financial ability to carry out any project awarded by any public entity must be carefully ascertained prior to a decision being made to award a tender.
5. The BVI Port Authority should develop and adopt a more comprehensive set of regulations for the management and control of its finances. These should include comprehensive rules for tendering and procurement.
6. Legislation is required to clearly define the relationship between Statutory Boards, Minister and Cabinet.
7. The Auditor General's Report on the Cruise Pier Project dated 31 January 2013 should be made a public document through the House of Assembly.
8. The Committee recommends that the Governor appoints a Commission of Enquiry to examine the propriety of the process through which the Cruise Ship Port Development Project was handled. This recommendation is made

in view of the evidence gathered during the Public Accounts Committee Process which clearly show:

- i. Disregard for public process in the procurement of a major public project;
- ii. Absence of transparency in the handling of the public business;
- iii. Engagement of companies, consultants and individuals without sourcing alternatives;
- iv. Consistent and ongoing association between parties representing the Government side and the contractors through processes that were deficient in achieving any positive public purpose yet incurring ongoing and unjustified costs to the public purse.

Attachments

128. Attached to this, the Final Report of the Public Accounts Committee on the Cruise Ship Port Development Project, are the Minutes of the Public Accounts Committee's proceedings and other relevant documents and records as they pertain to the Committee's investigation of the Cruise Ship Port Development Project.
129. The Minutes of the BVI Port Authority's Board's meetings are referenced in this Report but have not been appended hereto as the contents of those proceedings cover various matters, including but not limited to staff and legal, which are outside of the scope of this investigation and not appropriate for public distribution. Excerpts of BVI Port Authority's Board Minutes which pertain to the Public Accounts Committee proceedings and the Cruise Ship Port Development Project are available for perusal via the Clerk of the House of Assembly.

Acknowledgements

130. The Committee thanks persons who gave of their time and performed a public service by appearing before this Constitutional Body. The Committee also thanks the staff of the House of Assembly for providing valuable and ongoing support to the proceedings.

APPENDICES TO THE FINAL REPORT ON THE PORTS DEVELOPMENT PROJECT:

- Ten sets of confirmed Minutes of Public Accounts Committee Meetings where interviews about the project were conducted: (Mrs. Sonia Webster, Mr. Claude Skelton-Cline, Mr. Gregory Adams, Mrs. Arlene Smith-Thompson, Ms. Myrtlyn Hodge, Ms. Naomi Turnbull, Mr. Clyde Chalwell, Mr. Jeremiah Frett, Mr. Gene Creque, Ms. Vareen Vanterpool)
- PriceWaterHouseCoopers Government of the British Virgin Islands Cruise Pier PPP Financial Assessment Report dated 23rd November, 2012 - Excerpts from pages 7 and 10
- British Virgin Islands Road Town Cruise Pier Extension Schematic Mooring Analysis dated 20th October, 2011
- Resolutions

PUBLIC ACCOUNT COMMITTEE'S INTERIM REPORT ON THE PORT DEVELOPMENT PROJECT

The Public Accounts Committee has met and continues to meet to review the procedures as it relates to the ongoing Port Development Project. In doing so, the information furnished to the Public Accounts Committee on the Port Development Project, thus far, raises many red flags.

The Public Accounts Committee in its ongoing examining of the Port Development Project, among other means, has gathered evidence thus far on the said project from conducting interviews with the following persons:

| | | |
|-----------------------|---|--|
| Sonia Webster | - | Auditor General |
| Vincent O'Neal | - | Former Managing Director (BVIPA) |
| Claude Skelton-Cline | - | Managing Director (BVIPA) |
| Gregory Adams | - | Former Acting Chairman BVIPA Board |
| Edward DeCastro | - | Chairman of BVIPA Board |
| Arlene Smith-Thompson | - | Former Acting Permanent Secretary MC&W |
| Myrtlyn Hodge | - | Financial Comptroller (BVIPA) |
| Naomi Turnbull | - | Board Member (BVIPA) |
| Clyde Chalwell | - | Board Member (BVIPA) |
| Wendell Gaskin | - | Ministry of Finance BVIPA representative |
| Jeremiah Frett | - | Former Ministry of Finance BVIPA Rep. |
| Gene Creque | - | Deputy Managing Director BVIPA |
| Vareen Vanterpool | - | General Counsel (BVIPA) |

The Committee finds the evidence given by persons interviewed to be very informative and for the most part, alarming to state the least. The confirmed Minutes from some of the interviews conducted on the project are attached to the Interim Report as appendices. For the most part, these findings raises many red flags in regards to the project in question and give rise for further investigations.

The Committee's examinations thus far, of the project have revealed that there have been numerous apparent irregularities and questionable circumstances and actions in regards to the project in question which give rise for further investigations.

The Committee's examinations thus far have revealed the apparent usurping of the duties and responsibilities of the BVIPA Board. It strongly appears that the Board was excluded from important decisions in regards to the project which give rise for further investigations.

The Committee's examinations thus far have revealed the apparent absence of full transparency and the apparent withholding of important requested information in regards to the project from the PAC which brings into question whether the correct procedures were followed and are being followed. This gives rise for further investigations. In addition, the lack of furnishing the Committee in a timely manner select information requested by the Committee from the BVIPA continues to significantly delay the Committee from completing the final report; hence, give rise for this Interim Report.

The Committee's examinations thus far reveal that the escalating cost of the project from a total of \$12 million dollars to in excess of \$30 million dollars, excluding the land side development, seemingly is excessive, unsubstantiated and/or insufficiently justified based on the information provided to the Committee thus far. This finding gives cause for further investigations.

The Committee's examinations thus far reveal that the process for the engagement of consulting and contracting companies seem not to have been properly documented and gives rise for further investigations.

The Committee's examinations thus far reveal concerns about many questionable payments including but not limited to the approximately \$1.7 million dollars to Tortola Pier Partners and the variable and increasing payments to and employment of PriceWaterHouseCoopers. This finding gives cause for further investigations.

The Committee finds that the concerns raised by the Auditor General in the Audit Report dated 31st January, 2013 on the Port Development Project - Management Report has merit and require further in-depth investigations. Due to concerns raised in the 7th April, 2014, correspondence from the Speaker of the House of Assembly to the Chairman of the Public Accounts Committee, the Committee, thus far, has refrain from attaching the Auditor General's Management Report on the project as an appendix to this Interim Report. Nevertheless, it is noteworthy to re-emphasise that from the evidence gathered by the Committee thus far, the Committee has found merit in the contents of the Auditor General's Management Report on the Port Development Project. The findings gives cause for further investigations.

The Committee's substantive reason for the laying of this Interim Report on the Port Development Project on the Table of the House of Assembly at this time are:

1. To appraise all Honourable Members of the abnormal procedures that were discovered from the inception of the project since November 2011, that give rise to the intervention of the Governor's Office to retract the earlier award of contract and ensure a fair conduct of the tender process.
2. In light of the apparent irregularities cited during the PAC's examination of the project in question, and given the request by the Government for the House of Assembly to approve loan funding for the said project, it is imperative that the House of Assembly be appraised of the findings, to date, of the Public Accounts Committee. Hence arise the need for the Interim Report.

The Public Accounts Committee, being guided under Section 83 and Section 73(5) (e) of the Standing Orders of the Legislative Council/House of Assembly, do hereby lay this Interim Report on the ongoing Ports Development Project.

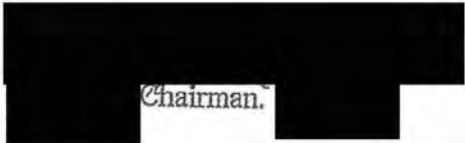
9th April, 2014



APPENDICES TO THE INTERIM REPORT ON THE PORT DEVELOPMENT PROJECT:

- Three sets of confirmed Minutes of Public Accounts Committee meetings where interviews about the project were conducted: (Mr. Wendell Gaskin, Mr. Edward DeCastro and Mr. Vincent O'Neal)
- Correspondences written by the Public Accounts Committee to different Government Ministries & Statutory Body (BVIPA)
- Correspondences received by the Public Accounts Committee from different Government Ministries & Statutory Body (BVIPA)
- Resolution

BE IT RESOLVED that the Public Accounts Committee of the Second House of Assembly of the Virgin Islands approves its interim Report on the Ports Development Project.

Passed by the Public Accounts Committee this 1st day of April, 2014.


Chairman.



Secretary, Public Accounts Committee.


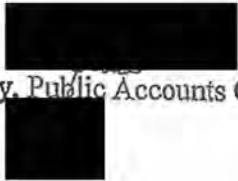
BE IT RESOLVED that the Public Accounts Committee of the Second House of Assembly of the Virgin Islands hereby requests that the Auditor General's Management Report be removed from the PAC Interim Report on the Ports Development Project so as to address the concern raised by the Speaker in her letter to the Chairman dated 7th April, 2014.

Amendment be made to the Interim Report to include the following:

- Allow reference to be made to the Auditor General's Management Report on the Ports Project
- Allow confirmed Minutes to form part of the Report
- Allow for amendments to be made to existing paragraphs in the Interim Report in reference to
 - i) information/Minutes received from BVIPA
 - ii) to list the persons interviewed by the PAC in regards to the Project
 - iii) to state the reason why the Auditor General's Management Report was not made a part of the Interim Report

Passed by the Public Accounts Committee this 9th day of April, 2014.



Chairman.




Secretary, Public Accounts Committee.

BE IT RESOLVED that the Public Accounts Committee of the Second House of Assembly of the Virgin Islands hereby requests that the Minutes that have already been reviewed by the PAC as previously agreed are hereby confirmed as amended

| | | | |
|---------------------------------|---|----------|-----|
| Honourable Ralph T. O'Neal | - | Chairman | Yes |
| Honourable J. Alvin Christopher | - | Member | Yes |
| Honourable Andrew A. Fahie | - | Member | Yes |
| Honourable Marlon A. Penn | - | Member | No |
| Honourable Alvera Maduro-Caines | - | Member | No |

Passed by the Public Accounts Committee this 9th day of April, 2014.


Chairman.


Secretary, Public Accounts Committee.




BE IT RESOLVED that the Public Accounts Committee of the Second House of Assembly of the Virgin Islands hereby requests to withdraw the PAC Interim Report on the Ports Development Project which was submitted to the Clerk on 2nd April, 2014 that was intended to make part of the Order of the Day for the Sitting that was scheduled for 8th April, 2014;

The PAC is submitting an amended version of the Interim Report in order to make part of the Order of the Day for the Sitting of 17th April, 2014;

| | | | |
|---------------------------------|---|----------|-----|
| Honourable Ralph T. O'Neal | - | Chairman | Yes |
| Honourable J. Alvin Christopher | - | Member | Yes |
| Honourable Andrew A. Fahie | - | Member | Yes |
| Honourable Marlon A. Penn | - | Member | No |
| Honourable Alvera Maduro-Caines | - | Member | No |

Passed by the Public Accounts Committee this 9th day of April, 2014.


Chairman.


Secretary, Public Accounts Committee.




**BRITISH VIRGIN ISLANDS PORTS AUTHORITY
TWO HUNDREDTH MEETING OF THE AUTHORITY'S BOARD
March 8th, 2012**

The Two Hundredth Meeting of the British Virgin Islands Ports Authority was held on Thursday, March 8th, 2012 in the Authority's Conference Room (48th Meeting of the Board constituted August 2008).

PRESENT

| | |
|----------------------|-------------------|
| Mr. Greg Adams | Acting Chairman |
| Mr. Franklin Walters | Member |
| Mr. Leroy Moses | Member |
| Ms. Naomi Turnbull | Member |
| Ms. Hadassah Ward | Member |
| Mr. V. Victor O'Neal | Ex-Officio Member |

ABSENT

| | |
|---------------------------|-------------------|
| Ms. Arlene Smith Thompson | Ex-Officio Member |
| Mr. Neil Smith | Ex-Officio Member |

IN ATTENDANCE

| | |
|--------------------|---------------------|
| Ms. Jessica Joseph | Recording Secretary |
|--------------------|---------------------|

AGENDA



ITEM I & II – CALL TO ORDER AND PRAYERS

The Meeting was called to order at 10:55 a.m.

Prayer was offered by Ms. Jessica Joseph.

ITEM III - [REDACTED]

[REDACTED]

[REDACTED]

ITEM IV - [REDACTED]

[REDACTED]

1.

[REDACTED]

[REDACTED]

Footnote:

[REDACTED]

2.

[REDACTED]

[REDACTED]

Footnote:

[REDACTED]

[REDACTED]

3.

[REDACTED]

Footnote:

[REDACTED]

The Minister joined the meeting at 12:10 p.m.

3. Cruise Pier

The Government received three proposals for the Development of the Cruise Pier.

The original proposal by Disney was cancelled. Disney is now working with another company, which is a Public, Private Partnership.

Carib Invest has also made a proposal to the Government.

A third proposal was also made by a group out of Miami, headed by Mr. Dion Stoutt.

It was noted that the British Virgin Islands is a desired Port for Cruise Lines such as Norwegian Cruise Lines (NCL).

It was noted that a decision will be made regarding the extension of the Cruise Pier.

The Minister stated that some funds can be borrowed from the Ports Authority based on the timeline in which this project has to be developed.

The Chairman suggested that a presentation could be made to the Minister regarding the funds.

It was estimated that the extension of the Pier could be completed by the following year.

The Minister asked the Authority to move forward with the Environmental Impact Assessment, in order that the process can move forward right away.

The land will be leased between the Ports Authority and the developer.

While attending the Cruise Miami Conference in Miami Florida, the Minister will meet with representatives from Royal Caribbean, Carib Invest and Disney Cruise Lines.

The Minister stated that no decision has been made regarding the proposals; however, the best decision will be made for the country. The matter will be put to Cabinet within thirty to sixty days.

The Minister asked the Managing Director how the staffing matters were progressing.

The Managing Director said a promise made is a promise kept and that the upcoming pay period will reflect the two payments that will be made to the staff.

Footnote: *The Authority to move forward with the Environmental Impact Assessment, in order that the process can move forward right away.*

5. [REDACTED]

6. [REDACTED]

Footnote: [REDACTED]

7. [REDACTED]

[REDACTED]

Footnote:

[REDACTED]

[REDACTED]

Footnote:

[REDACTED]

ITEM VI –

[REDACTED]

[REDACTED]

ITEM VII –

[REDACTED]

[REDACTED]

Footnote:

[REDACTED]

ITEM VIII –

1.

[REDACTED]

Footnote:

[REDACTED]

2.

[REDACTED]

Footnote:

[REDACTED]

3.

[REDACTED]

4.

[REDACTED]

ITEM IX - ADJOURNMENT

There being no further business the meeting was adjourned at 1:20 p.m.

[REDACTED]

Chairman

14/dg/12

Date

[REDACTED]

Secretary

14/dg/12

Date



SIGNED

BRITISH VIRGIN ISLANDS PORTS AUTHORITY
TWO HUNDREDTH AND FIRST MEETING OF THE
AUTHORITY'S BOARD
April 12th, 2012

The Two Hundredth and First Meeting of the British Virgin Islands Ports Authority was held on Thursday, April 12th, 2012 in the Authority's Conference Room (49th Meeting of the Board constituted August 2008).

PRESENT

| | |
|----------------------|-------------------|
| Mr. Greg Adams | Acting Chairman |
| Mr. Franklin Walters | Member |
| Mr. Leroy Moses | Member |
| Ms. Naomi Turnbull | Member |
| Mr. Neil Smith | Ex-Officio Member |
| Mr. V. Victor O'Neal | Ex-Officio Member |

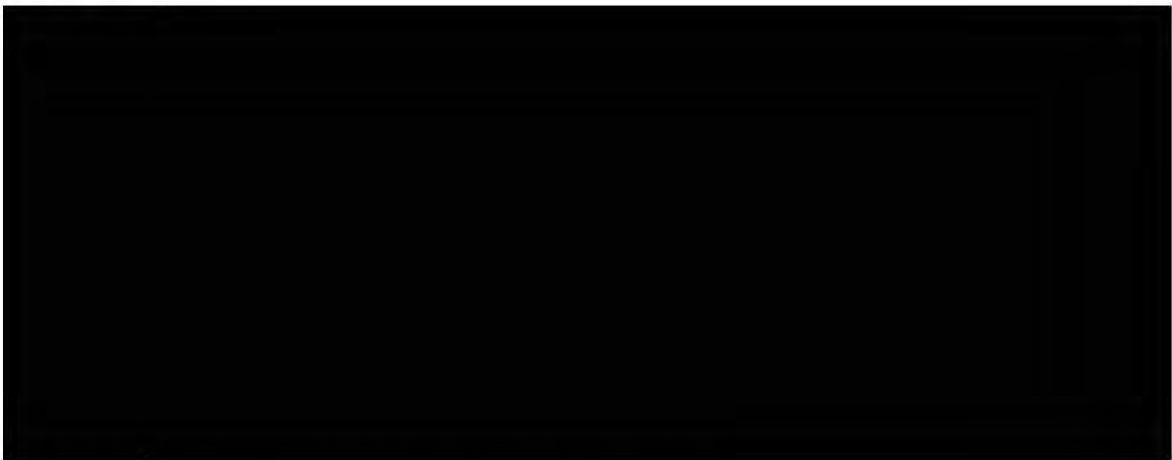
ABSENT

| | |
|---------------------------|-------------------|
| Ms. Arlene Smith Thompson | Ex-Officio Member |
| Ms. Hadassah Ward | Member |

IN ATTENDANCE

| | |
|--------------------|---------------------|
| Ms. Jessica Joseph | Recording Secretary |
| Ms. Ethlyn Rhymer | Secretary |

AGENDA



ITEM I & II – CALL TO ORDER AND PRAYERS

The Meeting was called to order at 11:20 a.m.

Prayer was offered by Ms. Jessica Joseph.

ITEM IV - MATTERS ARISING FROM THE MINUTES OF THE 200th MEETING OF THE AUTHORITY'S BOARD

1. Cruise Pier

The Government has signed an agreement with Disney Cruise Lines and Tortola Ports Partners to enter into negotiations for the four acres of land. The negotiation period is ninety days.

The primary focus of the project is the Cruise Pier and the Upland Development.

The company has suggested that the work can be done before the season, even if it means working on one side of the Pier in order to allow Disney's Cruise Ships to come to the territory.

The following concerns and comments were raised relevant to the proposed extension of the Cruise Pier.

- Would working on one side of the dock at a time weaken the structure?
- Would the extension proposed affect the turning basin for cargo boats?
- How will the proposed work at the Cruise Pier affect the dock at Port Purcell?
- The Chairman had not yet seen the drawings but he believes the work on one side of the dock at a time has more to do with strengthening out the bollards.
- The Study which the Authority obtained did not speak to widening of the dock. It however, addressed the issue of having someone manage the traffic in the harbour for safety reasons.

- Are we prepared to handle the catastrophe should a big ship become disabled in our waters? Are there any tugs available?

Member Leroy Moses promised to show the Managing Director drawings pertaining to the development, which were proposed for Port Purcell.

The overall plan is to do the Uplands within 2 to 3 years. As this can affect the taxi business as tourist may end up staying in that area, care must be taken to have a design that would discourage this.

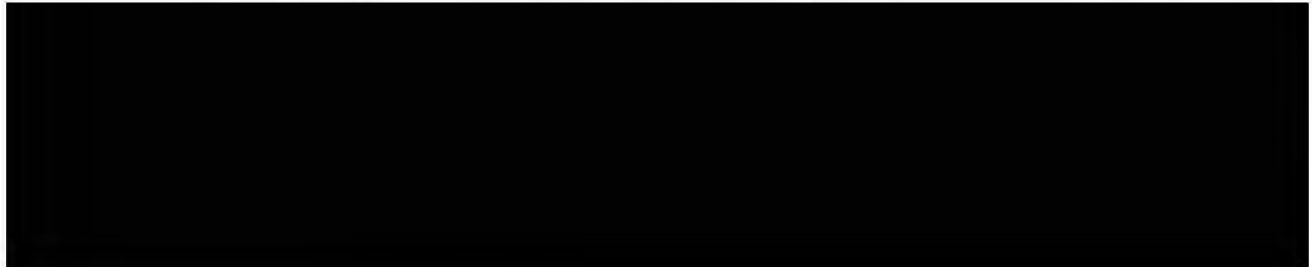
The Board will be more involved in the details of this project with the guidance of the Minister.

Ms. Cassandra Titley O'Neal will be conducting the Environmental Impact Assessment, at an agreed cost of forty thousand dollars (\$40,000); the Authority will bear the full cost of the Environmental Impact Assessment.

Footnote: *The Government has signed an agreement with Disney Cruise Lines and Tortola Ports Partners to enter into negotiations for the four acres of land.*

Member Leroy Moses promised to show the Managing Director drawings pertaining to the development, which was proposed for Port Purcell.

The Authority will bear part of the cost for the Environment Impact Assessment.



[REDACTED]

[REDACTED]

4.

[REDACTED]

5.

[REDACTED]

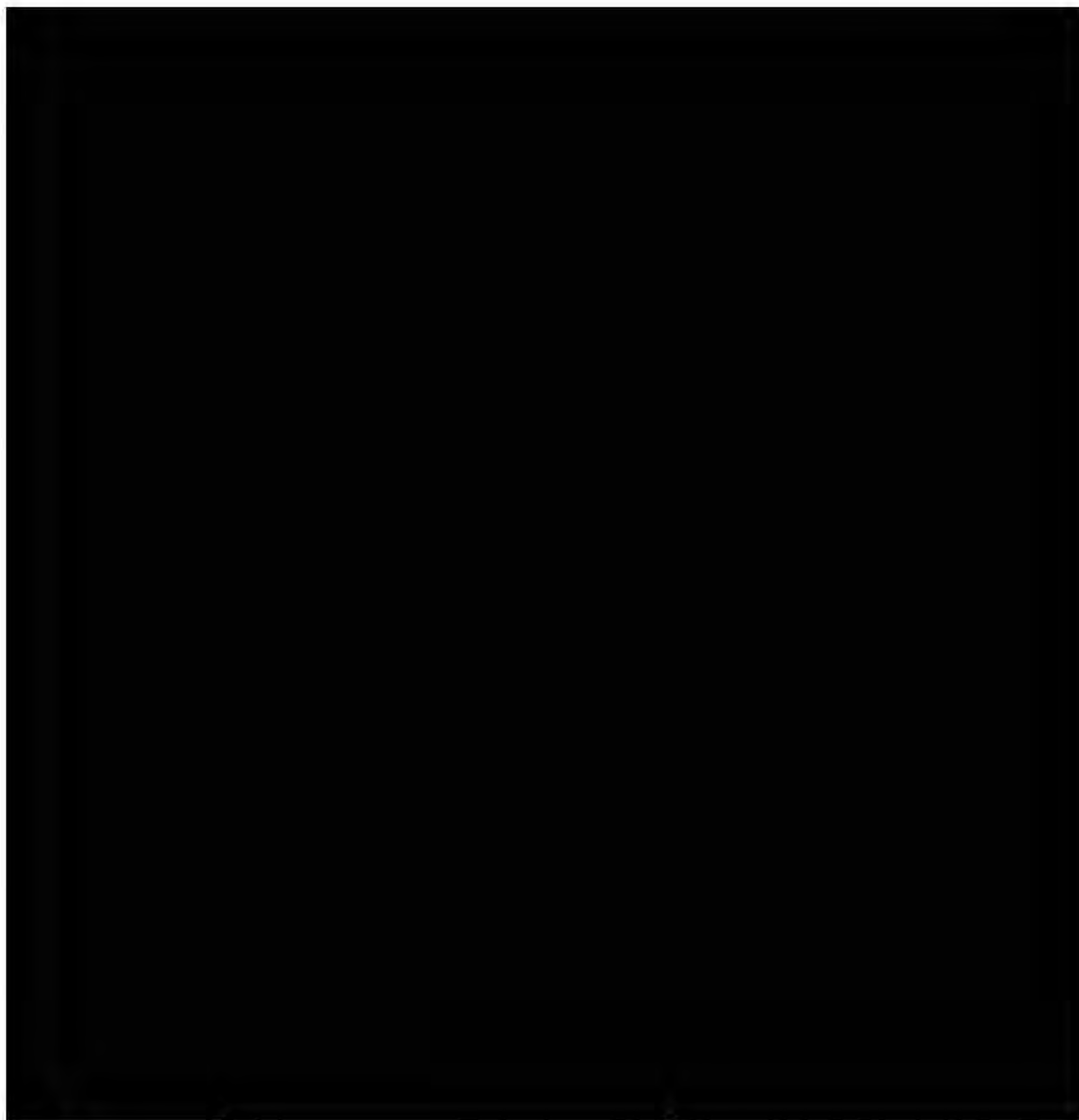
Footnote:

[REDACTED]

6.

[REDACTED]

7.



Footnote:



8.



9.



Footnote: *The Authority will respond appropriately to this request.*

[Redacted Signature]

Chairman

14/6/12

Date

[Redacted Signature]

14/6/12

Date



BRITISH VIRGIN ISLANDS PORTS AUTHORITY
TWO HUNDRED AND THIRD MEETING OF THE AUTHORITY'S
BOARD
June 14th, 2012

The Two Hundred and Third Meeting of the British Virgin Islands Ports Authority was held on Thursday, June 14th, 2012 in the Authority's Conference Room (51st Meeting of the Board constituted August 2008).

PRESENT

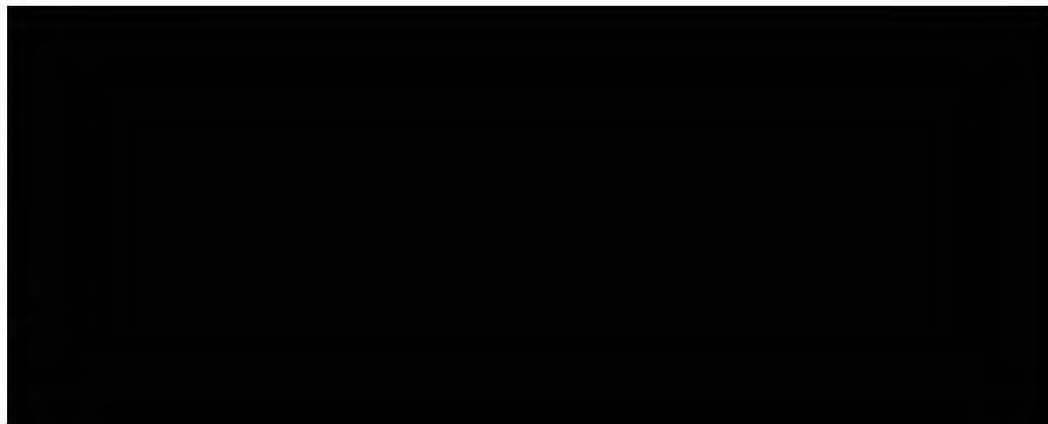
| | |
|---------------------------|--|
| Mr. Greg Adams | Acting Chairman |
| Mr. Franklin Walters | Member |
| Mr. Leroy Moses | Member |
| Ms. Naomi Turnbull | Member |
| Ms Malcia Smith Hamilton | Member |
| Mr. Wendell Gaskin | (representative for Mr. Neil Smith, Financial Secretary and Ex-Officio Member) |
| Ms. Arlene Smith Thompson | Ex-Officio Member |
| Mr. V. Victor O'Neal | Ex-Officio Member |

IN ATTENDANCE

| | |
|--------------------|---------------------|
| Ms. Jessica Joseph | Recording Secretary |
| Ms. Ethlyn Rhymer | Secretary |

AGENDA

- I.
- II.
- III.
- IV.
- V.
- VI.
- VII.
- VIII.
- IX.
- X.



ITEM I & II – CALL TO ORDER AND PRAYERS

The Meeting was called to order at 10:40 a.m.

Prayer was offered by Ms. Jessica Joseph.

[REDACTED]

[REDACTED]

1.

[REDACTED]

2.

[REDACTED]



ITEM V – PURCHASE AGREEMENT - TORTOLA PORT PARTNERS

The Managing Director received an email approximately two to three weeks ago regarding the Authority paying for the cost of the piles for the Cruise Pier Extension.

The cost of the piles is just over three million dollars.

Copies of the document relative to the cost of the piles were circulated to Members.

It was noted that the Authority could procure the piles and be reimbursed when the agreement with Tortola Port Partners Ltd is signed.

The Acting Chairman had two concerns:

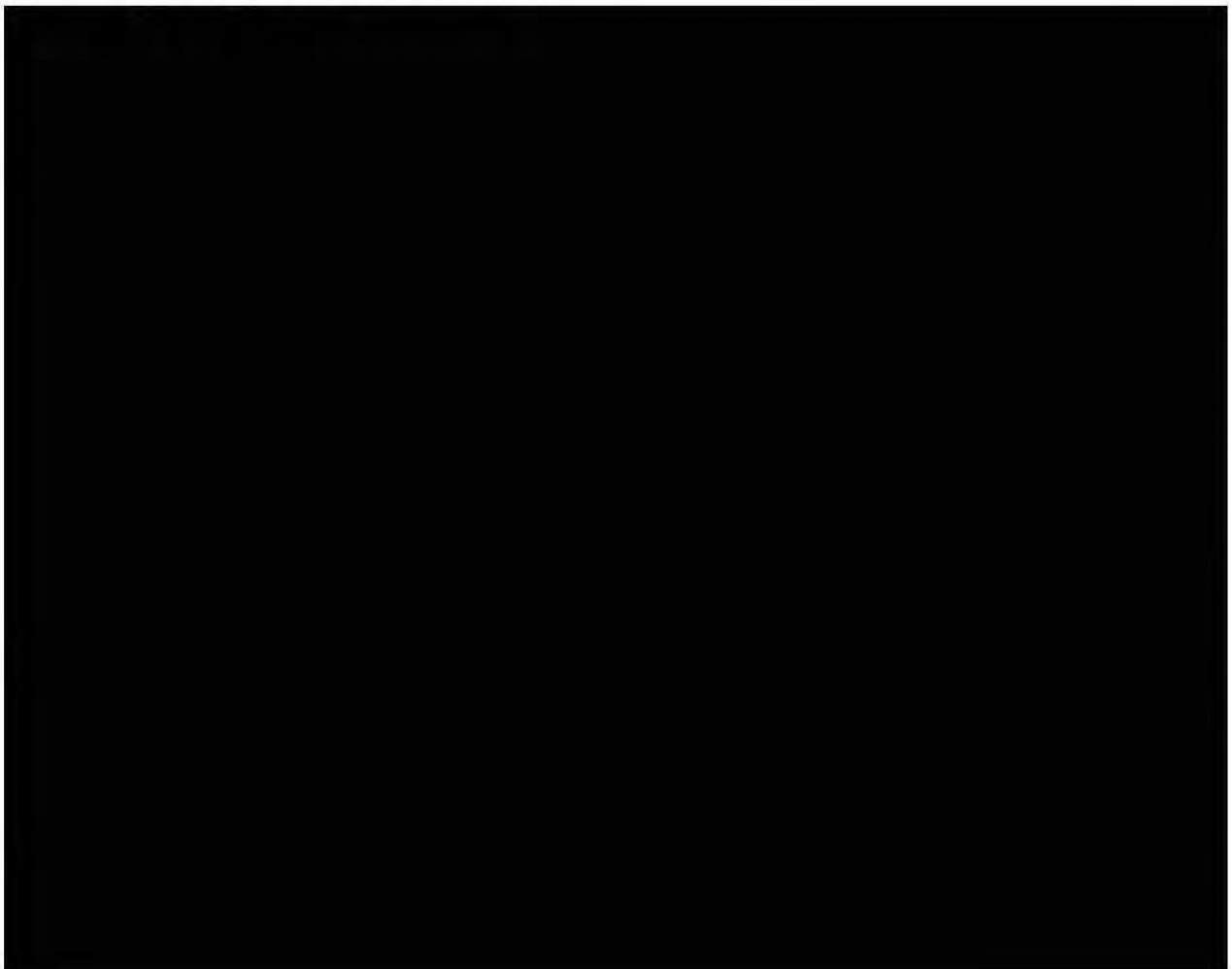
1. The Authority needs to have an invoice that states clearly what is the cost of the items and what items will be received for the cost.
2. The overall financial position of the Authority.

The agreement is an Electronic Letter of Credit Agreement, which means that no funds will be paid until the piles are landed in the territory.

The Acting Chairman stated that he is in full support of this initiative and the benefits of undertaking the initiative, but we must be mindful of the Authority's financial position.

The Managing Director mentioned that the Authority should receive a pro-forma invoice and that the Consultant, Mr. Claude Cline, promised that he would receive it.

A RESOLUTION WAS MOVED by Member Wendell Gaskin, seconded by Member Malcia Smith Hamilton that three million four hundred and thirty thousand eight hundred dollars (\$3,430,800) should be paid in agreement with the Contract between the Authority and Tortola Port Partners Ltd.



[REDACTED]

ITEM VII - [REDACTED]

[REDACTED]

ITEM VIII - [REDACTED]

[REDACTED]

ITEM IX - [REDACTED]

1.

[REDACTED]

2.

Footnote:

3.

4.

[REDACTED]

Footnote:

[REDACTED]

5.

[REDACTED]

■

[REDACTED]

Footnote:

[REDACTED]

[REDACTED]

6.

[REDACTED]

[REDACTED]

Chairman

Date

Secretary

Date

British Virgin Islands Ports Authority
(the “Authority”)

“ “written resolutions of the Board of Directors of the Authority.

1. Amendments to the Terms and Conditions of Employment Handbook



On Behalf of the British Virgin Islands Ports Authority

.....
Chairman of the Board of Directors
Mr. Gregory W. Adams

Date: June, 2012

DATED

AGREEMENT

between

THE BRITISH VIRGIN ISLANDS PORTS AUTHORITY

and

TORTOLA PORT PARTNERS LIMITED

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) **The British Virgin Islands Ports Authority**, whose principal address is at Port Purcell, P.O. Box 4, Road Town, Tortola, British Virgin Islands (the "BVIPA"); and
 - (2) **Tortola Port Partners Limited** whose registered office is at PO Box 3190, Road Town, Tortola, British Virgin Islands (the "**Developer**")
- (collectively referred to hereinafter as the "**Parties**" and individually as the "**Party**").

1. BACKGROUND

- 1.1 The Parties entered into a memorandum of understanding dated 21 March 2012 in relation to the development of the Road Town cruise pier in the British Virgin Islands (the "**MOU**").
- 1.2 Pursuant to the terms of the MOU, the Parties continue to work diligently to finalize and execute the Documents (as such term is defined in the MOU).
- 1.3 The Parties recognize the need to order certain construction materials from the relevant suppliers and at the prices outlined in Schedule A (the "**Construction Materials**") by June 10, 2012 in order to meet crucial deadlines for the construction of the cruise ship pier.
- 1.4 The Parties estimate that the Documents will not be signed by 10 June 2012 and the BVIPA recognizes that the Construction Materials will be necessary to complete the development of the cruise ship pier regardless of whether the project is awarded to the Developer.
- 1.5 The total cost for the Construction Materials is USD3,043,800.

2. INTERPRETATION

- 2.1 All capitalized terms used but not defined herein shall have the meaning attributed to them in the MOU.

3. PAYMENT FOR THE CONSTRUCTION MATERIALS

- 3.1 The BVIPA will order and pay for the Construction Materials directly from the relevant supplier at the prices outlined in Schedule A subject to any changes communicated to the BVIPA in writing by the Developer.
- 3.2 The BVIPA will be responsible for all charges in relation to the purchase of the Construction Materials including, but not limited to, delivery to the

British Virgin Islands and to the construction site, production delays, weather delays, or any other charges not attributable to the actions of the Developer and not borne by the supplier.

- 3.3 Upon execution of the Documents, the Developer agrees to reimburse the BVIPA for the total cost of the Construction Materials less customs duties/taxes (if any) within 30 days of delivery of the piles (whichever is later).
- 3.4 Legal and beneficial ownership of the Construction Materials will vest in the BVIPA until ownership is transferred to the Developer upon the fulfillment of the conditions outlined in Clause 3.3 above.

4. WAIVER OF CUSTOMS DUTIES AND TAXES

- 4.1 The Parties agree that, as indicated by the Government of the British Virgin Islands), no taxes or duties of any kind (including, but not limited to customs duties and sales taxes) will be levied on the Construction Materials.
- 4.2 The BVIPA agrees to take the appropriate steps to obtain the necessary approvals of the waiver of all customs duties/taxes imposed on the import of the Construction Materials and the BVIPA agrees to bear the cost of any customs duties/taxes imposed on the Construction Materials in the event that such waiver is not obtained.

5. TERM AND TERMINATION

- 5.1 This Agreement shall commence on the date of signature by both parties, and shall expire when the conditions outlined in Clause 3.3 above have been met.

6. VARIATION

This Agreement, including the Schedules, may only be varied by written agreement of the Parties.

7. CHARGES AND LIABILITIES

- 7.1 In the event that negotiations between the Parties do not result in the entry into the Documents, the BVIPA agrees to bear the cost of the Construction Materials and the Developer will have no liability or commitment whatsoever to reimburse the BVIPA for any expenses incurred or for any loss suffered by the BVIPA in connection therewith.

8. STATUS

- 8.1 This Agreement is intended to be legally binding and the Parties agree that legal obligations or legal rights shall arise between the parties from this Agreement.
- 8.2 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either Party as the agent of the other Party, nor authorise either of the Parties to make or enter into any commitments for or on behalf of the other Party.

9. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of the British Virgin Islands each Party agrees to submit to the exclusive jurisdiction of the courts of the British Virgin Islands.

Signed for and on behalf of
**THE BRITISH VIRGIN ISLANDS
PORTS AUTHORITY**

Signature:
Name:
Position:
Date:

Signed for and on behalf of
**TORTOLA PORT PARTNERS
LIMITED**

Signature:
Name:
Position:
Date:

**MINUTES OF THE PUBLIC ACCOUNTS COMMITTEE MEETING
HELD ON WEDNESDAY 15th JANUARY 2014 AT 11:35 A.M
OFFICE OF THE HOUSE OF ASSEMBLY
CONFERENCE ROOM NO 1.**

PRESENT

| | | |
|---------------------------|---|---------------------------|
| Hon. Ralph T. O'Neal, OBE | - | Chairman |
| Hon. J. Alvin Christopher | - | Member |
| Hon. Andrew Fahie | - | Member |
| Hon. Alvera Maduro-Caines | - | Member |
| Hon. Marlon Penn | - | Member |
| Ms. Sonia Webster | - | Auditor General (Adviser) |
| Ms. Phyllis Evans | - | Secretary |

IN ATTENDANCE

| | | |
|-------------------|---|--|
| Mr. Gregory Adams | - | Former Acting Chairman, BVIPA Board |
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1. The Member for the First District led the opening prayer.
2. The Chairman welcomed the former Acting Chairman of the Board of the BVI Ports Authority to the Committee and introduced the members for his benefit. He also gave a brief description of the Committee's purpose, duties and responsibilities. The Chairman opened the floor for questions.
3. The Member for the First District welcomed Mr. Adams and enquired about how long he had been acting as Chairman of the Board.
4. The former Acting Chairman, Mr. Gregory Adams stated that he had been acting as Chairman since October 2011 up until the present Chairman was appointed in either September or October 2012 which was around the time that they had attended a conference in Curacao.

5. The Member for the First District enquired about why the trip to Curacao was stuck in the former Acting Chairman's mind.
6. The former Acting Chairman stated that Curacao had been stuck in his mind because that was when he found out about the new Chairman. He indicated that travel to Curacao had already been planned and noted that he did not know about the new appointment until two days before the trip when he as the acting Chairman was informed that the new Chairman would be joining them.
7. The Member for the First District enquired about Mr. Adam's role as Acting Chairman regarding the Port Pier Project.
8. The Former Acting Chairman stated that his role in the project was minimal because at that time, there was a consultant within the Ministry of Communications, who had been handling most of the negotiations. He noted that the Board had been consulted sporadically and that at times, he had been called on to convene emergency meetings of the Board to basically regularise decision taken by the Ministry of Communications and Finance relating to the project.
9. The Member for the First District enquired about who called upon the Acting Chairman to convene the emergency meetings.
10. The former Acting Chairman stated that it had been Mrs. Arlene Thompson who was the Permanent Secretary of the Ministry at the time. He further stated that Mrs. Thompson would ask that a meeting be convened to consider a certain level of negotiations that had occurred sometime prior to the BVIPA Board meeting being called. He noted that they had been given documents to review and had been asked to consider certain resolutions that would allow for discussions to progress further.
11. Regarding everything that had been done throughout the course of the project, the Member for the First District asked if the procedures/processes had been carried out in keeping with the law.

12. The former Acting Chairman stated that he understood the role of the Board of the BVIPA to be one where they advised the Government on matters that pertained to the Ports as well help them to set guidelines and priorities for the management of the Ports. He further stated that, in his personal opinion, a lot of the responsibilities had been taken away from the Board by the way things had been done since November, 2011.
13. The Member for the First District enquired about who had been the consultant at the time.
14. The former Acting Chairman stated that the consultant was Mr. Claude Skelton-Cline.
15. The Member for the Second District enquired about when Mr. Adams had been appointed to the BVIPA Board.
16. The former Acting Chairman stated that he had been appointed to the Board in July 2008.
17. The Member for the Second District asked if the former Acting Chairman had been first appointed as a board member.
18. The former Acting Chairman responded in the affirmative and indicated that, later on, he had been elected as Deputy Chairman by the Board.
19. The Member for the Second District asked if the former Acting Chairman had the opportunity to serve on the board between 2008 and 2011 before he had been appointed Acting Chairman.
20. The former Acting Chairman responded in the affirmative and explained that he had been appointed as Chairman because the Chairman at the time had resigned.
21. The Member for the Second District enquired about whether the recent turn off events throughout the development of the project had been a normal process for the Board.
22. The former Acting Chairman responded in the negative and explained that, previously, the Board had been involved in negotiations with the cruise lines such as Disney Cruise Lines to

try to obtain a loan agreement that would allow for the completion of major works on the cruise pier dock. He further explained that, in those negotiations, the Board and Managing Director had been the ones to directly engage the other party. He stated that the Board had no other contact with the other parties involved in the Tortola Pier Park Project and noted that the only contact that they had with the negotiations had been through information provided by the Ministry.

23. The Member for the Second District asked the former Acting Chairman if, at that point in time, he could have identified the members of the Tortola Pier Partners Group.
24. The former Acting Chairman responded in the negative.
25. The Member for the First District enquired about who had been the Managing Director at the time with the original agreement with Disney that was agreed upon by the previous administration prior to November, 2011.
26. The former Acting Chairman stated that the Managing Director at the time had been Mr. Vincent O'Neal.
27. The Member for the First District stated that in the report, it was clear that the Board had been directed to purchase some piles. He asked Mr. Adams if he had been the Acting Chairman at the time.
28. Mr. Adams responded in the affirmative.
29. The Member for the First District asked the former Acting Chairman to explain what had happened with regards to the purchasing of the piles.
30. The former Acting Chairman explained that, when the project involving the extension of the pier dock became more imminent, the timeline turned into a critical factor. He further explained that they had realized that the piles would have taken a long time to procure and, in the interest of time, the Board had been approached by the Ministry of Communications and Works and asked to purchase the piles ahead of time while the agreements were being

finalized. He stated that the Board had requested an invoice for the piles and had been told to request a copy from the consultant who had been Mr. Skelton – Cline.

31. The Member for the Eighth District enquired about who had told the Board to request the copy if the invoice from the consultant.
32. The former Acting Chairman stated that he believed that it had been the Permanent Secretary in the Ministry of Communications and Works who told to them to request the copy of the invoice from the consultant.
33. The Member for the First District enquired about the cost of the piles before the Board saw the actual invoice.
34. The Former Acting Chairman stated that they had been told that the piles would cost approximately \$2 million and that the invoice listed costs at just above \$2 million.
35. The Member for the First District enquired about who gave the Board the cost of the piles.
36. The former Acting Chairman explained that at one of the Board meetings, Mr. Skelton – Cline stated that the cost of the piles would be somewhere around \$2 million, based on his recollection. He noted that a resolution had to be made by the Board in order to make the payment. He stated that the Board felt that controls had to be placed on the payment and created a Letter of Credit to the supplier where they had specified that payment would have been made when the piles landed on Tortola rather than otherwise as was being suggested. He further stated that the Board had been willing to pay for the piles to help expedite the project giving the time constraints and the Board will be reimbursed once the contract was signed by TPP.
37. The Member for the Eighth District asked if the Letter of Credit had been something the Board wanted to do before payment for the piles were made.
38. The Former Acting Chairman responded in the affirmative.

39. The Member for the First District enquired about whether the minutes of the Board meetings would reflect everything that the former Acting Chairman is stating before the Committee.
40. The Former Acting Chairman responded in the affirmative and stated that the meetings where the resolution had been ultimately passed would especially reflect the conditions that had been set within the Letter of Credit.
41. The Member for the First District enquired about who brought the company TPP to the Board and also asked if the Board had been able to ascertain whether the company was credible.
42. The former Acting Chairman stated that the company had been presented to the Board by the Ministry of Communications and Works and indicated that, at one point, the Board had met with two principals of the company one being a Mr. Todd Malphus and another whose name he could not recall.
43. The Member for the Second District asked the former Acting Chairman if there had been a tendering process for the piles to his knowledge.
44. The former Acting Chairman could not recall if there had been a tendering process.
45. The Member for the Second District enquired about whether the Former Acting Chairman had been aware that negotiations had been on-going previously with Disney Cruise Lines regarding loan funds needed for another project.
46. The former Acting Chairman stated that he was aware.
47. The Member for the Second District asked if there had been a tendering process for the first arrangement with Disney Cruise Lines.
48. The former Acting Chairman stated that, to his recollection, Disney had been the ones to approach the BVIPA regarding that project.

49. The Member for the Second District asked if the Board had been given a Government decision on the first project.
50. The former Acting Chairman stated that the project had originated from the Board and had been accepted by the Ministry through consultations with the Premier's Office which led to the Board signing a MOU with Disney Cruise Lines prior to November, 2011.
51. The Member for the Second District enquired about whether the former Acting Chairman had received any Government decision revoking the first project agreed to by the previous Administration seeing that the Government had now made new arrangements with another company.
52. The former Acting Chairman stated that he had not been presented with anything that said that the original project agreed to by the previous Administration had been revoked.
53. The Member for the Second District asked if Disney had written to the former Acting Chairman enquiring about the status of the project and if so, what was his response to Disney query.
54. The former Acting Chairman stated that Disney had not written to him in his capacity and noted that he was unsure if they had written to the Managing Director of the Board. He indicated that he had never seen any correspondence from Disney enquiring about the status of the project. He explained that they had met up with a Mr. Russell Dyer of Disney Cruise Lines at the Sea Trade Meeting in Miami who asked about the status of the matter. He noted that they had not had anything to tell Mr. Dyer because the BVIPA Board had not been involved in the new negotiations.
55. The Member for the First District enquired about who had brought Mr. Todd Malphrus and the other gentleman to the BVIPA Board.
56. The former Acting Chairman stated that it had been the Ministry of Communications and Works who had brought Mr. Malphrus and the other person to the Board. He further stated

- that the men had made presentations to the Board on what they planned to do regarding the project. He noted that the Ministry also made presentations.
57. The Member for the Second District asked if there had been any closure to the previous project agreed with Disney Cruise Lines with the BVIPA Board.
 58. The former Acting Chairman stated that, if any closure had been made, it would have come from the Ministry of Communications and Works and noted that, as far as the Board knew, the agreement with Disney had still been on the table.
 59. Referring to the time when the Board had met Tortola Pier Partners and had been asked to approve money in advance, the Member for the Second District asked if they had ever notified Disney that they had been severed.
 60. The former Acting Chairman responded in the negative and stated that at the time, they had been told that Disney had an interest with Tortola Pier Partners. He noted that a Mr. Hugh Darley of IDEA Inc. had supposedly been the link between Disney Cruise Lines and Tortola Pier Partners.
 61. The Member for the Eighth District thanked Mr. Adams for appearing before the Committee. He referred to the purchasing of the piles and asked the former Acting Chairman if he had thought it was a good idea.
 62. The former Acting Chairman responded in the affirmative and referred to his previous statement where he indicated that it had made sense to purchase the piles ahead of time due to time constraints and in order to keep the project on schedule.
 63. The Member for the Eighth District enquired about whether the Board supported the move to purchase the piles ahead of time.
 64. The former Acting Chairman responded in the affirmative and stated that the Board had felt comfortable moving forward with the resolution after being able to place conditions in the Letter of Credit rather than what was originally being requested.

65. The Chairman of the PAC enquired about whether the Board had agreed to the Letter of Credit willingly.
66. The Former Acting Chairman stated that the Board had willingly agreed to the Letter of Credit but noted that the Board had expressed some reluctance to pay the money up front.
67. The Member for the Eighth District enquired about whether the Former Acting Chairman, through the Board, had come up with the idea of establishing a Letter of Credit.
68. The former Acting Chairman stated that the Board had insisted on the process.
69. The Member for the First District asked if the Board had been approached to make a payment.
70. The former Acting Chairman responded in the affirmative and stated that they had been told that they needed to buy the piles immediately and that the Board had insisted that it made sense to follow that type of procedure to safeguard the Ports.
71. The Member for the First District stated that the Ministry told the Board that they wanted the piles to be purchased immediately but did not say that they had wanted the piles to be purchased from "Tom, Dick or Harry" immediately. He stated that the piles had to be purchased from somebody.
72. The former Acting Chairman stated that that had been the reason why the Board had requested an invoice.
73. The Member for the Eighth District enquired about whether the Board had any problems with what had been presented to them regarding the purchasing of the piles except for method of payment.
74. The former Acting Chairman stated that the Board had no problem in trying to expedite the project so long as the constraints listed in the Letter of Credit were in place.

75. The Member for the Eighth District stated that the former Acting Chairman and the Board had drafted the resolution to specifically state the constraints.
76. The former Acting Chairman stated that the Board had direct input into how the resolution had been worded but noted that, ultimately, the Managing Director and his staff had tweaked it.
77. The Member for the Eighth District asked if the Board had been directed in that process.
78. The former Acting Chairman indicated that the Board had been directed to the point where it had been necessary to make some type of payment.
79. The Member for the First District enquired about whether the payment would have been made if the Board had not insisted on certain criteria.
80. The former Acting Chairman stated that he could not say if the Board would have paid for the piles outright.
81. The Member for the Eighth District asked if the Board could have made the payment.
82. The former Acting Chairman stated that, hypothetically, the Board could have made the payment through a resolution.
83. The Member for the Eighth District stated that Mr. Adams, as the then Acting Chairman, would have had to authorize the payment through a resolution which would have had to come through him as Chairman.
84. The Former Acting Chairman stated that the resolution did not necessarily have to come through him as Chairman. He further stated that, for the year that he had been the Acting Chairman, he only remembered signing two cheques and noted that, depending on the level of expense, the Managing Director and the Financial Comptroller would sign cheques as well.

85. The Member for the Eighth District enquired about who the Managing Director and Financial Comptroller had been at the time.
86. The Former Acting Chairman stated that the Managing Director had been Mr. Vincent O'Neal and the Financial Comptroller had been Mrs. Myrthlyn Hodge. He indicated that it was not necessary for the Chairman to authorize payment and noted that a cheque could have been made under different terms.
87. The Member for the Eighth District enquired about whether the Managing Director and Financial Comptroller had the authority to sign a cheque for over \$2 million.
88. The Former Acting Chairman stated that so long as there had been a resolution from the Board stating that they authorize a payment, the procedures would have allowed for the other signatories to sign.
89. The Member for the Eighth District stated that the resolution would have had to go through a process in which Mr. Adams as Chairman would have had to be involved.
90. The former Acting Chairman confirmed this and stated that all the Board members would have been involved.
91. The Member for the Eighth District stated that, essentially, no cheque could have been written without the Chairman's involvement.
92. The former Acting Chairman confirmed this.
93. The Member for the Second District asked if it had been made clear to the former Acting Chairman that the scope of the project had changed or if he was still of the mind-set that the original design from the Disney MOU remained.
94. The former Acting Chairman stated it had been clear that the scope had been changed because there had been discussions about the work that was going to be done on the landside. He stated that MOU that had been signed with Disney prior to (November, 2011 had only

been for the extension and widening of the dock) for which the BVI Ports Authority was diving the project which was no longer the case after 2011.

95. The Member for the Sixth District enquired about whether the Board had been approached while putting money towards the purchasing of piles for Disney to complete the work.
96. The former Acting Chairman responded in the negative.
97. The Member for the Eighth District asked if the arrangement with Disney was a loan which would have to be paid back in full.
98. The former Acting Chairman confirmed that arrangement had been a loan agreement.
99. The Member for the Eighth District enquired about the interest rate.
100. The former Acting Chairman stated that the interest rate had been either 7 or 7.5%.
101. The Member for the First District asked the former Acting Chairman if the conditions placed in the resolution could be considered a "saving grace" to protect the Government.
102. The former Acting Chairman responded in the affirmative. He stated that the Board had insisted on the conditions in the resolution because there had not been any contract in place with TPP for works to be done and if the project had been scrapped for any reason, they would not have purchased piles that were no longer needed. He further stated that if the piles had arrived in the BVI, it had been agreed that the BVIPA would be fully reimbursed.
103. The Chairman of the PAC enquired about whether the piles had arrived.
104. The former Acting Chairman stated that, to his knowledge, no piles had been received and therefore no monies had been spent.
105. The Member for the First District asked if the piles had ever been ordered.
106. The former Acting Chairman stated that he did not know.

107. The Member for the First District enquired about whether the former Acting Chairman had received any indication that piles had been ordered seeing that there apparently exists an invoice for the said piles.
108. The Acting Chairman responded in the negative and stated that he could not recall if the piles had been ordered seeing that an invoice existed and payments were being requested to be made.
109. The Member for the Sixth District asked if the Board had received the invoice.
110. The former Acting Chairman stated that they had received an invoice which had allowed them to complete the resolution.
111. The Member for the Sixth District asked the former Acting Chairman if he knew where they could obtain a copy of the invoice.
112. The former Acting Chairman stated that there may be a copy somewhere on the files at the BVIPA. He noted that, if things had been done correctly, a copy should be on file with the resolution.
113. The Member for the Eighth District enquired about whether it is the role of the Board to evaluate suggestions and decide the best way forward for the Ports.
114. The former Acting Chairman explained that that is the role of the Board and noted that he had been comfortable in working with the Board to place safeguards in the resolution.
115. The Member for the Eighth District asked Mr. Adams if he had been essentially executing his duties as Acting Chairman.
116. The former Acting Chairman responded in the affirmative.
117. The Member for the First District enquired about whether the former Acting Chairman remembered the name of the company for the invoice.

118. The former Acting Chairman stated that he honestly did not remember the name of the Company. He stated that the former Managing Director had requested the invoice and noted that he did not think he himself had actually seen the invoice. He indicated that he knew the invoice had come through the former Managing Director's office.
119. The Member for the Second District referred to statements previously made by the Mr. Adams and noted that, as the former Acting Chairman, he had been fully involved in carrying out his role by advising the Ministry on the previous project. He asked the former Acting Chairman if, in trying to meet the directive and deadline from the Ministry, he felt that he had been doing what the Government wanted.
120. The former Acting Chairman stated that, at that time, he had felt like the Board's capacity was being minimized and noted that, because the directive came from the Ministry, they had recognized that it was an agenda that the Government wanted to pursue. He further stated that he had no interest in stalling the process and as Acting Chairman; he did not want to expose himself or any of the Board Members to any suspect transactions.
121. The Member for the Eighth District expressed the view that based on what had been presented; the former Acting Chairman and the Board had agreed to move the process forward.
122. The former Acting Chairman explained that, in July 2008, there had been a project that was being considered by the BVIPA to extend the cruise pier dock but with a different company. He stated that because of the timeline, the Board had contemplated paying the premium cost for piles instead of ordering them which would have taken longer. He indicated that the Board had an understanding of the cost and critical part played by the piles in the project.
123. The Member for the Eighth District enquired about whether the costs the Board had been considering for piles back then were comparable to the cost currently.

124. The former Acting Chairman stated that the costs were comparable in the sense that back then, they would have had to pay a little bit more because they were essentially buying someone else's piles.
125. The Member for the Eighth District asked if the BVIPA would have received a cost saving for executing a project that the former Acting Chairman and the Board had agreed on with regards to the extension of the dock which had been on the table since 2008.
126. Regarding the cost savings, the former Acting Chairman stated that he was not sure if the scope had been the same.
127. The Chairman of the PAC stated that, on the road to Pasea, he had seen piles packed up on the seaward side and noted that it was his understanding that they had been ordered for the rebuilding of the Cruise Pier. He noted that he knows there had been several construction projects on-going in the area and was unsure of whether the piles belonged to another contractor.
128. The former Acting Chairman stated that, as far as he knew, the piles had nothing to do with the BVI Ports Authority.
129. The Member for the First District asked if the Ministry of Finance had been represented on the Board as mandated by law.
130. The former Acting Chairman responded in the affirmative and stated that the Financial Secretary is an ex officio member.
131. The Member for the First District enquired about the FS's role on the Board. He also enquired about who his designate had been.
132. The former Acting Chairman stated that, originally, the Ministry of Finance had been represented by Mr. Jeremiah Frett, prior to November, 2011. He noted that, later on, the representative became Mr. Wendell Gaskin.

133. The Member for the First District asked about the role of the Ministry of Finance in each case.
134. The former Acting Chairman stated that Mr. Jeremiah Frett had been the person to do the "number crunching", meaning that Mr Frett provided projections and numbers for the Board to analyse in order for them to decide if the deal the Board had been pursuing was feasible. He further stated that, during Mr. Gaskin's tenure, he participated in the meetings and general discussions.
135. The Member for the First District asked if Mr. Gaskin had been more involved in the meetings as an ex officio member.
136. The former Acting Chairman stated that whereas Mr. Frett would work on figures and presented them to the Board, Mr. Gaskin participated more along the lines of an ordinary Board Member.
137. The Member for the Second District asked if Mr. Gaskin's role would have been one where he had helped to shape or influence decisions.
138. The former Acting Chairman confirmed this.
139. The Member for the First District enquired of the former Acting Chairman, if Mr. Frett or Mr. Gaskin had influenced a Board decision at any time.
140. The former Acting Chairman responded in the affirmative as it pertains to Mr. Gaskin.
141. With regards to making a payment, the Member for the First District enquired about the role of the Ministry of Finance when it came to giving advice in that situation.
142. The former Acting Chairman stated that he did not recall a specific role outside of what he had stated previously.

143. The Member for the First District enquired about who had been the legal advisor to the Board during Mr. Adams tenure.
144. The former Acting Chairman stated that the legal advisor at the time had been O'Neal Webster and that they had primarily dealt with Ms. Willa Tavernier and Mr. Paul Webster.
145. The Member for the First District asked if they had been involved with the project in any way.
146. The former Acting Chairman responded in the affirmative.
147. The Member for the First District enquired about whether the representatives from O'Neal Webster had been involved in the project on behalf of the BVIPA.
148. The former Acting Chairman responded in the affirmative and began to state that "when the initial agreements had been brought before the Board to be ratified" but was interrupted when;
149. The Member for the First District enquired about which agreements the former Acting Chairman had been referring to.
150. The former Acting Chairman stated that there had been a lease agreement and a thirty-eight (38) year operational agreement which had been made public.
151. The Member for the First District enquired about where, when and how PricewaterhouseCoopers became involved in the project.
152. The former Acting Chairman stated that PricewaterhouseCoopers became involved in the project around the same time the agreements were being discussed and noted that they had been represented at one of the meetings that had been convened by the Ministry along with individuals from the Attorney General's Chambers and other persons.

153. The Member for the Sixth District asked about who represented PricewaterhouseCoopers at the meeting.
154. The former Acting Chairman stated that he thought the representative had been Mr. Meade Malone who was said to have possibly done some preparatory work for PricewaterhouseCoopers and also a lady from Trinidad whose name the Acting Chairman could not recall.
155. The Member for the First District asked if the BVIPA Board had hired PricewaterhouseCoopers to conduct works regarding the project.
156. The former Acting Chairman stated that he did not know how PricewaterhouseCoopers had been hired. He further stated that he had been asked to convene a meeting of the BVIPA Board and had been told that the Ministry would have been there to present some things including the two agreements. He indicated that, when he had shown up for the meeting in the morning, he noticed a number of person in attendance such as Mr. Malone, the Minister, the representative from PricewaterhouseCoopers, persons from the Attorney General's Chambers, the consultant from the Ministry of Communications etc.
157. The Member for the First District enquired about who had paid PricewaterhouseCoopers.
158. The former Acting Chairman indicated that he did not know and noted that during his tenure, he had only signed two cheques.
159. The Chairman of the PAC asked if the current Minister for Communications and Works was the Minister throughout the new process.
160. The former Acting Chairman responded in the affirmative and noted that the Minister had attended the meeting briefly.
161. The Member for the First District asked if the morning of the meeting previously referred to had been the first time the former Acting Chairman had known that those persons were going to be in attendance.

162. The former Acting Chairman responded in the affirmative.
163. The Member for the Second District asked if the Board had ever been presented with reports from PricewaterhouseCoopers or PFK (BVI) Ltd.
164. The former Acting Chairman stated the he had not been given a copy of the financial report ahead of time but noted that it had been presented to the Board at the meeting. He further stated that the report had contained information regarding BVIPA's revenue and expenditure which showed that, at the time, the BVIPA had significantly overspent its budget.
165. The Member for the Second District asked if PFK (BVI) Ltd had been conducting an audit.
166. The former Acting Chairman stated that it had almost felt like he had been conducting an audit on behalf of the Ports.
167. The Member for the Eighth District enquired about whether the Managing Director at the time had been involved in the process with PricewaterhouseCoopers.
168. The former Acting Chairman stated that he did not know.
169. The Member for the First District enquired about who was the Managing Director at the time.
170. The former Acting Chairman stated that it had been Mr. Vincent O'Neal.
171. The Member for the Second District asked if the consultant had also attended the meeting.
172. The former Acting Chairman responded in the affirmative.
173. The Member for the First District enquired about whether an audit being conducted by the BVIPA would have come to Mr. Adams as Acting Chairman.

174. Mr. Adams stated that he would have expected the audit to come to him as Acting Chairman. He further stated that the BVIPA's audits had usually been done by BDO and noted that the Board would always know when BDO was there and received the report. He indicated that for any other project, he would have expected the same procedure to be followed.
175. The Member for the First District asked if the audit that had been done by BDO for around the same time period as the audits done by PricewaterhouseCoopers had shown that the BVIPA had been in the "red".
176. The former Acting Chairman stated that the report by BDO would not have shown if the BVIPA had been in the "red". He further stated that as far as he knew, the information that been presented was true. He explained that, during that fiscal year, they had undertaken the development of the Tender Dock, which the BVIPA did not have to borrow money for and also noted that they had given a loan of \$3 million dollars to the Government which would have gone to the BVI Tourist Board. He further explained that they had also been encumbered by having to acquire lands at West End for the West End Ferry Dock.
177. The Member for the First District enquired about why another company had been brought in to audit the BVIPA for only one year.
178. The former Acting Chairman stated that he did not know.
179. The Auditor General stated that the transactions would not have affected the profit or loss because as they were capital investments but noted that they would have affected the cash flow.
180. The Member for the Eighth District asked if the former Acting Chairman could have definitively said what the scope of the engagement had been.
181. The former Acting Chairman responded in the negative.

182. The Member for the Eighth District asked the former Acting Chairman if he knew of whether the company's purpose had been to audit the BVIPA for one year or to look at other things as well.
183. The former Acting Chairman responded in the negative and stated that he had only been familiar with what had been presented to him. He noted that they had received a copy of the report for the duration of the meeting but were asked to return it afterward.
184. The Member for the Eighth District asked if the scope could have been wider than just auditing the BVIPA for one year.
185. The former Acting Chairman stated that the scope could have been wider.
186. The Member for the first district asked if the project had been re-engineered.
187. The former Acting Chairman stated that the project had been re-engineered around the time when the Board had been in discussions with Disney Cruise Lines regarding the first MOU. He indicated that the expansion of the dock had been re-engineered to strengthen the balusters that ships would have tied up to in order to accommodate heavier ships.
188. The Member for the First District asked if the Board had been involved in the tender process that involved Royal Caribbean International and/or Tortola Pier Partners.
189. The former Acting Chairman stated that the Board had never been involved during his tenure.
190. The Member for the First District referred to a \$1.7 million dollars listed in the report and enquired about what the payment had been for.
191. The former Acting Chairman stated that he had resigned from the Board in April 2013, which was prior to that time.

192. The Member for the Second District enquired about whether discussions with Tortola Pier Partner had been on-going when the former Acting Chairman left.
193. The former Acting Chairman stated that the discussions had been on-going when he left and noted that the tender process had also been on-going.
194. The Member for the First District enquired about Mr. Hugh Darley who seemed to have been the representative from Disney Cruise Lines.
195. The former Acting Chairman stated that it had been presented to the Board that Mr. Hugh Darley who had been an IDEA Engineer for Disney.
196. The Member for the First District asked if the Board had met with anyone other than the representative from Disney.
197. The former Acting Chairman responded in the negative and stated that the agreements and arrangements that the Board had been asked to consider had been under the same negotiations with Disney. He further stated that by the time they had seen the documents, they had included both Disney and Norwegian Cruise Lines.
198. The Member for the First District asked if the consultant, Mr. Claude Skelton-Cline, had been fully involved in the various processes whereas the Board had not been involved.
199. The former Acting Chairman stated that the consultant had been fully involved and noted that the Board had been updated periodically by the Ministry. He explained that requests for meetings to be convened would come from the Permanent Secretary and at those meetings; either the consultant and/or the Minister would attend to explain certain things that had transpired.
200. The Chairman of the PAC stated that the Board of the BVIPA seemed to have been inactive.
201. The former Acting Chairman stated that the Board had been active but was inactive on that particular project.

202. The Member for the Second District enquired about whether the former Acting Chairman had come to the conclusion that the consultant had been fully able to discuss the negotiations on the Cruise Pier Project.
203. The former Acting Chairman stated that consultant had a lot more information than him and noted that he was not sure how much the consultant could interact with someone regarding the project.
204. The Member for the First District stated that the consultant had to have had more information because the Ministry had sent the Board to the consultant to obtain the copy of the invoice for piles. He asked if the Board had received the invoice from the consultant eventually.
205. The former Acting Chairman stated that eventually the invoice had come to the Managing Director's office but noted that he was unsure of whether it had gone through the Permanent Secretary at the Ministry or if it had gone directly to the Managing Director.
206. The Member for the First District stated that he thought the former Acting Chairman had answered all of the Committee's questions to the best of his ability and asked if he had anything that he would like to inform the Committee.
207. The former Acting Chairman stated that he would like to leave the Committee with the impression that he had taken the charge that the Board had as it related to directives from the Ministry which should have been followed by the Board and should have also come in writing. He explained that there had been times where they did not receive directives in writing although they had been requested and noted that he felt that they should support the Government of the day. He indicated that he had been active while on the Board and noted that records would show that he had consistently attended Board meetings since 2008 where he had been chosen as the Chairman of the Projects Committee based on his background. When the new Chairman had been appointed, Mr. Adams stated that he had decided to take a step back and had informed the Board that he would let someone else be Deputy Chairman and did not want to be Chairman of any committees.

208. The Member for the First District asked if the Acting Chairman felt the statutes that said that the Ministry should be accommodated had been overlooked.
209. The former Acting Chairman explained that his feelings should be clearly stated within the minutes of the BVIPA Board meetings for which he recommended that the PAC request copies. He further explained that his decision stemmed from things like the appointment of the new Managing Director to some decisions that had been made which he had not been comfortable with. He stated that he had been specific with the record keeper and asked that his opinion be recorded the minutes.
210. The Member for the Second District asked if the former Acting Chairman was still a member of the Board.
211. The former Acting Chairman stated that he had resigned when he took his position at the Town and Country Planning Department and noted that he had resigned in early April 2013.
212. The Member for the First District stated that, thus far, based on all the information furnished to the Committee, it seemed like the consultant had been knowledgeable and had been very involved in the project. He asked the former Acting Chairman if he thought that it raised a "red flag" when the consultant, who had secured a deal for the Government, is appointed Managing Director to implement the very same deal that he had secured.
213. The former Acting Chairman stated that he thought that it had been very convenient for the consultant to assume that position at that particular time because of his previous involvement. He further stated that he informed the Board that he did not support the hiring of the new Managing Director and went a step further to say that, if Mr. Claude Skelton-Cline is there, he would work with anyone in a professional capacity.
214. The Member for the First District enquired about whether the Board became more involved with the project after the appointment of the new Managing Director.

215. The former Acting Chairman stated that, during that time, the project had been in a kind of holding pattern where they had been waiting to hear from the Foreign and Commonwealth Office on what the next steps should have been. He further stated he was unsure of how much more the Board had been involved in the project. He related that, coming down to the end of his tenure, there had been two meetings that he had not been invited to and was unsure of whether it was by clerical error or on purpose.

216. The Chairman of the PAC asked if there were any more questions for Mr. Adams.

217. The Committee indicated that they had no more questions for the former Acting Chairman.

218. The Chairman of the PAC thanked Mr. Adams for appearing before the Committee and dismissed him.

**CABINET PAPER RECORD & EXTRACT FROM THE MINUTES OF THE MEETING
OF THE VIRGIN ISLANDS CABINET HELD AT THE
PREMIER'S CONFERENCE ROOM ON
11th JULY, 2012**

To: Minister of Finance

Cc: Financial Secretary

Date: 19th July, 2012

Paper No. Memo No. 191/2012

Date Arrived in the Cabinet Office 10th July, 2012

Date Approved by the Cabinet Steering Group 6th July, 2012

Date Sent to Cabinet 11th July, 2012

Cabinet Confirmation Date 18th July, 2012

Cabinet Extract:

**Public-Private Partnership Agreements between Tortola Port Partners Limited, the Government of the
Virgin Islands and the British Virgin Islands Port Authority for the Development of Cruise Pier and
Adjoining Pier Park
Memo No. 191/2012**

1160. Cabinet:

- (a) concurred with the BVI Ports Authority Resolution on 5th July 2012 in accordance with Section 4(6) of the First Schedule of the BVI Ports Authority Act 1990;
- (b) agreed to proceed with finalizing the proposed Public Private Partnership agreement between the Government of the Virgin Islands, the BVI Ports Authority and Tortola Port Partners for the expansion of the existing Cruise Pier;

.../P.T.O.

- (c) agreed to proceed with finalizing negotiations based on the proposed lease Agreement between the Tortola Port Partners Limited and the British Virgin Islands Ports Authority for the lease and development of approximately four (4) acres of land adjacent to the Cruise Pier;
- (d) authorised the Ministry of Communications and Works in collaboration with the Ministry of Finance be tasked with providing solutions to the outstanding issues surrounding this proposed arrangement such that a Public Private Partnership that addresses these issues can be concluded;
- (e) decided that during the Development Phase of the project, the Minister will be required to give a progress report to Cabinet on a basis to be determined by Cabinet and that the BVI Ports Authority provide him with such information as he may deem necessary for the preparation of such progress reports, and
- (f) decided that an expedited extract be issued.

Cabinet Secretary's Signature



Cabinet Secretary's Sign-off Date

20.07.2012

Date Sent to Ministry

20.07.2012

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION
OF INQUIRY 2021
AND IN THE MATTER OF THE CRUISE SHIP PORT DEVELOPMENT PROJECT**

WRITTEN SUBMISSION TO THE EVIDENCE PRESENTED

**THE HONOURABLE MARK VANTERPOOL - REPRESENTATIVE FOR THE 4TH
ELECTORAL DISTRICT**

September 23rd 2021

The Rt Hon Sir Gary Hickinbottom
Commissioner
BVI Commission of Inquiry
BVI International Arbitration Center
3rd Floor Ritter House
Wickham's Cay II
Road Town, Tortola

Dear Mr. Hickinbottom,

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY (COI)
Re: Written Submissions - Hon Mark Vanterpool - September 23rd 2021

I refer to your letter dated 13th September 2021 and your subsequent email of September 17th granting an extension to provide a written response by today's date.

In this response, I will provide full information available on the matter. I must however caution that crucial to this response is information recorded in the notes and decisions of Cabinet from January 2012 to somewhere around June 2015.

You will be aware that during that period I was a sitting Member of Cabinet and certain decisions made by the Cabinet during that period would be germane to this matter. As indicated in my Legal Representative's email to you on September 22nd, you will be aware that we attempted to get copies of the relevant documents from the Cabinet Office to no avail. However, I am aware that the Commission is attempting to assist us in the matter and we will be happy to provide a full and comprehensive response to the evidence as soon as the information from Cabinet becomes available. I will however respond to the issues/evidence/criticism raised that is within my capacity to so do.

In this submission I will set out your numbered points in APPENDIX A to your letter of 13 September to myself and where possible in the absence of the Cabinet's documents, as such I hereby submit the following:.

CRITICISM #1 - From November 2011, the development project was directed and controlled by the Hon. Mark Vanterpool knowingly and unlawfully to the exclusion of the statutory governing body and decision maker for the port, the BVI Port Authority and its Board.

RESPONSE:

As minister responsible for Sea Ports, the government's policy to develop a cruise pier to meet the demands of the Cruise lines in the Florida Caribbean Cruise Association (FCCA) was entrusted to me as Minister responsible for the subject.

I was appraised of the former Government's port development project by Mr. Jerimiah Frett who at the time was the Ports Development Liaison Officer in the Premiers Office.

Based on my knowledge gained from the Cruise companies, it became obvious very early that the pier development project as planned by the previous Government and the British Virgin Islands Port Authority (BVIPA) was designed for smaller ships than the Cruise companies more modern ships carrying 5,000 plus passengers; 2,000 crew; in excess of 160,000 tons and most 14 to 16 stories high and in excess of 1,100 ft long.

We immediately began to gather information and invite proposals for a suitable pier expansion and land side development. Our intention was to develop the scope of the project, receive proposals, establish a Heads of Understanding, then present the project as proposed to the BVIPA and the Public for consultations and suggestions.

This was done under the Minister's Authority according to the BVI Port Authority Act; We have had several meetings with the Managing Director. Also, one of the Ministry's representative on the Board responsibility was to appraise the Minister/Ministry of the various decisions at the Board Level. Information must have necessarily been exchanged and agreed between the two entities. It must be pointed out as well that the Auditor General's report of 31st January 2013 at page 35 indicated that Board Members were informed of the development, at a meeting on 26th January 2012. The Report continued that the Board Members were "briefed at a meeting on 8 March 2012...". Further, the said report informed that "... after execution of the Heads of Understanding the Minister of Communications and Works and the Consultant attended a Board meeting on 3 May 2012 to provide information to the Members about the selected proposal ." Hence, it cannot be surmised that the Minister controlled the project to the exclusion of the BVIPA.

Of paramount importance is section 19(1) of the Ports Authority Act which states: "The Minister may give the Authority general directions in writing as to the performance of its powers under this Act on matters which appear to him to affect the public interest and the Authority shall give effect to such directions". Other relevant sections of the Acts indicating the Ministers connection with the BVIPA are:

Sections 4 (a): "The functions of the Authority shall be (a) to provide, operate, and maintain all port and harbour services and facilities in the Territory as the Minister considers necessary".

Sections 4 (f) "to perform such acts as the Minister determines and report to the Minister at such times as he requires respecting the matters to which this Act relates".

Sections 7 (5): The accounts of the Authority shall be audited at least once every financial year by an auditor appointed by the Authority with the approval of the Minister”.

Sections 19. (2) “The Minister may, from time to time, direct the Authority to furnish to him, in such form as he may require, returns, accounts and other information with respect to its property and business, and the Authority shall carry out every such direction”.

Sections 19. (3) “The Minister may, from time to time, order all or any of the activities of the Authority to be investigated and reported upon by such person or persons as he may specify, and upon such order being made, the Authority shall afford all such facilities and furnish all such information, as may be necessary to carry out the order”.

The Cabinet of the Virgin Islands was appraised at all times and decisions were made by the cabinet on the process at all times.

CRITICISM #2 - A substantial Change in project scope was made at the direction of the Hon Mark Vanterpool, and without prior Cabinet Decision.

RESPONSE:

Section 19(1) of the BVI Ports Authority Act is reiterated. Further, it must be made clear that Cabinet authorized this change of scope in the project in February 2012. The Managing Director of the Port Authority as well as my Permanent Secretary (sitting as an ex-officio Member of the Board) were appraised of this change of scope in several meetings at my office.

The board was expected to be appraised of the change in scope of the project by my Permanent Secretary. However as Minister I appraised the Board of the full scope of the project in a Board meeting dated October 8th, 2013. The Board approved a resolution to move forward accordingly.

CRITICISM #3 - Mr. Claude Skelton-Cline was retained by the Hon Mark Vanterpool as a consultant for the purpose of liaising with the Port Authority and advising on port related matters without a transparent selection process, without evidence of Mr.

Skelton-Cline having any relevant experience, and without him in fact having any relevant experience.

RESPONSE:

At the time it was my considered view that it was the Minister's discretion to appoint consultants under the budgeted amount allocated to the Ministry. At that time it is my knowledge that Consultants to Ministers were not posts that would normally be advertised. I appointed a consultant who would liaise with experts and focus on the urgent need to move the project to the development stage, after which it would be turned over to the BVIPA. I was not seeking a consultant who was an expert on port matters but rather one who would be the chief liaison between myself, the Ports Authority, experts and stakeholders.

CRITICISM #4: Despite the change in scope and the scale of project there was no suitable project appraisal; no comprehensive planning; no detailed development proposal; no needs assessment; no cost benefit analysis and no cost estimate.

RESPONSE:

The initial phase of the project was a mission to gather information to further develop the project scope. To indicate that comprehensive planning was not done would be a misstatement. The records would indicate that there was a Business case provided by BDO. Project appraisal, planning, development proposal, needs assessment, cost benefit analysis and estimates followed. The envisioned project was to be executed through a Public Private Partnership under which the BVIPA would lease the land and the pier for a period of time and the private party would fund the development. A fee sharing agreement was being proposed. Further, once the policy decision was made to expand the scope of the extension, the selected bidder was expected to do a complete analysis, planning and project appraisal as it was the selected bidder who would be carrying out the project.

CRITICISM #5 : The public tender process was disregarded. There was no public tender or open solicitation for the project; no competitive procurement procedures;

no proper or transparent process by which the three bidders and contractors were identified or selected; and no assessment made of whether there were better and/or more cost-effective options available.

RESPONSE:

In light of the urgency to compete for cruise business, 3 bidders were invited to make proposals to cabinet, and one was selected. As you are aware, Cabinet has the discretion to waive the tender process. This process was reconsidered by cabinet and a full procurement process was undertaken by the Ministry of Finance. The recommended bidder was approved by Cabinet. Heads of Terms were established with conditions precedent to be observed prior to a final decision being made. As these deadlines for conditions precedent were not met the agreement with TPP was curtailed. Cabinet then decided and recommended that the project should be undertaken by the BVI Ports Authority. A resolution was casted by the BVIPA Board on October 8th 2013 based on a Business Case established by BDO. This resolution was submitted to cabinet for approval.

CRITICISM #6: - The process of stakeholder consultations took place after TPP were chosen as contractors so preventing input from relevant stakeholders to ensure that the best option was pursued.

RESPONSE:

Before a full agreement was made, following a non-binding Heads of Understanding (HOU), the project as proposed by TPP was submitted to public hearings for stakeholders and public input.

CRITICISM #7: the Town and Country Planning Department (TCP) was not involved in the cross agency consultations solicited for the development. The project moved forward without their input in spite of the fact that the development involved prime land in the middle of Road Town.

RESPONSE;

I do recall at least one meeting with TCP in my office as Minister. Further, I am reliably informed that TPP Group would have had several meetings with the TCP during the

process. In fact as I recall, the former Managing Director at the time had engaged the services of Dr. Cassandra Titley-O'Neal to conduct an EIA as required by the TCP.

CRITICISM #8: to the knowledge of Hon, Mark Vanterpool, there were serious flaws in the proposed Project Development Agreement (PDA), the Heads of Understanding (HOU) agreement and the Ground Lease as between the BVI Government and TPP.

RESPONSE:

I was not aware of any serious flaws in the drafting of the project agreement (PDA), the Heads of Understanding (HOU) agreement and the Ground Lease as between the BVI Government and TPP. As I understood it these were negotiations between the Attorney General's chambers and TPP. It was subsequently recommended that as the Attorney General's Chambers did not have the expertise for Public Partnerships Agreements, a UK firm with this expertise was hired.

CRITICISM #9: there was a concerted effort on the part of the Hon Mark Vanterpool to obscure information regarding the processes undertaken on the project from the Public Accounts Committee.

RESPONSE:

I strongly deny the validity of Criticism #9. All persons under my authority were asked to fully cooperate with the Public Accounts Committee. I was not summoned to the Public Accounts Committee. However, I made several statements to the House of Assembly and answered the Public Accounts Committee report through the House of Assembly.


CONCLUSION

All of my actions as Minister regarding the Port Development were authorized through the Cabinet in the interest of the people of the Virgin Islands. At the appropriate time the BVIPA took over the Development of the Pier Park project.

I have requested access to cabinet minutes to support my statements. Other records such as BVIPA minutes regarding the project and minutes of meetings in my office with Port Authority are also unavailable at this time for my consumption.

I, Mark Vanterpool believe that the facts set out in this statement are true. I understand that proceedings for perjury may be brought against a witness who willfully gives false evidence concerning the subject matter of the Commission of Inquiry.

Mark Vanterpool



23 September 2021

**MINUTES OF THE PUBLIC ACCOUNTS COMMITTEE MEETING
HELD ON WEDNESDAY 29TH JANUARY 2014 at 2:23 p.m.
OFFICE OF THE HOUSE OF ASSEMBLY
CONFERENCE ROOM NO. 1**

PRESENT

| | | |
|---------------------------|---|---------------------------|
| Hon. Ralph T. O'Neal, OBE | - | Chairman |
| Hon. J. Alvin Christopher | - | Member |
| Hon. Andrew Fahie | - | Member |
| Hon. Marlon A. Penn | - | Member |
| Ms. Sonia Webster | - | Auditor General (Adviser) |
| Ms. Phyllis Evans | - | Secretary |

ABSENT (with apologies)

| | | |
|---------------------------|---|--------|
| Hon. Alvera Maduro-Caines | - | Member |
|---------------------------|---|--------|

IN ATTENDANCE

| | | |
|----------------------------|---|--|
| Mrs. Arlene Smith-Thompson | - | Former Acting Permanent Secretary, Ministry of Communications and Works |
|----------------------------|---|--|

The Member for the First District led the opening prayer.

1. The Chairman of the PAC welcomed the former Acting Permanent Secretary, Ministry of Communications and Works to the Committee. He informed her that she would be asked some questions and asked to speak the truth to what she knew and if she did not know, she did not know.
2. The Chairman of the PAC stated that there were five (5) members and one was absent, Mrs. Alvera Maduro-Caines, Member for the Sixth District.
3. The Chairman of the PAC stated that this was a matter that was considered necessary to do some investigations. He further stated that after they were finished, they would

submit a report to the House of Assembly for them to do what they thought should be done with it.

4. The Chairman of the PAC indicated that he would open the floor for questions to be asked by the Members.
5. The Member for the Second District also welcomed the former Acting PS, MC&W to the meeting. He informed her that the questions were not questions to put her in any uneasy position. They were just to give the Committee some clarity to the matter they were investigating and trying to get a good understanding of the process as her knowledge will serve concerning the Cruise Ship Pier Development Project.
6. The Member for the Second District asked what period she was Acting PS in the Ministry of Communications and Works.
7. The former Acting PS responded that her appointment as Acting PS in the Ministry of Communications and Works commenced in September, 2010 until November 2012.
8. The Member for the Second District noted that would put her within the period of time of most of the activities surrounding the Cruise Pier Development Project, which had brought some concerns to the Committee. He further noted that shortly after the elections of 2011, the Government of the Virgin Islands did a restructuring of portfolios subject with Ministers and in doing so, there was a transfer from the Ministry of Finance to the Ministry of Communications and Works the subject of the BVI Port Authority. He continued that at present there was an ongoing project being carried out by Government for the development and expansion of the cruise pier. The Member asked if she could tell them, at what stage the Project was transferred to her as Acting PS.
9. The former Acting PS indicated that there was quite a lot going on at the time, with a new Minister on board and having the project transferred at that time. It meant that

they all had to become familiarise with the subject in a relatively short period. The files were transferred to them from the Ministry of Finance and they had to brief themselves on what transpired to that point. She further stated that, what she could say was that the information they received from the files and via some officers in the Ministry of Finance was that the ports project was indeed an urgent one. She noted that it had gone through a phase where there were negotiations that had been on going up to that point in time with Disney. There was a proposal that was developed and had gone through certain channels with the previous Administration, and at that point it had gone to get Cabinet's approval and then there was a change in Administration. At that point, she guessed that things were put on hold where that was concerned.

10. The Member for the Second District asked whether the decision was taken to put the project on hold at that the stage where it was after Cabinet's approval.
11. The former Acting PS stated that from what she gathered the negotiations with Disney were well advanced under the previous Administration. She guess maybe they were put on hold temporarily when the new Administration came in as they sought what they thought would have been the best way forward at the time.
12. The Member for the Second District stated when she said put on hold, he was trying to ascertain whether a Cabinet decision was taking to put the project on hold or it was a verbal directive from whomever.
13. The former Acting PS stated that from what she gathered from the Honourable Minister for Communications and Works was that she guessed that everyone wanted an opportunity to review what had transpired before it went forward.
14. The Member for the First District asked whether she was referring to the current Minister.

15. The former Acting PS responded in the affirmative. She noted that as she had said before it was a familiarisation process for everyone.
16. The Member for the Second District asked whether she could say if it was a decision taken by Cabinet.
17. The former Acting PS answered in the negative. She noted, however, that there was a heightened sense of urgency, which was the information they had received from certain officers who had handled the subject prior, that it was urgent.
18. The Auditor General asked the former Acting PS if when she said that she could not say if there was a Cabinet decision to put a hold on the project does that mean there was none.
19. The former Acting PS stated that at that point in time she did not recall seeing a Cabinet paper for decision.
20. The Member for the Second District stated that if a decision was taken after the file was transferred, more than likely, she would have been the officer who was involved in seeing, or sanctioning the Cabinet decision before it went to the Minister.
21. The former Acting PS answered in the affirmative and indicated that she would have seen it before.
22. The Member for the Second District asked whether any such decision was taken as far as she could remember by her Ministry.
23. The former Acting PS stated that she did not recall seeing anything on paper that such a decision was taken.
24. The Member for the Second District stated that the former Acting PS indicated that the project was put on hold to be reviewed by the incoming Administration. He

inquired whether she could with any sense of clarity tell the Committee what period of time was involved before a new project was resurrected versus the time the project was put on hold until a new project emerged.

25. The former Acting PS asked for clarity whether he wanted to know the period of time it took. She stated that, at that point in time, they had many projects that were on hold and being reviewed. Based on her recollections it was about two to three months but she could not say for sure with accuracy. The interest in the subject picked up in 2012.
26. The Member for the Second District stated that during that period of time her Ministry went into the process of hiring a Consultant in order to advise the Minister on port projects. He then asked what period of time after the Administration changed as far as she could remember, did the new Consultant commenced employment.
27. The former Acting PS responded it happened during the first quarter of 2012. It was very early in 2012.
28. The Member for the Second District asked whether she would say that the development of the Port project revived after the Consultant came on board.
29. The former Acting PS stated that she did not know whether she could answer that question the way he was expecting, because it would also involve the Honourable Mark Vanterpool decision and the urgency he placed on it. She could not say for sure that it was when the Consultant came on board. From where she sat, it might be an inaccurate statement if she said that because as soon as the project was transferred they were told that it was urgent. She further informed the Committee, that she knew very early in this Minister's Administration that he was in contact with all the major cruise players in the industry that stressed the urgency of the project.
30. The Member for the Second District asked if the Consultant came from a selected tender process or from competitive bidding.

31. The former Acting PS responded that it was not a competitive bidding process. She was told that the Consultant was someone with an interest in the area and would possibly serve the Ministry well. At that point, a contract was drawn up for his employment.
32. The Member for the First District asked from whom she was told.
33. The former Acting PS responded it was the Honourable Minister for Works at that time.
34. The Member for First District asked whether the terms and conditions and the amount of the contract, whether it was done by negotiation with the Consultant.
35. The former Acting PS stated that she was not privy to that part, in terms of how it came about and how his fee was decided upon. She indicated that she tried to ask questions with that process as well with some other processes that was somewhat similar in nature. She noted that she was reminded by the Honourable Minister who drew her attention to the Constitution Order 2007 Section 56 Clause 5. It speaks of the Minister being assigned responsibility for the administration of any Government department and the Minister shall exercise direction and control over that department including implementation of Government policy as it relates to that department. Subject to such direction and control the department shall less otherwise agreed between the Governor and Premier be under the supervision of the Permanent Secretary who is a Public Officer. She stated that sitting in the PS's seat that Clause in the Constitution presented an area of conflict because it was the Minister asserting his control based on the powers he thought that was vested in the Constitution, but the latter part of the Clause was still speaking about the Permanent Secretary. She further indicated that there were other Codes, Acts, and Regulations that pointed to the Accounting Officers carrying out their duties and responsibilities by law. That was source of conflict, but she did understand the urgency with which the Honourable

Minister wanted to move. She stated that as Acting PS she did not want to stand in his way because; she also tried to support him as best as she could.

36. The Member for the Eighth District stated that in terms of Consultants and engaging Consultants in the Ministry. He asked whether this was the first Consultant that was engaged under her tenure.
37. The former Acting PS stated that what she could say was that there were one or two Consultants that had contracts in place prior to her arrival at the Ministry. She noted that such contracts may have been extended but to actually be negotiated from the very beginning, she imagined that he was referring to prior to the sitting Minister coming. As far as she knew, the contracts that were in place were already there prior to her arrival.
38. The Member for the Eighth District asked that in the extension of such contracts whether she was involved in any discussion and vetting, ensuring that they were getting value for money from those contracts for the previous consultants.
39. The former Acting PS stated that she might have had some limited involvement in terms of what work the Consultant may have done previously and whether it warranted a contract being renewed.
40. The Member for the Eighth District asked if she could tell the Committee any of the Consultants who were extended during her tenure.
41. The Auditor General asked whether his question was relevant to the project.
42. The Member for the Eighth District asked for clarity indicating what she meant whether it was relevant to the project.
43. The Auditor General stated that what she was trying to clarify was whether he was referring to Consultants to this project or in general.

44. The Member for the Eighth District responded that he wanted to know what their roles were.
45. The Member for the Eighth District asked the former Acting PS to tell the Committee about the Consultants that she mentioned earlier. He noted that she indicated that the contracts were renewed.
46. The former Acting PS stated that one to which she referred was the Consultant related to the Biwater project. She recalled that one was renewed. She could not recall any other that would have been started prior to this Administration.
47. The Member for the Eighth District asked in her recollection was there never a Consultant that dealt with port matters in the Ministry prior to Mr. Skelton.
48. The former Acting PS responded in the negative. She noted that was because the subject was not in the Ministry at that time.
49. The Member for the First District stated that being that this was a contract that she was involved in from inception, the one with the ports project, the one with the Consultant she was just referring to. He asked that if the amount was something that was given to her as Accounting Officer to just prepare the contracts and the scope of works.
50. The former Acting PS responded in the affirmative. She noted that that the scope of works was discussed a bit between the Minister, herself and may have been someone from the Ports. For the most part, she did not have a say in the amount the Consultant received.
51. The Member for the First District stated that he was trying to obtain the correct procedure. He asked what documentation was there for this port project for the Consultant that would have facilitated the making up of a contract for the Consultant.

52. The former Acting PS stated that at the time it would have been the Consultant's resumé. She did not recall seeing a proposal or any work he would have engaged in or proposed to be engaged in.
53. The Member for the First District asked the former Acting PS if the Consultant's resumé from her recollection included a vast experience with ports development, which would have qualified him to perform the scope of works with the said contract.
54. The former Acting PS indicated that she would have liked to have such details in front of her so that she could answer accurately.
55. The Member for the Second District stated that one of the things that came to mind that he needed to clarify as Accounting Officer she quoted a section of the Constitution that gave the Minister the power to administer the subjects under him. He also asked the former Acting PS if she was fully well versed in the Financial Management Act and the authority and power given to the Accounting Officer. He stated that was where the conflict was between what the Minister can ask her to do and what the Act gave her the authority to do. The policy under that Act sets a perimeter of a hundred thousand dollars petty contracts. The Member asked whether the contract of the Consultant exceeded the hundred thousand sum.
56. The former Acting PS stated that the contract did not exceed it.
57. The Member for the Second District stated that it might not have been necessary to take an executive decision on it; it could have been done within the Ministry based on the Finance policy that was in place.
58. The former Acting PS answered in the affirmative.
59. The Member for the Second District noted that the Act does not speak to the amount it just speaks to authority that the Accounting Officer has. The Policy of the Government of the day would have the amount, which is subject to change by an

executive decision. He further stated that if it was over one hundred thousand dollars, she could have easily requested a Cabinet decision, but since it was under the present policy, a different process came into being.

60. The former Acting PS responded in the affirmative.
61. The Member for the First District stated that was an interesting scenario. The reason he was asking about the whole scenario with the Consultant was that he would not at this time question the experience but as a former Minister who was given the very same Consultant as a Youth expert he was flabbergasted to hear that right after the November 2011 General Elections transformed him into a ports expert. That was the reason he was inquiring as to what was on the resume but since the Acting PS could not remember the contents in the resume of the Consultant, he would leave the matter there for now. The Member asked now that the Consultant was in place during that time period, was there any Cabinet paper that she could recall that changed from the original project to Tortola Pier Project along with was there any Cabinet paper that after Tortola Pier Partners was selected that terminated them and changed to go into another direction.
62. The Auditor General asked whether the Member wanted to include Cabinet Papers as part of the questions. The Cabinet papers she was not sure whether he wanted to include them as part of his questions. The question is more along the line of whether a decision was taken and whether it was ratified.
63. The Member for the First District asked whether she would have access to both entities.
64. The former Acting PS answered in the affirmative. She stated that in terms of a Cabinet decision, she thought a decision to enter into negotiations with a public private partnership at some point but she was not certain.

65. The Auditor General asked whether there was conscious decision taken to terminate the previous process and extend the project.
66. The former Acting PS responded that the conscious decision would have been a verbal one by the Honourable Minister, but she knew he would always remind her that when he made a decision, he was not speaking alone that it would have been a collective decision taken by his colleagues.
67. The Auditor General asked whether the verbal decision was supported by Cabinet.
68. The former Acting PS stated in the early parts of the negotiations she did not recall seeing a Cabinet paper.
69. The Member for the Eighth District asked whether there was one or she does not recall.
70. The former PS stated that she did not see one.
71. The Member for the First District asked whether she would have had to write that Cabinet Paper as the Permanent Secretary.
72. The Member for the Second District indicated that it would at least be sanctioned or reviewed by her.
73. The former Acting PS agreed to what the Member for the Second District stated.
74. The former Acting PS stated that usually Cabinet papers on that level she would be involved.
75. The Member for the First District stated that she would have written the draft Cabinet paper for subjects under her and asked whether she could recall writing a draft paper.

76. The former Acting PS stated answered in the negative. She further stated that not in the early stages once the decision was taken to shift from the original port proposal.
77. The Member for the Second District stated that in the whole process of the project, it seems to be very clear that even after the subject was handed over to her, the Ministry of Finance continued to play an active role with a Committee that was spearheading the development of the new arrangement. He asked whether the former Acting PS was a part of that Committee.
78. The former Acting PS asked the Member for clarity and to explain what he meant by the Ministry of Finance playing an active role and the Committee to which she spoke of.
79. The Member for the Second District stated that from what he understood the terms of reference and the scope of the project that developed into the Tortola Port Partners arrangement.
80. The former Acting PS responded as she could recall there were a number of meetings that were held very early on she imagined when it was being decided what direction would be taken in terms of the Pier Park project. From where she sat, she could not tell him whether the Ministry of Finance played an active role. There was a separate Committee but she was aware that the Minister was being advised by a number of persons including the Attorney General. They had a liaison person from the AG Chambers that attended a few of those meetings.
81. The Member for the First District asked who was the person.
82. The former Acting PS responded Ms. Varen Vanterpool. She noted that there were times when the Attorney General would have been present.

83. The Member for the Second District stated whether it would be fair for him to assume or to say that she was not fully involved in this subject under the Ministry of Communications and Works.
84. The former Acting PS indicated that it would be fair to say that she was not the leader in the negotiations that took place while in the post as Acting PS. She indicated that she sat in on a few of the meetings not all.
85. The Member for the Eighth District stated that it was mentioned about a negotiation process that happened and he knew this based on persons that came before the Committee and he came to learn that the process went through several iterations. He stated that he did not know whether the period the Member was referring to was the same period that she was Acting PS. He stated that they would have to get back some of the dates to confirm when the other Members of the panel mentioned the different phases and the timeline, that it was the same timeline as he did not want to be prejudice in the fact that she was there and she was not there.
86. The Auditor General indicated that it was a good point because there were two stages to the process. She noted that there was the stage before Finance actually got involved and the stage when the tendering process was engaged. Finance was involved in the second stage.
87. The former Acting PS asked if the question that was posed earlier by the Member for the Second District, was referring to the phase when the Ministry of Finance was more actively involved.
88. The Member for the Second District stated if she could recall he asked her a question earlier when the project was put on hold and then when it emerged again, it took a different turn from the project that she was handed from Finance. It went dormant from what he understood. The project came back on the table but it was not the same

project. He stated that he was trying to establish whether she had any involvement but from what she was saying it did not seem as if she any significant involvement.

89. The former Acting PS responded in the affirmative. She stated that the project went through a couple dormant phases. When it was handed to the Ministry of Communication and Works based on her review of the records, the Ministry of Finance was actively involved up to that stage. She further noted that when it went dormant under the TPP arrangements that was being pursued it picked up again after the tender process.

90. The Member for the First District asked how involved was the Consultant in this role.

91. The former Acting PS responded that the Consultant was quite involved in a lot of the negotiations. She noted that she would have been present at some meetings but not all. She indicated that the Consultant took an active role in the subject from what she observed.

92. The Auditor General asked how involved the former Acting PS was after the Consultant was engaged.

93. The former Acting PS stated that at that point she raised questions, as she knew the Public Private Partnership they were pursuing at the time. She thought that they were acting outside the parameters that were set out in the Protocols of Effective Financial Management the way it was being pursued. A lot of the negotiations at that time were a little bit premature it would seem, but then the fact that they had Government Legal Advisors as part of the negotiating teams very early on, to her, put her in a very awkward position as Acting PS.

94. The Auditor General asked whether she was a part of the negotiating teams.

95. The former Acting PS responded that she would attend on invitation. She noted that the negotiating team would have legal representatives from the Tortola Port Partners.

96. The Auditor General inquired whether the former Acting PS was aware when they were having meetings.
97. The former Acting PS stated that she was aware sometimes. She further noted that a lot of the meetings were held in their Ministry, Communications and Works.
98. The Member for the First District asked who was holding the meetings in their Ministry.
99. The former Acting PS stated that the meetings took place in the Minister of Communications and Works' office or a Conference Room in the Central Administration Complex.
100. The Member for the First District inquired where was the Consultant stationed.
101. The former Acting PS responded that he did have an office assigned to him in the Complex but was not sure if it was always occupied. The former Acting PS further stated that she was invited to meetings and briefings on invitation only.
102. The Auditor General asked approximately what percentage of the meetings did the former Acting PS attend.
103. The former Acting PS stated that it varied. In the earlier part, she was probably asked to attend more. She noted that she did not want to call a percentage because it might be off.
104. The Member for the Eighth District stated that if she was not comfortable do not.
105. The former Acting PS stated that she was not comfortable.

106. The Member for the First District asked if the former Acting PS could tell them who issued the invitation.
107. The former Acting PS stated that it was an informal process. The Minister of Communication and Works would indicate that they had a meeting.
108. The Member for the First District sought to clarify if she would get a message stating that the Minister said he wanted her in this meeting.
109. The former Acting PS responded in the affirmative.
110. The Member for the First District asked whether she would know about the meetings other than what the Minister informed. He also asked whether there were minutes of the meetings.
111. The former Acting PS stated that what was normally circulated afterwards was the points that were raised. At that point, it was more a legal matter as they worked out what an agreement should look like. A lot of those meetings dealt with that matter.
112. The Member for the Second District asked whether as the former Acting PS in the Ministry for Communications and Works if she attended as an ex- officio member to the Board meetings at the Port Authority.
113. The former Acting PS answered in the affirmative.
114. The Member for the Second District asked if at this phase they were referring to many meetings held by the Port Authority to discuss the Port project.
115. The former Acting PS stated that she does not know what he meant by many.
116. The Member for the Second District asked whether the Port Authority was involved in the decisions when she attended the meetings in the decisions of the project.

117. The former Acting PS responded in the affirmative. She stated that when the present Minister for Communications and Works came on board he did meet with the Ports Board quite early to let them know his directions. But in terms of a lot of the negotiating meetings that took place right after when they were actively pursuing the public private partnership under the TPP, the Ports unless there was some sort of Resolution of the Board that had to be taken, they were not actively involved and she imagined that it was because there was also a Ports Consultant on board. However, later on the Ports became a bit more involved.

118. The Member for the Eighth District stated that the former Acting PS mentioned earlier that she felt that the project was not following the Protocols of Effective Financial Management. He asked at what point was this as the Public Accounts Committee heard several different testimonies about the process. He asked if it was after the Protocols were signed or was it the initial stage of discussion of the project.

119. The former Acting PS responded that it was after the Protocols were signed. It was around the first quarter of 2012.

120. The Member for the Eighth District asked when the Protocols were signed.

121. The former Acting PS and the Member for the First District responded that it was signed on 23rd April, 2012.

122. The Member for the Eighth District stated the project that was started under her tenure early 2012 and the Protocols would not have been signed until April.

123. The former Acting PS answered in the affirmative. She stated that a lot of what was taking place in the early parts of 2012 was trying to see the best way to go forward with a Public Private Partnership. However, once the protocols surfaced, and the Ministry of Finance cautioned them to pay attention then they realised that they were

not necessarily following some of the guidelines in the Protocols in terms of tendering process and TPP.

124. The Member for the Eighth District asked whether that was the position of the Committee or her decision.
125. The former Acting PS stated that it was her position. She indicated that she could not speak for the Committee. Her observation was that the Committee would have been advised by the Attorney General's Chambers.
126. The Member for the Eighth District asked whether the Committee consisted of the Government's Legal Counsel.
127. The former Acting PS responded in the affirmative. She further stated that she recalled raising informally later on (2nd quarter) some concerns she had. She would have spoken to the Government's Legal Representative but not on the record.
128. The Member for the Eighth District inquired in terms of the negotiations, was she or were there any type of communication, electronic communication as far as meetings, minutes or notes or correspondence back and forth regarding the project and whether she was copied on the correspondence even if she was not in a meeting.
129. The former Acting PS responded that she would have been copied; however, she could not say whether she was copied on all.
130. The Member for the Eighth District asked whether she could recall being copied on correspondence to meetings she did not attend.
131. The former Acting PS stated that sometimes the Honourable Minister might say that they were just going to continue discussing the document today and it was not necessary for her to attend. He did not say that all the time, but there were times he would have said it.

132. The Auditor General asked the former Acting Permanent Secretary where she had served prior to her assignment to the Ministry of Communications and Works.
133. The former Acting PS responded that she was at the Deputy Governor's Office from 2010 where she served as Acting PS for a few months before she was transferred to the Ministry of Communications and Works.
134. The Member for the Eighth District stated that normally as PS she said she served previously as PS for Deputy Governor's Office. When she is working on projects would she normally be involved in sort of the detailed discussions with the technical people or more of the higher-level discussions. He asked normally what has been her involvement.
135. The former Acting PS stated that at the Deputy Governor's Office it was different, as the subjects under that Office are not administered by a Political Directorate. There is a difference and she was more involved with financial matters regarding the Office or even projects that might have been done on the different Departments within the Governor's Group. As acting PS, she definitely had more of a say in terms of financial matters.
136. The Member for the Eighth District stated in terms of her role and since she moved to the Ministry of Communications and Works, he asked whether she was always involved in the technical details and discussing those things.
137. The former PS responded that once she moved to the Ministry of Communications and Works she realised though the way the Ministry of Communications and Works was ran, there were Consultants, depending on how technical the subject matter was they would have Consultants advising the Ministry whether it was the previous Administration or the current one.
138. The Member for the Eighth District asked so this was not unusual to you then.

139. The Auditor General asked if the Member could clarify the question being asked.
140. The Member for the Eighth District stated that she said that there were different Consultants involved even from the previous Minister involved in the project based on how technical it was, they were just speaking of this project, and the Consultant involved in this project. He is asking based on her if she wanted to look at both instances is there anything unusual in terms of what happened here versus what happened previously.
141. The former Acting PS stated that she wanted to be able to make an accurate statement. She thought that in some ways it is comparing apples and oranges in a way. She would say that it was because he made particular reference to the BiWater agreement but that was a whole process that was ongoing prior to her being in the Ministry and by the time that she got there quite a bit had advanced in that regards. She noted that where she wanted to be clear in terms of questioning that he is saying that it might not be out of the ordinary but she thought they might be speaking of two things. The Consultants and his role and how the Ministry went about its negotiations in terms of the Public Private Partnership. She queried as to what he was asking.
142. The Member for the Eighth District asked whether BiWater was a part of the Public Private Partnership.
143. The Member for the Eighth District was advised that it was not part of the Public Private Partnership.
144. The Auditor General asked that the Member for the Eighth District clarify his question.
145. The Member for the Eighth District stated that the former Acting PS mentioned in terms of the involvement in terms of the details in negotiating the details and that she

was not always involved in that process. She mentioned when she was at the DG's Office she was more involved in the process as far as the DG's Office so he was trying to make the parallel in terms of her mentioning that the DG's Office was not really led by a Political Leader. He further noted that she worked with two different Ministers the previous Minister and now the current Minister. In terms of her involvement with projects under that Ministry, she worked with the water project and he is sure that she worked in other projects as well.

146. The former Acting PS answered in the affirmative. She noted that she should make it clear at this point that when she went to the Ministry of Communications and Works, the Honourable Minister at the time, Hon. Mark Vanterpool, expressed an interest in the areas that he wanted her to focus her attention on. One would have been the Admin Complex building and the fact that it was an unhealthy building and he wanted her to focus a lot of her attention on that area until she got more comfortable with the subjects in the Ministry because it was a vast number of subjects and some of them were much more involved than others like the BiWater project. With the BiWater project, she would be aware of the meetings. Even the BiWater persons themselves they were very good with their reporting. Even if they did not always keep up to date records, she was talking about maybe the Consultant she know for sure they kept strict records so in terms of information. She was always copied in at least even from BiWater's end.

147. The Member for the Eight District asked whether this was before or after the signing.

148. The former Acting PS asked the Member to clarify his question.

149. The Member for the Eighth District stated the signing of the BiWater agreement.

150. The former Acting PS indicated that the BiWater agreement would have been signed before she came to the Ministry of Communications and Works.

151. The Member for the Eighth District stated that his question in terms of what sort of projects and progress in terms of her involvement in the details of projects that she was bringing to fruition and not for projects that had been finalised.
152. The former Acting PS stated that with this Administration it was a little different because this was a situation in which there was a new Minister. This would have been the first time that he would have been working in such an environment and it meant that he had lot of reading to do, a lot of catching up to do on all the different subjects in the Ministry of Communications and Works. In her role as PS, she would have been much more involved in terms of trying to make sure that he stayed on top of everything. In the case of the previous Minister, he read a lot more.
153. The Member for the Eighth District stated that he wanted to make it clear that he was trying to get an understanding of the culture because he is new to Government and the processes of how things worked as things happen differently in the Private Sector. Therefore, he was trying to understand whether it was cultural how things happened in the culture of the Ministry or if it was a shift from the norm from how things happened procedurally etc. The PS's involvement in terms of the day to day versus being the executive.
154. The former Acting PS stated that she would be aware of all financial matters. The way the Ministry was administered under both Ministers, obviously they had different styles. For her as acting PS her role was to understand their styles and just try to facilitate processes as much as possible and their styles are very different.
155. The Member for the First District stated that he was trying to understand the procedures followed. One thing the PAC cannot evaluate/debate is whether or not the project etc should or should not be done. That is the decision of the Government of the day. What the PAC is looking at is, was the correct procedures followed. He asked when the Consultant was hired, who did he report to, was it the PS as the Accounting Officer.

156. The former Acting PS stated that the Consultant's contract stated that he should report to her as the Accounting Officer and he did so. A lot of the times he would inform her of what was going on. However, the reason she is hesitating to answer is because he also reported to the Honourable Minister as well separately at time. He did not report to her alone as the Acting PS.
157. The Member for the First District asked how was the informing done.
158. The former Acting PS responded that some of his briefings as the Consultant would have been done in the presence of herself and the Honourable Minister.
159. The Member for the First District asked if she ever received anything from the Consultant in writing.
160. The former Acting PS asked for clarity stating if he meant in terms of reports. She answered in the affirmative. There should be some reports on file in terms of the frequency; she could not say that every month a report was done.
161. The Member for the First District stated that why he was asking was because the Consultant, as she stated before, was very involved in the negotiations of the project.
162. The former Acting PS answered in the affirmative from what she could recall.
163. The Member for the First District asked if she had any records as far as her recollection in the Ministry or any correspondence from the Ministry of Finance stating the UK's position on the project.
164. The former Acting PS responded that when questions were being raised on the UK's end at that point they should be able to find something on the file that spoke to concerns about whether or not procedures were followed. At that time, it more would have maybe come from the FS but maybe more so verbally. To be honest she did not think that a lot was recorded in terms of whether the proper procedures were

being followed. They may not have had a whole lot in writing but at that point, when the UK started raising concerns, she thought that was when approvals were being sought by Cabinet. They may have something on file from the Governor's Office. These details were a bit fuzzy.

165. The Member for the First District stated that the details are a bit fuzzy but PAC was concerned with whether the correct procedures were followed.
166. The former Acting PS responded in the affirmative. She noted that at that point they had written to Cabinet seeking permission to enter into further negotiations with this particular company at that point. She remembered a response coming back from the Governor's Office that concerns were being raised about whether they had followed the proper procedures.
167. The Member for the First District stated that why he was asking such questions was that at one point, he could vividly recall that an announcement was made by Government that an agreement was made with TPP and basically it was only a matter of signing, but not too long after the protocols were approved. He did not know if in the record there was anywhere to bear out if the signing of the Protocols was one of the key factors in altering how it was being done with the TPP group. He asked was there anything that can bear that out.
168. The former Acting PS responded that she wanted to be clear about such timelines stated by the Member.
169. The Member for the First District stated that before the Protocols were signed the Government/Ports were in motion with TPP.
170. The former Acting PS stated that at least preliminary negotiations.
171. The Member for the First District stated that it was already clear that it would have been a Public Private Partnership.

172. The former Acting PS answered in the affirmative.

173. The Member for the First District stated that with the Protocols being signed that would have changed the dynamics of how that was being dealt with. If it was followed according to the book with how they dealt with TPP in relation to the Protocols then this would have completely change the dynamics.

174. The former Acting PS answered in the affirmative.

175. The Member for the First District asked if there was any correspondence that shows how the current negotiations would have been done.

176. The former Acting PS asked for clarity on what he meant by current negotiations.

177. The Member for the First District clarified that he meant the one with TPP at the time.

178. The former Acting PS stated that she could not really say for sure.

179. The Member for the First District stated that the original tendering process or what the Government of the day refer to as a transparent tendering process, saw where the Consultant was involved in; (1) selecting of companies, (2) making decisions in the awarding of contracts. He asked whether she as the former Acting PS was involved in that process, because it was previously stated to the Committee numerous times by others who gave evidence that the Consultant was heavily involved in selecting the companies. There were at least a minimum of three companies and TPP emerged as the preferred one. The lack of transparency caused one of the companies to document their concerns in writing to the Governor and FCO and to date there is no evidence to support that their concerns were adequately addressed.

180. The former Acting PS clarified whether he asking if she was involved in the process of selecting of the companies initially.

181. The Member for the First District answered in the affirmative.
182. The former Acting PS stated no.
183. The Member for the First District noted that would have been a role that the Accounting Officer would have been involved in and not the Consultant, if he was correct according to the FMR. He inquired of the former Acting PS if she was involved in that section or was the Ministry of Finance involved in that section.
184. The former Acting PS stated that she could not say for sure whether the Ministry of Finance was involved.
185. The Member for the Eighth District asked whether the Ministry of Communications and Works went out and solicited companies or whether the company came to the Ministry and expressed interest.
186. The former Acting PS responded that it would be difficult for her to say at that point in time. She knew from where she sat they did not actively solicit companies at that point in time. A little later on when they went through the proper tendering process.
187. The Auditor General inquired whether the former Acting PS knew how the Ministry of Communications and Works got in contact with those three entities. She further inquired whether the former Acting PS was in a position to say if they were actively solicited by the Ministry or was someone else acting on its behalf.
188. The former Acting PS stated that it appeared at the time that the Hon. Minister and the Consultant would have been more involved in the discussions surrounding the companies that were considered at the time. She was not involved in that process.
189. The Member for the First District stated that why he was asking along this line of question was that there is a serious breach if the Accounting Officer was not

involved. He noted that if Finance was involved they would have had to have written to the Accounting Officer for the Ministry. He inquired of the former Acting PS if at any time did she receive any correspondence from her recollection, of Finance saying that this is the direction that they were going in with the first stage of the new phase of the project.

190. The former Acting PS responded that she did not recall receiving any correspondence from the Ministry of Finance. She stated that she wanted to clarify when he said this is the direction we going, whether he meant the Public Private Partnership or just with the companies.

191. The Member for the First District stated no, just with companies to do a competitive bidding because it was clear that was not a transparent tendering process.

192. The former Acting PS noted that it was not a tender at the time. She cannot say for sure how these companies emerged.

193. The Member for the Eighth District inquired whether she could not say whether it was solicited or whether they came to the Ministry.

194. The former Acting PS stated no and that is because she thought that, at that point the Consultant would have had a better knowledge of the selection process that she did.

195. The Auditor General noted that the former Acting PS could not say whether the companies were solicited or whether they were the ones to approach the Ministry. The Auditor General asked whether the former Acting PS could say the Ministry solicited proposals for these companies in her capacity as PS.

196. The former Acting PS stated that in her capacity as PS as far as she knew the Ministry itself did not solicit these companies.

197. The Auditor General asked if the companies could have been solicited by the Consultant and not through the Ministry.
198. The former Acting PS stated that was correct.
199. The Member for the Eighth District stated that it could have been solicited by any member of the Ministry.
200. The former Acting PS stated that, what came to her as the Acting PS were the names of the three companies and from what she gathered the Hon. Minister and the Consultant were actively engaged in that process at that time.
201. The Member for the Eighth District asked if the former Acting PS could say that she solicited them.
202. The former Acting PS stated that there is no way that she could that. She just knew that the names came before her as names they should consider and again it was always this urgency that we need to get funds that we did not have access to right away and it was this sense of urgency that was always driving the decisions at that time regarding the Ports Project.
203. The Member for the Second District asked in her tenure in the Ministry as PS was she ever involved with contracts given by the BVI Electricity Corporation.
204. The former Acting PS stated that when she came on board she knew that there was an ongoing matter with the generator for Bi-Water. She further stated that at the point that she came in she knew that the Ministry was trying to get the funds together.
205. The Member for the Second District asked what was her involvement with the fuel contract.

206. The former Acting PS stated that later on there was a fuel contract but it went through the whole tender process.
207. The Member for the Second District noted that is the reason why he asked that question because he wanted to ask her about the Port. He stated that the BVI Electricity Corporation is a Statutory Body as the Ports. The BVIEC Board which she would have been a member as an ex-officio member and asked if she participated in Board Meetings where the tendering process was discussed.
208. The former Acting PS stated yes.
209. The Member for the Second District stated that the BVI Ports Authority is a Statutory Body governed by the same laws and have the right to sue and be sued apart from Central Government, from what you are saying, the Board was not actually involved in any tendering process for the Cruise Ship Pier.
210. The former Acting PS stated that in the early phases of negotiations the Ports was not as involved as they should.
211. The Member for the Second District asked whether the Ministry of Finance has been involved in the negotiating process towards the tender for the Pier.
212. The former Acting PS responded later on.
213. The Member for the Second District stated the reason for this question is he was trying to establish the rights of the Statutory Bodies. The whole reason for establishing a Statutory Body is for the Board to govern that Body not the Ministry or another Ministry and even going back to where they were given legal advice from the Attorney General Chambers that is totally out of the norm. They have the right to hire their legal Attorney, the only time the AG can advise the Board on those legal matters is when decisions are made at the Cabinet level.

214. The Member for the Second District stated that they could be sued separate of Central Government. The Board reports to the Minister who then comes to Cabinet. The Minister cannot overshadow the Board, only if the Board is not constituted. He thought that is the point what the Auditor General was trying to get across to you or after they were constituted, you cannot question their ability. He further stated that so when the Minister gets involved he could only get involved of the Government position explaining to them what the Government priority is, they have to work it out. So the fact that you leave all the processes within the Board and if the PS is a member of the Board, they would have to be involved in the processes from them and the fact that the PS was left out because the Board is not actively involved in the process which makes the whole thing null and void and this is the statement that he made in the House and he made a public statement in the House advising the Minister, Minister you are going about the whole thing wrong but nobody take heed of that. He made that statement in the House it is on the record of the House. You cannot circumvent the process. When it comes to you, you can discard it, you even don't have to go to Counsel, you can turn it down and tell them go back to the drawing board because that is not what your policy dictates. But when you involve Finance, now that is when the Attorney General has to advise Finance so now you tie the Central Government back involved with any lawsuit that will come about and that should not happen and that the fundamental principle of guidelines that we keep ignoring all the time. You cannot take the Board out because you can sue the Port and take everything they got and you do not touch the Central Government cash flow but the minute you involve Finance you can wipe the Treasury out. Because they can be sued. All those Statutory Bodies for the mistakes that they make, you can sue them and take them to the cleaners but you cannot touch Central Government they are Statutory Bodies who has a Board that can be sued clear of Government without involving Central Government.
215. The Member for the First District stated that it is an interesting thing now because that would bring a lot of the actions taken in the project into question.

216. The Member for the Eighth stated that the PAC requested some documents and they are yet to receive those documents so he cannot form conclusions unless they get all the documents.
217. The Member for the Second District stated that Bi- Water could sue the Central Government if that become a problem.
218. The Member for the Second District stated that he is not forming conclusions. He was just trying to ask the PS in reference to Bi-Water arrangements and contract negotiations what was the process.
219. The Member for the First District stated that as PS when this whole process came down from the time when the shift of the course of the project came from when she got the file, and the project started back up again with great speed. He asked did she ever have to summons the Board to a meeting to deal with any matters dealing with the project as far as she could remember.
220. The former Acting PS responded no. She did not summons the Board personally.
221. The Member for the First District stated that the Ports Board was in effect not allowed to function at this point. He stated that in her tenure as former Acting PS it was apparent that during this stage the Board did not meet to deal with any matters dealing with the project.
222. The former Acting PS responded that was not quite accurate. In the early stages, she would say that the Ports Board was not as involved as it should have been but a little later on she knew that there were a few Resolutions that would have been signed off on that would have involved the Ports Board. However, as she said earlier the Hon. Minister did say early the direction he would have liked to see the project go in and that was expressed to the Board early.

223. The Member for the Second District asked if the Board convened to make a decision on the project or to ratify the decision given.
224. The former Acting PS responded that they were a few times when the Board would have had to ratify decisions. From what it seems a lot of the decisions were being made in the Ministry of Communications and Works.
225. The former Acting PS stated the Ministry of Communications and Works in terms of the direction the Minister would have liked to see the project go. The former Acting PS thought the Minister had a big say at the time but she was not sure.
226. The Member for the First District stated that he wanted to be clear because she was the Acting PS, so was it something that came through her, the Minister or the Consultant.
227. The former Acting PS stated the Hon. Minister and the Consultant played very active roles in this process, as needed she would have been informed.
228. The Member for First District asked if she ever came across meeting, a man named Hugh Darley.
229. The former Acting PS responded in the affirmative.
230. The Member for the First District asked in what capacity was Mr. Hugh Darley introduced.
231. The former Acting PS stated that Mr. Darley was introduced as one of the key players. She could not recall what his official title was but he was one of the key players in the negotiations with the Tortola Port Partners conglomerate. She saw him as the person that brought the finances together. It seemed as if his role was to go out and she guessed solicit interest in terms of persons wanting to finance the project. She saw Mr. Darley in that role.

232. The Member for the First District asked who introduced Mr. Hugh Darley to her.
233. The former Acting PS stated that it could have been at the meeting with the Hon. Minister and the Ports Consultant, Mr. Claude Skelton Cline. They both introduced him.
234. The Member for the First District asked if the former Acting PS could recall any meeting where Mr. Hugh Darley was introduced to the Board or otherwise.
235. The former Acting PS stated that the Board meetings that she attended during her tenure, Mr. Hugh Darley was not present at any of those meetings. He was not introduced to the Board at any of those meetings.
236. The Member for the First District inquired of the former Acting PS if the decision to get the TPP to do work was being paid by the Ports.
237. The former Acting PS stated that he had to clarify what he meant by works.
238. The Member for the First District stated that when TPP were selected or being told that they would be selected there was a \$1.7 million dollars that had been agreed upon, he did not know by whom the agreement was made with whether the Board or otherwise. From the listening of other persons to the PAC, it does not seem like the Ports Board was to pay TPP. He asked if the former Acting PS remembered if there was a Resolution, whether prior to or retroactively by the Board to approve that matter because Ports was the one that was suppose to pay.
239. The former Acting PS responded in the affirmative. She indicated that she remembered such a meeting.
240. The Member for the First District asked if she remembered anybody else who would have being paid from the \$1.7 million.

241. The former Acting PS stated that she did not have those details.
242. The Member for the First District stated that why he was asking is that he wanted to share something with the Committee. He was asking about the \$1.7 million dollars because there was a question that was asked about this matter in the First Sitting of the Third Session of the Second House of Assembly under Questions and Answers on October 7, 2013, that must form part of the record of PAC. He would like for the Questions and Answers pertaining to the Cruise Ship Pier Project and payment of \$1.7 million dollars be part of the PAC records. The last time that he was at PAC, he learnt just last week that \$1.6 million dollars was paid to TPP for work supposedly done. He asked if that was the same Resolution that the former Acting PS could remember that gave the authority to make such payments.
243. The former Acting PS clarified of the Member was saying that just last week he learnt that a payment was made to TPP.
244. The Member for the First District answered in the affirmative. He stated that from the information provided to PAC, just last week it was done.
245. The Member for the Second District noted that the Resolution was passed before, but the money was paid last week.
246. The former Acting PS asked whether it was in connection with this same document.
247. The Member for the First District stated no. He further noted that this is where it gets interesting. This same issue about the \$1.7 million dollars was asked in the House of Assembly and when it was asked in the House, I remember distinctly that there was a breakdown that we were given in the House of a list of Sub contractors/Consultants and the description for each one was listed. Therefore, when he heard that just last week that TPP was paid raises a major red flag. The Member stated that the Hon. Member for the Third asked this question on October 7, 2013. Therefore, what he is asking in her capacity as former Acting PS if she could

remember what was the difference between the two payments of \$1.7 million dollars and \$1.6 million dollars.

248. The former Acting PS responded in the negative. She stated that she did not know if the current Director of the Ports at the time, if he would have been summoned to such a body.

249. The Member for the First District stated that he would have to be summons now to clarify this matter.

250. The Member for the Eighth District asked whether the PAC did summons the copy of the wire that was sent.

251. The Member for the First District stated that the Committee did issue a summons for a copy of the wire transaction to be furnished to the Committee. He noted that they were clear that the wire went out for \$1.6 million dollars to Tortola Port Partners just last week.

252. The Member for the Eighth District stated the he was not sure that they were too clear.

253. The Member for the First District stated that the Committee was clear that they were told about such payments. He further stated that he did not think that they would have to wire out money to Roger Downing you would just have to do a check because they are a local company.

254. The Member for the First District stated that his point about it is whenever he asked more about this project it gets a little more cloudy because he was not clear now what this last payment was for.

255. The Member for the Second District stated that they did not receive the breakdown of the payment as yet.
256. The Member for the First District stated one thing is clear with the breakdown, breakdown or breakdown not. One thing was clear from the witness last week was he did not have the money break down in parts, he knew for sure that he wired a lump sum in excess of \$1.6 million dollars it was not broken up into details. He was asking if the Resolution during her time if she remembered along what lines the Resolutions were given approval to pay.
257. The former Acting PS stated that she did not know if the Resolution would have been broken down to itemise each payment.
258. The Chairman of the PAC asked how long did she work in the Ministry of Communications and Works.
259. The former Acting PS stated that she worked there as Acting PS for two years.
260. The Chairman of the PAC asked from when to when.
261. The former Acting PS stated from September 2010 to November 2012.
262. The Chairman of the PAC stated that the next question he was going to ask the former Acting PS if she did not want to answer it he did not mind and she can even plead the Fifth Amendment. He asked whether she enjoyed her time as a Civil Servant working in the Ministry of Communications and Works.
263. The former Acting PS asked whether she could say yes and no or she was not allowed to.
264. The Chairman of the PAC stated that if she wanted to say no it was alright.

265. The Member for the Second District stated that she could plead the fifth.
266. The former Acting PS responded that there were aspects of the job that she enjoyed and there were aspects that caused her sleepless nights.
267. The Chairman of the PAC stated that the higher you get in the echelon you find out that the civil servant is to advise the Ministers. You get a lot of disagreement at that level because sometimes Ministers feel that they are the boss and they do not need your advice, however, sometimes the advice is necessary because he has worked with Ministers a few years and he came across some that welcomed the advice and others who did not want it and would tell you so. He further stated that then trouble begins when it is found out that they did something wrong and that is the difficult part of working with Ministers who do not take the advice. He just wanted to get that clarified because listening to the discussion he could understand some of her difficulties.
268. The Member for the First District stated that was an interesting thing that the Chair said and that he liked that analysis because it reminded him of something. He asked when she said that the Board was more involved and inquired who was the Chairman at the time.
269. The former Acting PS responded that the Chairman was Mr. Adams and he was Acting Chair.
270. The Member for the First District asked if that was getting down close to the time they were going to sign.
271. The former Acting PS responded in the affirmative.
272. The Member for the First District asked and that would have been the time they could not sign to use to the Port money without the Ports so the Board would have came into play.

273. The former Acting PS answered in the affirmative.
274. The Member for the First District asked whether the former Acting PS ever met Todd Malphus.
275. The former Acting PS answered in the affirmative.
276. The Member for the First District asked what was his role and the role of Mr. Cashman.
277. The former Acting PS responded that Mr. Todd Malphus and Mr. Cashman, they represented the companies that would have been providing some of the funding for the partnership.
278. The Member for the Second District asked if they represented Tortola Port Partners.
279. The former Acting PS stated that she said earlier that it was a conglomerate of organisations coming together. One of them was UIG and Cashman was another agency.
280. The Member for the Second District asked whether she could recall all the players that brought the conglomerate together that formed Tortola Port Partners.
281. The former Acting PS responded in the negative. She noted that mostly they were in contact with Mr. Hugh Darley and on occasions Mr. Todd Malphus as she said that Mr. Cashman was from a different company but she could not say who all the members of the Port Partners were.
282. The Member for the Second District asked what company the two gentlemen represented.

283. The former Acting PS responded that she could not recall.

284. The Member for the Second District asked if she recalled any names that represented Disney Cruise Line

285. The former Acting PS stated not for the Port Partners.

286. The Member for the First District stated that with the piles when TPP were involved there were some piles involved the purchasing of some piles. He asked whether the origin of that came through the Board, Finance, or the Consultant where did that come through.

287. The former Acting PS asked for clarity on what he meant by the origin.

288. The Member for the First District asked whether the Board was the one that made the decision to purchase these piles or the Board was given a directive to ratify the purchasing of the piles.

289. The former Acting PS stated that she could recall the Board only ratifying the purchase of the piles.

290. The Member for the First District stated so they ratified it so that was something that would have been taking to the Port Authority Board to be ratified.

291. The former Acting PS responded in the affirmative.

292. The Member for the Eighth District asked if the Board developed a Resolution to pay once the piles were delivered to the Territory.

293. The Auditor General asked whether the terms that they were adopted by the Board were to cover themselves in passing this Resolution.

294. The former Acting PS asked whether it was possible for them to have access to this information if they wanted.
295. The Members of the Committee stated that the information was requested.
296. The former Acting PS stated that she knew there were a number of Resolutions that would have been signed around that time but she wanted the record to reflect accurate statements.
297. The Member for the First District stated that with the invoice who was the one who would have produced the invoice for the Board.
298. The former Acting PS responded that part she was not clear on who would have.
299. The Member for the First District stated that it was not her as PS.
300. The former Acting PS stated that it was not her as PS.
301. The Member for the First District stated so when the Tortola Port Partners project was halted and the new direction was sought he asked whether she was PS at that time.
302. The former Acting PS stated that she was basically on her way out at that point in time. She did remember the Ministry sort of redirecting processes to do things in line with the proper financial procedures and going through the tendering process and she thought that one of the very last meetings she attended was a central tenders Board that would have been late in 2012.
303. The Member for the First District asked who was the Chairman of that meeting.
304. The former Acting PS responded that it was the Deputy Financial Secretary.

305. The Member for the Second District stated that there is two Deputy Financial Secretary.
306. The Member for the First District stated that at that time there was only one Deputy Financial Secretary.
307. The Member for the Second District inquired if the name of the Deputy Financial Secretary was Wendell Gaskin.
308. The former Acting PS answered in the affirmative.
309. The Member for the First District asked who was the FS's designate on the Board.
310. The former Acting PS responded Mr. Wendell Gaskin.
311. The Member for the First District asked who was her desk officer for the Ministry of Finance for Port matters.
312. The former Acting PS stated that she could not recall that they had a specific desk officer. They liaised directly with the FS and the Deputy FS. In terms of information that she would have required based on the previous arrangement a lot of groundwork was done based on what she saw in the file, so from time to time she would call Mr. Jeremiah Frett because she thought that he was most knowledgeable at the time in terms of what had transpired previously before he was removed from the Board.
313. The Member for the Second District asked if for the first project.
314. The former Acting PS answered in the affirmative. Outside of that, they contacted the FS and his Deputy directly.

315. The Member for the First District asked whether it was during her tenure that the new Managing Director came into place.
316. The former Acting PS stated that she was on her way out. She did remember that the selection process was on the way and she thought that she left at that point.
317. The Member for the First District stated that given her knowledge of what happened before. When Tortola Port Partners became involved, was it necessary to redo all this engineering work or it was something that she was not involved in.
318. The former Acting PS asked for clarity when he said redo the engineering work on the Pier.
319. The Member for the First District responded yes.
320. The former Acting PS stated that those technical details she would not have been privy to because she guessed from the Ports end they would have said maybe what needed to be done and some of those more technical issues she would have been involved.
321. The Member for the First District stated that based on what she was told, if the Port was not involved with the project to that extent who would have made the decision for them to have the reengineering done.
322. The former Acting PS asked whether he was referring to this project.
323. The Member for the First District stated that he did not know what he was referring to now, as he was more confused. What he is saying is that CH2MHill had already done some work and with Tortola Port Partners coming into play it seems like the work was done again. He did not know whether the scope of work changed but there were some new engineering works being done because seemed to be what the \$1.7

million dollars they are claiming was for. He asked if that was something that she as former Acting PS would have been involved in that process.

324. The former Acting PS responded in the negative. She indicated that she was not involved that process with the design works.

325. The Member for the First District stated that as far as she can recall that this process was something that she was not involved in.

326. The former Acting PS stated that she was not sure when this surfaced.

327. The Member for the First District asked when was this versus the monies for the TPP. He was clear with CH2MHill that was before. He thought he was clear with the Port Partners because that was after. He was trying to find out; as it appeared that, the work was done three times.

328. The former Acting PS stated that she thought the former Managing Director of the Ports and certainly the current Managing Director between them both they should be able to shed light on those figures

329. The Member for the First District stated that he wanted to be clear as the current Managing Director from what he read here, the former Acting PS would correct him if he was wrong, he stated clearly that as the Consultant stated to the PAC that he was not actively involved in the project, the Ministry of Finance was the entity involved.

330. The former Acting PS sought to clarify if the Consultant said that he was not involved.

331. The Member for the Second District stated that the Consultant said he did not know who is Tortola Port Partners, he does not know, he was a part of a team to negotiate the figures but he does not know the person who was involved with TPP.

332. The Member for the Second District stated that the \$1.6 million that was sent off to Tortola Port Partners. He asked in her dealing with the project who would she identify that that money was sent to Tortola Port Partners.

333. The former Acting PS asked at what point would this \$1.6 million been sent.

334. The Member for the Second District stated last week. He noted that \$1.6 million went to TPP but he could not find who they are. He asked in her dealing in the Ministry did she ever come face to face with the representative of TPP. If she had an idea who they were. He noted that he wanted to know where the money went.

335. The former Acting PS stated as she said before the names that were mentioned around the table, those were the names of the persons that she was introduced to.

336. The Member for Second District stated names such as Mr. Cashman, Hugh Darley, and Todd Malphus.

337. The former Acting PS stated names such as Mr. Hugh Darley and Todd Malphus. She noted that Mr. Todd Malphus had a brother as well, but she could not recall his name.

338. The Member for the Second District stated that he wanted to narrow in on who they were.

339. The Member for the First District asked whether the former Acting PS was ever called to the Moorings to discuss this project because other persons who previously testified at the PAC on this matter informed the Committee that they were summoned to the Moorings for meetings pertaining to the Ports Project.

340. The former PS responded in the negative.

341. The Member for the First District asked whether all the meetings she had was at the Complex.
342. The former Acting PS responded in the affirmative.
343. The Member for the First District stated that what he wanted to understand from her as the former Acting PS that as Accounting Officer given an invoice to pay for piles would mean that from following the history of projects would mean that somebody already made a move to order and get piles. If you asking for payment to be made it would mean that, you are already engaged in the ordering of piles.
344. The former Acting PS stated that from where she sat as Acting PS at the time, if the decisions regarding the purchasing of piles was carried out/ executed, she would say it would have been through the Ports Authority. She noted that there was a Resolution of the Board. In terms of her involvement, she was not really involved in that part of the process so she could not really speak to it.
345. The Member for the First District stated that he would ask her two questions about the process. Not with whether the project should be or not as that was not her call. He did not agree with any public servant making that call for any Government. But, based on the Financial Management Regulations and the Protocols and all other such financial guidelines, based on them solely and not emotions, was she as PS concerned about the process that was being followed while as Acting PS that the course of action were seemingly falling outside those scopes.
346. The former Acting PS responded in the affirmative.
347. The Member for the First District asked if she ever expressed this to the Ministry of Finance.
348. The former Acting PS responded in the affirmative. She spoke with the FS and the Deputy FS. She remembered at one point in time the Hon. Premier called and he

expressed concerns. She noted that this was around the time when the UK was asking questions and he ask whether she had advised the Minister of the proper way, which she said to the Premier that she did, she tried. As she said earlier, also spoke to the Deputy Governor. She stated that she spoke to anybody that would listen.

349. The Member for the First District asked whether she spoke to the Governor.

350. The former Acting PS stated that she spoke to the Governor because she knew that as Acting PS she should have had a lot more things in writing. Again, she was mindful of a number of things. The Minister was new, she knew that he really had the zest and still seemingly does to get the project going. They did attend couple of meetings in Miami at the Cruise Conventions. She did happen to sit around the table with a couple of the key players in the Industry and they expressed their concerns that we were not moving fast enough. She did understand why the Minister wanted to move with haste to get things done but still the rules had to be followed.

351. The Member for the First District stated that why he was asking is that he vividly remembered that the first time the project was stopped, by the now Premier, the Premier said in the House that he asked the FS to review if the processes/procedures in relation to the Ports Project were falling outside of the Protocols for Effective Financial Management. The Government then came back to the House of Assembly and stated that the FS found that what was happening was outside of the Protocols. The Premier stated that he instructed the FS to get the matter rectified.

352. The Member for the First District vividly remembered getting up in the House saying that he could not understand how they could send an entity who is on the Ports Board being the FS or his designate who would have been there during the current process being followed, to now investigate if the process is outside of the protocols to go and look into themselves and now come back and report that his process was outside of the Protocols. This the Member stated raised some serious questions in his mind about what was Ministry of Finance's interpretation of the

Protocol document that they signed because the FS or his designate by law is part of the Board. So to go look into whether the Board was acting outside of the Protocols of Effective Financial Management or not is asking the FS to look into himself and then come back and report that his process was outside of the boundaries of the Protocols for Effective Financial Management brings the Ministry of Finance into serious question. The Member for the First, as a result, requested of the Committee to subpoena what all the UK wrote to the Ministry of Finance in relation to the Ports Project. It is now clear that the Ports Project did not get stop by the FS's actions or findings seeing that he was on the Board all the time or his designate. Obviously, the concerns raised by the UK in terms of the procedures that were being followed by the Government/Ports caused the stoppage of the project at the stage in question.

353. The former Acting PS responded no.

354. The Member for the First District stated that now that the former Acting PS heard what the Consultant, Mr. Claude Skelton Cline said to the PAC, he asked whether she still maintained from her integrity of the post that the Consultant, Claude Skelton Cline, was heavily involved in the Ports project in every facet as stated before.

355. The former Acting PS responded in the affirmative. The former Acting PS continued that Consultant, Claude Skelton Cline, from where she sat as Acting PS at the time, he did play an active role from the inception of the Port Development project up until the point that she left. She further noted that at her last meeting with the Tenders Board she thought that is where she had an issue. The Consultant, Claude Skelton Cline also sat on that Board and she did not think he necessarily had an active role to play, but again they were dealing with some of the same entities that they were negotiating with earlier. She remembered at that last meeting she expressed certain concerns but she did not know how much the minutes would reflect that so she did express those concerns.

356. The Member for the First District asked whether the Consultant, Claude Skelton Cline, was verbal in the meeting or was he just an observer.

357. The former Acting PS stated that he had some comments. She would say again that they were just too anxious to get things done.

358. The Member for the First District stated that the Committee is not worried about the anxiousness but rather the Committee is concerned about whether or not the current procedures/processes were followed. From the information received by the Committee the Consultant, Claude Skelton Cline was on a Tendering Board as a Consultant to a project that he was organising. The composition of the Tender Board is clearly stipulated by law if he was not mistaken. The question to be answered is what would be the Consultant's role on a tender Board which section of the law can this be found.

359. The former Acting PS stated that she thought that some of these questions should be pointed to the Ministry of Finance in all fairness because it was along those lines that she raised certain questions. She remembered being excluded from that meeting because of certain questions that she was raising.

360. The Member for the First District asked whether she asked to be excused.

361. The former Acting PS stated that when they break for lunch from the meeting she sent her Deputy PS so that was her last contact that process. She was basically on her way out. She felt as though sometimes she was the lone voice crying in the wilderness and she received very little or no support from sources including the Ministry of Finance that she thought should have supported her more in terms of procedures. She honestly felt that she did not get that support and that is why she opted to leave the Ministry of Communications and Works when she did.

362. The Member for Second District stated that the question that Member for the First asked, he wanted to ask two follow up questions. Who was the Deputy PS at the time when she left.

363. The former Acting PS responded at the time that she left it was Mr. Gary Penn. She also reported that Mr. McMaster was newly appointed as Deputy around the time that she left.
364. The Member for the Second District asked which one attended the meeting.
365. The former Acting PS responded that Mr. Penn was asked to attend the afternoon session of the meeting.
366. The Member for the Second District stated that the Deputy Financial Secretary who represented the Ministry of Finance made some comments on record stating that the current Managing Director of the Ports, Claude Skelton Cline is one of the best thing that happened to the project because if it was not for him they would not have gotten the project to the phase where they could have signed it on the date it was signed. He has high respect for his ability and his determination to get the job done. He asked whether she would support that statement.
367. The former Acting PS stated that she did not think that it is fair to tell her to say yes or no.
368. The Member for the Second District stated that he said that was why the job was done.
369. The Member for the Eighth District stated that was the DFS's opinion.
370. The Member for the Second District stated that he was asking the former Acting PS's opinion.
371. The former Acting PS stated that if he wanted to ask her opinion what she could say was that she saw the zest and gusto in the then Consultant, Claude Skelton Cline wanting to move the whole Port project forward.

372. The Auditor General asked whether the Consultant, Claude Skelton Cline consulted her as PS on the process, as he was also new to the Ministry and the functions of the Government.

373. The former Acting PS answered in the affirmative. She noted that is what they were dealing with; all the key players in the Ministry were new. There is where she had a problem because they were all new and anxious to get things done. In terms of procedures, the patience was not there to wait out a lot of these processes and that was what came through clearly that there was no time to wait. Her issue with the entire project was of a procedural nature that they were not in line and they did not take the time to be in line and her voice she felt did not matter at that point.

374. The Chairman of the PAC thanked Mrs. Thompson for attending and he stated that he did not think that they would have to call her back. He thanked her for what she was able to enlighten them on and he thought that what he had been hearing, they might have to ask the current MD, Mr. Claude Skelton Cline to come back probably next Wednesday.

375. The Member for the Second District stated that the Chairman indicated that they have to bring back the current MD. He thought that they needed to bring back the Financial Comptroller, BVIPA separate from the MD. He noted that previously the Committee made a mistake by bringing both of them at the same time. He also noted that he thought that they needed the Legal Counsel who seemed to be very much involved through the Ministry of Finance.

376. The Chairman stated that they are not bound to wait until Wednesday.

377. The Secretary of the PAC stated that they were preparing the Standing Finance Committee Report for the House so they have to get that out and have to get it vetted which is time consuming.

378. The Chairman of the PAC asked when they getting to the House.
379. The Member for Second District stated that it would be nice if the PAC could get the requested documents before the next meeting of the House of Assembly.
380. The Member for the Second District stated that he must not be taken out of context as he put everything in the right perspective. Last week Friday a document was signed that gave a process for the berthing agreement at the Pier, which tells him that, the Government is actively going forward with this project. As far as accountability is concerned, we will fail this country if we cannot say to this country that, that project is heading in right direction or it is heading in the wrong direction in terms of the processes/procedures being followed by the Ports.
381. The Secretary of the PAC asked the Chairman when he wanted to receive the report.
382. The Member for the Second District stated that whenever they setting the date for the next meeting, whether it is next week or week after. He just wanted to make sure that the letter goes out to the people.
383. The Chairman of the PAC asked the Secretary of the PAC whether she had some papers to distribute to the Members.
384. The Secretary indicated that she had information to obtain from the Ports and the Ministry of Finance.
385. The Chairman asked if she had not received them yet.
386. The Secretary of the PAC indicated no.
387. The Committee expressed their dismay over the many delays being experienced in obtaining of information requested.

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388. The next PAC meeting was scheduled for 20th February, 2014.

29 Jan

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION
OF INQUIRY 2021**

LEGAL SUBMISSION

**TO THE COMMISSION OF INQUIRY REFERENCE SUBMISSION ON BEHALF OF
THE HONOURABLE MARK VANTERPOOL**

1. This brief submission comes in response to a warning letter served on the Hon. Mark Vanterpool on 13 September 2021. A copy of the relevant sections of the **British Virgin Islands Ports Authority Act, 1990** is attached.
2. The Hon. Mark Vanterpool was served with WARNING LETTER NO. 1 by the Commission of Inquiry on 13 September 2021. Hon. Vanterpool submitted his written response to the Commission by the extended deadline on Thursday 23 September 2021.
3. I propose to set out in this analysis the position as to the powers that the **British Virgin Islands Ports Authority Act, 1990, (as amended)** [the Act] grants to a Minister over the decisions and actions of the BVI Ports Authority.
4. The British Virgin Islands Ports Authority was established by the Act being a body corporate to have perpetual succession which may sue and be sued in that name and perform such other acts as bodies corporate perform. Section 2 (4)(11) of The First Schedule to the Act gives the Authority the power to regulate its own procedure, subject to the Act itself.
5. In his response to the criticisms listed in his Warning Letter, the Hon. Vanterpool referred to the Act and in particular to....

SECTION 19(1) OF THE ACT which states;

“The Minister may give the Authority general directions in writing as to the performance of its powers under this Act on matters which appear to him to affect the public interest and the Authority shall give effect to such directions.”

INTENT OF THE ACT

6. It is clear that it was the intent of the Act to give certain powers to the Minister. The intent is described in the marginal notes next to section 19, “*Powers of the Minister in relation to the Authority*”. While the Act states that the Minister “...*may give general directions in*

writing....”, it is also clear that any directive (oral or otherwise) given by the Minister to his or her Secretary, or other subordinate to issue certain instructions which may be deduced in writing, is tantamount to the Minister being in full compliance with the Law. Any official minutes of the Authority which is on record and to which the Board Members of the Authority has assented to or has access to, can also be properly referred to as “instructions in writing”;

7. Section 19 (1) of the Act goes on to assert that directions which the Minister shall give to the Authority on matters which appear to him [the Minister] to affect the public interest, shall be given effect by the Authority.
8. Further, the Authority is mandated to implement any policy or decision of the Minister as required under **Section 4(g) of the Act** which states:

“4. The Functions of the Authority shall be -

(g) to perform such acts as the Minister determines and report to the Minister at such times as he requires respecting the Matters to which this Act relates;... ”

9. Another mentionable point is section 7(5), which indicates the extent of the Ministers reach over the Authority. This section provides for the Minister’s purview to select the Auditors for the Authority.

SECTION 7(5) OF THE ACT

“The accounts of the Authority shall be audited at least once with the approval of the Minister.”

CONCLUSION

10. In concluding, it is important to note that while the Authority’s Board [the Authority] has certain powers given under section 5 of the Act, it is clear that the Minister has overarching Authority to give general directions to the Board. Judicial precedents were not mentioned herein as it is believed that Section 19(1) of the Act which confers powers to the Minister should be interpreted literally and be given strict construction, holding that it should be given literal terms, without looking to other sources to ascertain the meaning.

Denniston Fraser

Counsel for the Hon. Mark Vanterpool

24 September 2021

Revocation of Membership of Statutory Boards under the Premier's Office

Signed

· 19 March 2019 · PO · Mrs. Elvia Smith-Maduro · Memo No. 103/2019

Background Information

1) Under the law, statutory bodies of the Virgin Islands are quasigovernment organizations but that get their powers, service rules, authority by an act of parliament or state legislatures. They are generally established to perform specific functions which a government considers effectively performed outside a traditional departmental executive structure. They fulfill the requirement for operational independence from the government however, funding arrangements are dependent on the annual appropriations processes in most instances for those statutory bodies who receive their annual budget allocation by way of a subvention from Government.

2) 2. As a result of the recently concluded general elections there was a change in the government administration and a reshuffling of portfolio subjects across ministries. The list of statutory bodies under the Premier's Office portfolio includes the following;

- Planning Authority Board
- Physical Planning Appeals Tribunal
- BVI Tourist Board
- Board of Immigration
- BVI Airports Authority
- BVI Ports Authority

- **Telecommunications Regulatory Commission**
- Building Authority
- Prospect Reef Management Company
- Maritime Advisory Board
- Climate Change Trust Fund Board

3) Membership of each statutory board is approved by Cabinet and instruments of appointments signed by the respective Ministers or the Governor.

4) 3. With each new Government Administration it is common practice that some or all current board membership is dissolved and new members appointed to the respective boards. The manifesto of the new government administration calls for innovative, forward and progressive ideas, initiatives and action from each government ministry, department and agency during this recovery period. For those initiatives that must be implemented through a statutory body the same principles for innovative, forward and progressive initiatives and action will be required.

5) 4. The manifesto of the new government administration places heavy emphasis on youth involvement in every aspect of the development of the Territory. As such the intention is also to appoint a youth representative on each statutory board and committee. In addition, recommendations will be forthcoming for a new policy to amend the membership terms of each board to not extend beyond the term of the sitting Administration that appointed the board.

6) 5. As such Cabinet's approval is being sought to revoke the membership of the current statutory boards under the Premier's Office portfolio to allow for the right mix of new innovative and progressive minded members to be appointed

that would include representation of youths on each board. A list of the current membership of each statutory board under the Premier's Office portfolio is attached at **Appendix A**.

Purpose

7) To dissolve current board membership and appoint new board members

Cross-Ministry Consultation

8) The Attorney General, the Financial Secretary, Ministry of Natural Resources and the Ministry of Transportation, Works and Utilities have been invited to comment on the paper.

Financial Implications

9) I have noted the comments of the Attorney General when he stated, "I have not had the opportunity to review the removal provisions of ALL the Boards (statutory corporation or otherwise)." To this end, it is critically important that Cabinet satisfies itself that even in the cases of the BVI Ports Authority and BVI Electricity Boards wherein there is express provision for the removal of Statutory Board members and as cautioned by the Attorney General, the discretionary powers of Cabinet must be exercised reasonably.

10) In light of the above, before Cabinet takes the decision to remove any Board Director of a Statutory Board, Cabinet must satisfy itself that it not only has the power to do so as per the respective statutes establishing the Boards but that in removing the Directors amass that this will not easily be construed by any arbiter as acting/behaving unreasonable. To act otherwise in these circumstances may expose Government to claims of unreasonable dismissals which in turn could result in huge financial liabilities being attached to Government.

Legal Implications

11) May I note further that there is no provision for revoking the appointment of members of the Tourist Board ,But that is cured by section 20 of the Interpretation Act (Cap. 136) which authorises an appointing authority to remove an appointee at its discretion.This of course entails compliance with the rule of law requirement I had previously made reference to.

Communication Strategy

12) Ministry to send written communication to each board member advising of dissolving of their membership pending Cabinet's approval

Conclusion

13) Existing board membership to be dissolved and new members to be appointed.

Decision Sought

Cabinet is invited to:

1. approve the revocation of the board membership of the following Boards under the Premier's Office portfolio with immediate effect;
 - BVI Tourist Board leave on ex-officio
 - BVI Ports Authority
2. approve the membership on any board should not go beyond the term of the sitting Administration
3. agree to an expedited extract of the decision made by Cabinet

1. new government has come in with a new mandate and as a result it is decided to reassess the membership of all boards in a manner that they see will allow the mandate given by the people to be expedited in transparent and accountable manner
2. in so doing in the case of BVITB all ex-officio Members will remain, all other members will be removed and some having the opportunity to return along with some new members .
3. justifiable reasons that each member will be removed and the new composition will be fully assisted and brought back to Cabinet and if fall within the gamut will be reassessed in keeping with this Administration's mandate Chairman advised revocation and
4. Malone given the national mandate on economic pillars that an assessment that it was justifiable reasons; as apart of the narrative that give the full national importance to the economy these two particular boards
5. DP agrees with the premise that Boards should not exceed the tenure of an Administration and it proves challenging; it could expose to certain level of risk but weighing the potential for this Boards to interfere with our mandate willing to be exposed to that risk as Member of Cabinet; not good that appointments; incorrect actions of the past could have a real impact on how things are going forward. it is reasonable to say we have a mandate from the people but their association with the former party Administration, they did the same; while not explicit it was apparent ; commitment to the mandate must be paramount
6. Rymer agrees and supports sentiments and Vincent's terms should not exceed
7. would like to see in Code of Conduct that caretaker period.

8. removal and revocation powers
9. AG must always have a
10. Chairman voiced concerns believe that we should break with conv
11. has wide discretion powers which should be ;used with principle of administration and not without justifiable reasons and risks undermining our commitment to good administration and good governance
12. Thank govt for noting his concern and definition of justifiable differs from ours.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Andrew A. Fahie
Premier
27 March 2019

Revocation of Appointments of Board Members - British Virgin Islands Electricity Corporation

Signed

· 25 March 2019 · MTWU · File: CW/EL.6/46 · Mr. Andrew St. Hilaire

· Memo No. 115/2019

Background Information

1) **Section 3** of the **British Virgin Islands Electricity Corporation Ordinance (CAP 277)** provides for the establishment of a Corporation to be known as the British Virgin Islands Electricity Corporation (BVIEC). **Section 4** of the Ordinance stipulates that the Corporation be constituted as follows:

- a. A Chairman;
- b. Not less than three and no more than five members, who are referred to as 'appointed members'; and
- c. Two other members, who are referred to as 'ex officio Members', who shall be the Permanent Secretary of the Ministry responsible for electricity and the General Manager of the Corporation.

2) **Section 5** of the Ordinance states, "The Chairman and any appointed member of the Corporation may resign his office by notice in writing addressed to Cabinet, and may be removed from office by Cabinet in its discretion at any time". The Ordinance in **Section 6(1)** further states, "Subject to Section 5, an appointed member, other than the Chairman or the ex-officiomembers, shall hold office for such period not exceeding four (4) years, as may be specified in the notice appointing him, and on the expiration of such period shall be eligible for reappointment. Provided that in the case of appointed members, Cabinet

shall specify such periods of appointment so that the periods of appointment of not more than one-third of the members shall expire in any one year". Pursuant to this section of the Ordinance all appointed member positions have been filled as listed below:

- a. Ms. Pearl Smith was re-appointed as Member for three years, which will expire on 31 August 2021 (see **Appendix A**);
- b. Mr. Ira Oliver Skelton was re-appointed as Member for three years, which will expire on 31 August 2020 (see **Appendix B**);
- c. Mr. Ellsworth T. Flax was re-appointed as Member for three and one-half years, which will expire on 31 August 2019 (see **Appendix C**);
- d. Mrs. Lucia Lettsome was re-appointed as Member for one year, which will expire on 30 November 2019 (see **Appendix D**);
- e. Mr. Sean J. Palmer was re-appointed as Member for one year, which will expire on 31 December 2019 (see **Appendix E**).

3) In **Section 6(2)** the Ordinance states, "Subject to Section 5, the Chairman of the Corporation shall hold office as Chairman for a period of three years and may be reappointed for any further period of three years". Mr. Ron Potter was duly appointed by Cabinet as Chairman for a period of three years, which will expire on 30 November 2019 (see **Appendix F**) and was made after prior approval for the appointment was obtained by Resolution No. 16 of 2016 passed by the House of Assembly (see **Appendix G**).

4) The Vice-Chairman is elected from among its appointed members once in every year and shall hold office for a period of one year, according to **Section 6(3)**. Ms. Pearl Smith was re-elected as the Vice-Chairman.

5) Important milestones for the Corporation were the completion of Phase V Power Development, which was inherited by the sitting Board and the passage of renewable energy legislation. Collectively, the Chairman and Members, with the sage advice of the General Manager, Mr. Leroy Abraham, and the Deputy General Manager, Mr. Henry Creque, was able to achieve the completion of the power development, which was navigated through tough economic times hitting the Territory over the last decade. The significant financial investment was backed by Central Government and the Social Security Board, and was since credited for helping to minimise damages from the ravages of Hurricanes Irma and Maria to the Henry Wilson "Freddie" Smith Power Station. Renewable Energy legislation is now a legal option for alternative sources to power homes and businesses, and for the Corporation to reduce the overall public energy bill.

6) With any dynamic organisation strategic changes are inevitable to keep pace with achieving its goals and objectives. To this end, the Government of the Virgin Islands has mandated that a complete review of the electricity supply regime will be undertaken during the period 2019-2023 to ensure that there is an adequate and consistent supply of electricity for homes and businesses 24/7. With this new mandate the Government now sees it fit to revamp the Board of the British Virgin Islands Electricity Corporation with new members and subject to the discretion of Cabinet pursuant to **Section 5** of the Ordinance.

Purpose

7) To revoke the appointment of appointed Board Members of the British Virgin Islands Electricity Corporation.

Cross-Ministry Consultation

8) The subject of this Cabinet Paper has been amended to read "Revocation of Appointment..." instead of "Dissolution of Appointment...." which is in keeping with the Attorney General's advice given under legal comments.

Financial Implications

9) There are no direct financial implications were Cabinet to act on the decisions being sought.

Legal Implications

10) There are no expressed provision in the BVIEC Act for the dissolution in the BVI Electricity Corporation Act,.

11) for the dissolution of the Board of the Corporation. However, Cabinet has discretion to revoke tedhe appointments of the Members of the Board.

12) However, in exercising its discretion to revoke the appointment of the members of the Board, Cabinet must comply with one of essential requirement of the rule of law identified by Lord Bingham; namely that a discretion conferred by statutes on "Ministers and other public officials, must be exercised reasonably (rationally), in good faith and for the purpose for which the power was conferred and without exceeding the limit of such powers."

13) The concept of reasonableness is defined by its opposite; namely Wednesbury unreasonableness. A decision is said Lord Diplock to be unreasonable (irrational) if "it so outrageous in its defiance of either logic or morals that no sensible person could arrived at that conclusion on proper application of his mind."

Budget

14) Stipends paid to Appointed Members of the British Virgin Islands Electricity Corporation are as follows:

- a. Chairman receives \$1,200.00 per month;

b. Vice-Chairman receives \$900.00 per month; and

c. Appointed Members receive \$700.00 per month.

15) The associated stipend expenditure is met by the Corporation and does not have a direct impact on central Government.

Communication Strategy

16) Letter to be issued to each Board Member to be removed and to notify him/her of the Government's gratitude for his/her untiring efforts in completing Phase V Development, the passage of Renewable Energy Legislation and more recently the post Hurricanes Irma and Maria works in restoring electricity to the Territory. Public disclosure of this decision should be restricted to publication of the new appointees only as is customary for appointments to boards.

Conclusion

17) The British Virgin Islands Electricity Corporation has achieved its goal of completing Phase V Development and divesting to renewable sources of energy. The Government now has a new mandate which necessitates revamping the Board membership coupled with a new strategic goal of ensuring that there is an adequate and consistent supply of electricity for homes and businesses 24/7. Cabinet Members are asked to consider and concur with the decision sought.

Decision Sought

Cabinet is invited to:

- a. decide that in its discretion that the appointments of the following Board Members of the British Virgin Islands Electricity Corporation

be revoked with immediate effect:

- i. Mr. Ron Potter, Chairman of the Board, and whose three year appointment will expire on 30 November 2019;
 - ii. Mr. Pearl Smith, Vice Chairman of the Board, and whose three year appointment will expire on 31 August 2021;
 - iii. Mr. Ellsworth T. Flax, Member of the Board, and whose three and one-half year appointment will expire on 31 August 2019;
 - iv. Mrs. Lucia Lettsome, Member of the Board, and whose one year appointment will expire on 30 November 2019; and
 - v. Mr. Sean J. Palmer, Member of the Board, and whose one year appointment will expire on 31 December 2019.
- b. note that new Members to be appointed to the Board will be addressed in a separate Cabinet paper; and
- c. decide that an expedited extract be issued to allow the decision of the Cabinet to be acted upon immediately.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Kye Rymer
Minister for
Transportation, Works
and Utilities

15 April 2019

CABINET MEETING NO. 2 OF 2019

Agenda No: C/2/AGEN/7/2019

Present

| | |
|---|-------------------------------|
| The Governor | H. E. Augustus J. U. Jaspert |
| The Premier | Hon. Andrew A. Fahie |
| Minister for Education, Culture, Youth Affairs, Fisheries and Agriculture | Dr. the Hon. Natalio Wheatley |
| Minister for Transportation, Works and Utilities | Hon. Kye Rymer |
| Minister for Natural Resources, Labour and Immigration | Hon. Vincent Wheatley |
| Minister for Health and Social Development | Hon. Carvin Malone |
| Attorney General | Hon. Baba Aziz |

Cabinet Officials

| | |
|-------------------|-----------------|
| Cabinet Secretary | Ms. Sandra Ward |
|-------------------|-----------------|

Memorandum - NO. 103/2019 - BY THE PREMIER - Revocation of Membership of Statutory Boards under the Premier’s Office

Deliberations

- 3.The Premier presented this paper.
- 4.The Chairman stated that specific reasons or a reasonable justification should be given to remove persons as members of a Board. He asked if there was sufficient reason in this regard.
- 5.The Attorney General confirmed that the BVI Tourist Board Ordinance does not reference removal of members from the Board; therefore, in this instance, removal of members can be carried out on the basis of discretion.
- 6.The Chairman reiterated that there is no specific removal power in the Ordinance but that he understands from the Attorney General that such a clause is included in the Interpretation Act.
- 7.The AG said in cases where any powers are conferred by the Legislature, one should provide reasons for removal of persons and suggested that it is better to provide reasons. The AG advised that if this Administration wants to be a government consistent with public administration; then reasons must be given for removal of members of boards.
- 8.Members asked if there were any precedents of unreasonable exercise.
- 9.The Minister for HSD commented that given its national mandate and that tourism is an economic pillar, it should be deemed reasonable that the tourism Minister be comfortable with the membership of the BVI Tourist Board to move the sector forward and therefore should be mindful to appoint a Board that reflects his Administration’s mandate.

10.The Chairman stated that there should be an avoidance of risk of targeting people. He voiced his concern about the captioned paper and that he was not against its intention but he wanted to ensure that there was a demonstration of good governance procedure. The Chairman reiterated that justifiable reasons should be given to remove members from a Board.

11.The Minister for Natural Resources, Labour and Immigration mentioned that the decision was not for the removal of one person but the entire Board membership.

12.The Minister for HSD asked the AG if Board members had a legal recourse for being removed. The AG responded that anyone can go to court whether they have legal recourse or not.

13.The Chairman asked if there were any operational liabilities or risks to revoking the appointments of the members of the BVI Tourist Board or BVI Ports Authority.

14.The Premier responded that there were no risks to either entity if they operated without a Board at this time.

15.The Premier stated that his decision to revoke the membership of the Boards is on the basis that a new government has assumed office with a new mandate, and as a result, he has decided to reassess the membership of all Boards in a manner that will allow the mandate given by the people to be expedited in a transparent and accountable manner.

16.Furthermore, the Premier stated that he would be recommending a policy that the membership on Boards would extend for the duration of the Administration's term in office.

17. Action By:

18.The Premier would instruct his office to prepare a Cabinet paper that the period of appointments of members serving on Boards would be commensurate with the Administration's term in office, in consultation with the Attorney General's Chambers.

19.In support, the Minister for Education, Culture, Agriculture, Fisheries, Sports and Youth Affairs agrees that Boards should not exceed the tenure of an Administration because it can prove to be challenging. The Minister said that despite the possibility of exposing the Government to certain levels of risks, when he weighs the potential for Boards to interfere with the government's mandate, as a Member of the Cabinet, he was willing to be exposed to that risk. He stated that commitment to the current government's mandate from the people must be paramount because incorrect actions of the past and/or an association with a former party or administration could have a real impact on how matters progress.

20.The Minister for Communications and Works voiced his agreement and support of the sentiments expressed with respect to the revocation of the membership of the captioned Board.

21.Voicing his concerns, the Chairman said that the Cabinet has wide discretionary powers, which should be used in accordance with principles of administration and not without justifiable reasons. This he said risks undermining the Cabinet's commitment to good administration and good governance.

22.The Premier thanked the Chairman for noting his concern on the matter but pointed out that the Chairman's definition of justifiable reasons differed from theirs.

Decision Sought

23.Cabinet:

- a. approved the revocation of the appointments of all members, except the ex-officio members, of the following Boards, with immediate effect:
 - i. British Virgin Islands Tourist Board; and
 - ii. British Virgin Islands Ports Authority.
- b. decided that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the minutes.



MEMORANDUM

FROM: Attorney General

TO: Permanent Secretary, Premier's Office

DATE: 13th May 2019

SUBJECT: Appointment of New Board Members to the BVI Ports Authority Board

I refer to the Cabinet Paper dated 6th May 2019 in regards to the captioned subject.

I have reviewed the Cabinet Paper with respect to the appointment of new members of the Board of the BVI Ports Authority Board. I note that it is a requirement under the First Schedule to the BVI Ports Authority Act ("Act") that six (6) members of the Board should not be Public Officers. There is a further requirement that in appointing the members of the Board, Cabinet should take into account "the desirability of such interest as are affected by the Authority's activities being represented."

My understanding of the words quoted above is that Cabinet, in appointing Board members, should consider the competence and capability of potential members against the backdrop of the objectives of the British Virgin Islands Port Authority and in particular its functions under section 4 of the Act. The paper does not indicate in the background how the qualifications of the proposed members have a bearing on the objectives of the Board. My view is that it is necessary for the paper to do so.

I note that the Cabinet Paper has put forward "youth presentation" as a basis for the proposed composition of the Board. This is, however, not required under the First Schedule. It would seem to me, from decision making in an administrative law context, having regard to the First Schedule, an irrelevant consideration.

And I so advise.



Baba Aziz
Attorney General

BA/mjl

Government of the Virgin Islands, TTT Building, 4th Floor, P.O. Box 242,
Road Town, Tortola VG1110, Virgin Islands
Tel: (284) 468-2960 ~ Fax: (284) 468-2983 ~ E-mail: agc@gov.vg

Appointment of New Board Members to the BVI Ports Authority Board

Signed

· 06 May 2019 · PO · Mrs. Elvia Smith-Maduro · Memo No. 154/2019

Background Information

1) On 27th March 2019 Cabinet via memorandum No. 103/2019 revoked the appointment of all members of the Ports Authority Board with immediate effect as follows:

- i. Mr. Wendell Gaskin – Chairman
- ii. Ms. Linell M. Abbott – Member
- iii. Mr. Kevin S. Fahie – Member
- iv. Mr. Walford Farrington – Member
- v. Ms. Patricia Romney – Member
- vi. Mr. Ibrahim Tarabay – Member

2) This Administration's desire to reshuffle the composition of each board to include youth representation of the boards. As such the membership of the current board was revoked in keeping with the this Administration's policy for inclusions and the new policy regarding appointments of board membership not extending beyond the sitting of the Government's tenure. Due to the critical role the Board plays for setting the policy direction for the operations of the Port Authority it is important that the appointment of new board members be approved as a matter of urgency. The Ports is scheduled for an audit by the international regulatory authority in November 2109 and will undergo a pre-

audit in August. It is therefore critically important for the board to be reinstated to provide oversight of the daily operations of the Ports and so that the audit results in a favorable outcome for the facility.

3) Cabinet is therefore asked to approve the appointment of the following persons to serve as board members of the BVI Ports Authority for a period of three (3) years;

- i. Mr. Nathaniel Isaac – Chairman
- ii. Mr. Keith Flax – Member
- iii. Ms. Roxane Sylvester – Member
- iv. Mr. Egar Wattley – Member
- v. Mrs. Patsy Lake –Member
- vi. Mrs. Tamarie Wheatley-Hodge – Member
- vii. Mr. Damien Lettsome – Member
- viii. Financial Secretary - Ex-Officio
- ix. Permanent Secretary, Premier’s Office – Ex-Officio
- x. Managing Director, BVI Ports Authority – Ex-Officio

4) All the nominees have been contacted and invited to serve on the Ports Authority Board. They have all responded agreeing to serve on the Board. Resumes have been submitted for Mr. Isaac, Ms. Sylvester, Mr. Whattley, Mrs. Wheatley-Hodge, Mr. Lettsome and Mr. Flax are attached as **Appendices A, B, C, E, F and G** respectively. Mrs. Lake accepted to serving on the Board (**see Appendix D**) but indicated that she will provide her resume shortly.

Purpose

5) The purpose of this paper is to appoint new Board members to the BVI Ports Authority Board

Cross-Ministry Consultation

6) No cross ministry consultation is required regarding the decision sought.

Financial Implications

7) There are no direct financial implications to the Government of the Virgin Islands as the monthly remunerations to be paid to the members are the responsibility of the BVI Ports Authority.

8) I will respectfully suggest that the actual instruments appointing the Board members provide for a staggered term membership. There should be different length of service (albeit within the New Administration's policy of not outliving any administration political term) to ensure continuity at all times in the life of the Board. This can easily be accomplished since legislation establishing statutory boards inevitably provide for the renewal of terms of service.

Legal Implications

9) The Attorney General's comments are attached at **Appendix H**.

Budget

10) The cost associated with stipends paid to the members will be covered from the Ports Authority.

Communication Strategy

11) The appointment of the new Board will be published in the official Gazette.

Conclusion

12) Cabinet is invited to approve the decision sought.

Decision Sought

Cabinet amended item (a) and:

a. approved the appointment of the following persons to the British Virgin Islands Ports Authority Board effective 16th May, 2019:

- i. Mr. Nathaniel Isaac as Chairman for a period of three (3) years;
- ii. Ms. Roxane Sylvester as Member for a period of three (3) years;
- iii. Mr. Vincent Wattley as Member for a period of three (3) years;
- iv. Mrs. Patsy Lake as Member for a period of three (3) years;
- v. Mr. Keith Flax as Member for a period of two (2) years;
- vi. Mrs. Tamarie Wheatley-Hodge as Member for a period of two (2) years;
- vii. Mr. Damien Lettsome as Member for a period of two (2) years;
- viii. Financial Secretary, ex-officio;

ix. Permanent Secretary/Premier's Office, ex-officio;and

x. Managing Director, BVI Ports Authority, ex-officio.

b. decided that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

a.

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Andrew A. Fahie
Premier
14 May 2019

COMMISSION OF INQUIRY REQUEST FOR INFORMATION (DOCUMENT 2)

Composition of the Climate Change Trust Fund Board

The Board shall consist of nine members, six of whom are private sector and civil society representatives and three ex-officio members.

CLIMATE CHANGE TRUST FUND BOARD COMPOSITION 2017 – 2020

| Member Name | Position | Appointment Date | Term (yrs) |
|------------------------------------|--|----------------------------|------------|
| Edward Childs | Chairman | 15 th June 2017 | 3 |
| John Klein | Deputy Chairman | 15 th June 2017 | 3 |
| Shelly Bends | Board Member | 15 th June 2017 | 3 |
| Dr. Shannon Gore | Board Member | 15 th June 2017 | 2 |
| Mr. Ronnie Lettsome | Board Member | 15 th June 2017 | 2 |
| Dr. Katherine Smith | Board Member | 15 th June 2017 | 1 |
| Glenroy Forbes | Ex-officio member Financial Secretary | 15 th June 2017 | 3 |
| Ronald Smith-Berkeley | Ex-officio member Permanent Secretary, Ministry of Natural Resources and Labour | 15 th June 2017 | 3 |
| Chief Executive Officer, VICCTF | Not in place as operational structure was not in place | | |

1. Whether the VICCTF is still in operation': The board is not in operation.

. If the Board is no longer in operation, please can you confirm:

(a) who dissolved the Board, and what power was used to dissolve the Board:

The Board was dissolved through the powers of Cabinet -Memo No. 122/2019: Revocation of the Appointments of the Membership of the Virgin Islands Climate Change Trust Fund Board. However, it is important to note that the Members of the Board were asked to consider voluntary resignation to allow for new policies to be formed to guide the formation of all Boards upon the life of any new Administration . The membership of this Board was not re-established to date.

Further, Memo No. 155/2019: Amendment to the Virgin Islands Climate Change Trust Fund Act, 2015 sought approval to amend section 16 subclause 2 of the Climate Change Trust Fund Act to give Cabinet discretionary powers to revoke the appointment of any member of the Board of Trustees.

(b) what were the reasons to dissolve the Board;

Memo No. 122/2019 : Revocation of the Appointments of the Membership of the Virgin Islands Climate Change Trust Fund Board cited the following:

(i) "it is common practice that some or all membership of boards are revoked, and new members appointed to the respective boards"

(ii) "The desire is also to reshuffle the membership of each statutory board to include the appointment of a youth to each board"

(iii) The new policy of the new government administration is for the terms of each board should not extend beyond the tenure of the government administration that appointed them."

(c) what happened to the funds/assets held by the Trust

The funds are held in an account with the treasury.



April 5, 2019

Mr. Edward Childs
Chairman,
Climate Change Trust Fund Board,
Road Town, Tortola,
British Virgin Islands.

Dear Mr. Childs

RE: Climate Change Trust Fund Board

I write with regard to the above captioned subject.

As you are aware, this administration has just taken office a little over five weeks ago. Since taking office, I have been assessing the functions and composition of the Statutory Boards across government and more so those Boards that fall under the portfolio of the Premier's Office.

Further, you may be aware that a number of portfolios had been shifted around. Therefore, and in this regard, the Climate Change portfolio has been moved to the Premier's Office. Thus, in keeping with our mandate, it is this Government's intention to restructure the composition of membership on each board inclusive of youth involvement on each board. A new policy attaching term limits on board membership to coincide with the term of the sitting Government is now being implemented.

Hence, in view of the foregoing, we are seeking your cooperation in voluntarily tendering your resignation from the Climate Change Trust Fund Board by Thursday April 11, 2019.

The Government thanks you for your service rendered and wishes you success in your future endeavor.

Sincerely,


Andrew A. Fiala
Premier
Territory of the Virgin Islands.
Government of the Virgin Islands.

APR 05 2019

Revocation of the Appointments of the Membership of the Virgin Islands Climate Change Trust Fund Board

Signed

· 23 April 2019 · PO · Mrs. Elvia Smith-Maduro · Memo No. 122/2019

Background Information

1) The Virgin Islands Climate Change Trust Fund was established under the Virgin Islands Climate Change Trust Fund Act 2015. Section 12 of the Act calls for the establishment of a Board of Trustees to have executive control and management of the affairs of the Trust, and shall exercise and perform the functions, powers and duties of the Trust on its behalf, and shall be responsible for its effective and efficient administration. The current membership of the Virgin Islands Climate Change Trust Fund is as follows:

- i. Mr. Edward Childs – Chairman
- ii. Mr. John Klein – Deputy Chairman
- iii. Ms. Shelly Bends – Member
- iv. Dr. Shannon Gore – Member
- v. Mr. Ronnie Lettsome – Member
- vi. Dr. Katherine Smith – Member
- vii. Mr. Glenroy Forbes – Ex-Officio
- viii. Mr. Ronald Smith-Berkeley –Ex- Officio

ix. Chief Executive Officer of the Trust – Ex- Officio

2) 2. As a result of the recently concluded general elections, there was a change in the government administration and a reshuffling of portfolio subjects across ministries. The Virgin Islands Climate Change Trust Fund Board, which was a portfolio subject under the Ministry of Natural Resources and Labour was transferred to the Premier's Office.

3) 3. With each new Government Administration, it is common practice that some or all memberships of boards are revoked, and new members appointed to the respective boards. The manifesto of the new government administration calls for innovative, forward and progressive ideas, initiatives and action from each government ministry, department and agency during this recovery period. For those initiatives that must be implemented through a statutory body, the same principles for innovative, forward and progressive initiatives and action will be required. In keeping with the new government policy for inclusions the desire is also to reshuffle the membership of each statutory board to include the appointment of a youth to each board. In addition, the new policy of the new government administration is for the terms of each board should not extend beyond the tenure of the government administration that appointed them. As such Cabinet's approval is being sought to revoke the appointment of each board member of the Virgin Islands Climate Change Trust Fund Board with the exception of the ex-officio members to allow for the right mix of new innovative and progressive minded members to be appointed that would include representation of youth on the board. A list of the current membership of the Virgin Islands Climate Change Trust Fund Board is attached at **Appendix A**.

Purpose

4) The purpose of this paper is to seek the approval of members to revoke the appointments of the current Climate Change Trust Fund Board to make way for the appointment of new members at a later stage.

Cross-Ministry Consultation

5) There is no need for cross-ministry consultation.

Financial Implications

6) In light of the learned Attorney General's comments with respect to the legal implications of the decision being sought, I can only caution that in revoking the membership of the Board that the Honourable Members of Cabinet exercise the powers afforded under the Act in a reasonable manner. To exercise such powers otherwise could expose the Administration to the risk of persons seeking judicial review of the decision taken.

Legal Implications

7) Section 16(2) provide the grounds for the removal of a Member of the board. These grounds include satisfaction of the Minister with the approval of Cabinet that the member:

- i. is guilty of misconduct;
- ii. failed to attend four (4) consecutive meetings of the Board, of which the member had notice except where leave was granted by the Board, or where the member is excused by the Board for having been absent from those meetings; or
- iii. knowingly failed to notify the Board of a conflict of interest;
- iv. no longer fulfills the conditions of appointment as set forth in section 12; or

v. acts in a way that is detrimental to the Trust.

8) It therefore appears from this section that justifiable reasons have to be provided for the removal of members of that Board.

Budget

9) There are no budgetary implications to the decision sought.

Communication Strategy

10) Notice of the revocation of the appointments would be published in the official Gazette of the Virgin Islands

Conclusion

11) Cabinet is asked to consider and concur with the decision sought.

Decision Sought

Cabinet is invited to decide:

a. that the membership of the following board members of the Virgin Islands Climate Change Trust Fund Board be revoked effective 24th April, 2019:

1. Mr. Edward Childs – Chairman
2. Mr. John Klein – Deputy Chairman
3. Ms. Shelly Bends – Member
4. Dr. Shannon Gore – Member
5. Mr. Ronnie Lettsome – Member

6. Dr. Katherine Smith - Member

- b. that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

put in about policy extending

Recipients: Financial Secretary, MOF; Attorney General, AGC;

Hon. Andrew A. Fahie
Premier
23 April 2019

MEETING NO. 5 OF 2019

Agenda No: C/2/AGEN/10/2019

Present

| | |
|---|-------------------------------|
| Deputy to Governor and Chairman | Mr. David Archer, Jr. |
| The Premier | Hon. Andrew A. Fahie |
| Minister for Education, Culture, Youth Affairs, Fisheries and Agriculture | Dr. the Hon. Natalio Wheatley |
| Minister for Transportation, Works and Utilities | Hon. Kye Rymer |
| Minister for Natural Resources, Labour and Immigration | Hon. Vincent Wheatley |
| Minister for Health and Social Development | Hon. Carvin Malone |
| Attorney General | Hon. Baba Aziz |

Absent

| | |
|--------------|------------------------------|
| The Governor | H. E. Augustus J. U. Jaspert |
|--------------|------------------------------|

Cabinet Officials

| | |
|-------------------|-----------------|
| Cabinet Secretary | Ms. Sandra Ward |
|-------------------|-----------------|

Memorandum - NO. 122/2019 - BY THE PREMIER - Revocation of the Appointments of the Membership of the Virgin Islands Climate Change Trust Fund Board

Deliberations

- 36.The Premier presented this paper.
- 37.Referencing the captioned paper, the AG cautioned the Cabinet that the reasons for the removal of members from the Virgin Islands Climate Change Trust Fund Board are clearly stated in the respective law.
- 38.The Premier reiterated this Administration's new policy that Board memberships would not extend beyond the term of this Administration.
- 39.The Premier informed Cabinet that he had asked the membership to resign from the Board.
- 40.The AG expressed his concern that in revoking the appointments of members of the Virgin Islands Climate Change Trust Fund Board, that the conditions for the removal listed in Section 16.2 of that legislation has not been demonstrated to exist.

Decision Sought

41. Cabinet decided:

- a. that the membership of the following board members of the Virgin Islands Climate Change Trust Fund Board be revoked effective 24th April, 2019:
 1. Mr. Edward Childs – Chairman
 2. Mr. John Klein – Deputy Chairman
 3. Ms. Shelly Bends – Member
 4. Dr. Shannon Gore – Member
 5. Mr. Ronnie Lettsome – Member
 6. Dr. Katherine Smith – Member
- b. that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.

Amendment to the Virgin Islands Climate Change Trust Fund Act, 2015

Signed

· 03 May 2019 · PO · Mrs. Elvia Smith-Maduro · Memo No. 155/2019

Background Information

1) The Climate Change Trust Fund Act 2015 was passed and assented to by Governor John S. Duncan on 15th May 2015. The Act establishes the Virgin Islands Climate Change Trust Fund. The Trust is governed by a Board of Trustees comprised the following persons:

- a. the Permanent Secretary of the Ministry of Natural Resources and Labour, ex officio;
- b. the Financial Secretary, ex officio;
- c. the Chief Executive Officer of the Trust or his or her designate, ex officio;
- d. six other members appointed with the approval of Cabinet, by the Minister by instrument in writing as follows:
 - i. a private sector representative of the tourism industry;
 - ii. a private sector representative of the financial services sector;
 - iii. a private sector representative of any sector responsible for making contributions to the Fund, not already represented on the Board;
 - iv. a representative from an academic or research organisation ordinarily resident in the Territory;

v. a representative from a non-governmental organisation or community-based organization ordinarily resident in the Territory; and

vi. an individual ordinarily resident in the Territory, who may possess relevant knowledge, expertise or experience related to the purposes of the Act.

2) The Board shall have executive control and management of the affairs of the Trust, and shall exercise and perform the functions, powers and duties of the Trust on its behalf, and shall be responsible for its effective and efficient administration.

3) Section 16 subclause 2 (a-e) outlines the conditions by which the Minister can revoke the appointment of a member of the Board of Trustees as follows:

4) The Minister may, with the approval of Cabinet, revoke the appointment of a member of the Board, other than a Government member if the Minister is satisfied that the member:

i. is guilty of misconduct;

ii. failed to attend four (4) consecutive meetings of the Board, of which the member had notice except where leave was granted by the Board, or where the member is excused by the Board for having been absent from those meetings; or;

iii. knowingly failed to notify the Board of a conflict of interest;

iv. no longer fulfills the conditions of appointment as set forth in section 12; or

v. acts in a way that is detrimental to the Trust.

5) Approval is being sought to add an additional sub clause that gives Cabinet discretionary powers to revoke the appointment of any member of the Board of Trustees.

6) The Climate Change portfolio has been transferred to the Premier's Office from the Ministry of Natural Resources and Labour. It is customary that the Ministry to which statutory bodies fall would have a representative on the Board as an ex-officio member. As such Cabinet is also asked to approve the appointment of the Permanent Secretary, Premier's Office as an ex-officio member of the Climate Change Trust Fund Board; and to remove the Permanent Secretary, Ministry of Natural Resources and Labour as an ex-officio member of the Board.

Purpose

7) To amend Section 12 sub-clause 2 of the Climate Change Trust Fund Act to add the Permanent Secretary, Premier's Office as an ex-officio member to the Board of Trustees.

8) To amend Section 12 sub-clause 2 of the Climate Change Trust Fund Act to remove the Permanent Secretary, Ministry of Natural Resources and Labour as an ex-officio member to the Board of Trustees.

9) To amend Section 16 sub-clause 2 of the Climate Change Trust Fund Act to give Cabinet discretionary powers to revoke the appointment of any member of the Board of Trustees.

Cross-Ministry Consultation

10) The Ministry of Natural Resources and Labour has been invited to comment on the decision sought.

Financial Implications

11) There are no adverse financial implications for Government based on the decision sought.

Legal Implications

12) The Attorney General's comment is at **Appendix A**.

Budget

13) No budgetary implications to the decision sought.

Communication Strategy

14) To be published through the usual Cabinet Office machinery.

Conclusion

15) Cabinet is invited to approve the decision sought.

Decision Sought

The captioned paper was deferred for two (2) weeks to give the Premier and the Attorney General time to have further discussions on the proposed amendments.

Recipients: Financial Secretary, MOF; Attorney General, AGC; Permanent Secretary, MNRLI;

Hon. Andrew A. Fahie
Premier
14 May 2019

MEMORANDUM

From: Attorney General
To: Permanent Secretary
Date: 9th May, 2019
Subject: Virgin Islands Climate Change Trust Fund Act, 2015

Advice

I would strongly advise against the amendment of the Climate Change Trust fund Act (the Act) by way of substituting “the removal of members of the Trust Corporation at the discretion of the Minister and Cabinet” for the elaborate basis for removal of the members contained in section 16 of the Act. No reason has been advanced for the proposed amendment.

The proposal to add another ex-officio member, namely the Permanent Secretary, in the Premier’s Office may on its face be unobjectionable. However, with that addition, the total membership of the Board becomes an even number and may produce a deadlock. There has also been no reason advanced for adding an additional ex-officio member to this trust.

Discussion

I had on previous occasions drawn attention to the fact that even where discretionary power is granted for the removal of members of any statutory corporation, such discretion must be exercised in accordance with the well- established principles of the exercise of such discretionary power. I noted that this involves exercising the power in good faith, reasonably and for the purposes of the Act which established the statutory Corporation.

The above is captured amongst the principles of the “rule of law” as this concept is explained by Lord Bingham and it is that: Ministers and public officials must exercise the powers conferred on them by statute in good faith, fairly, for the purpose for which the powers were conferred- reasonably and without exceeding the limits of such powers.

The basis of my advice follows from a careful review of the Act, paying particular attention to the purpose for which the Board of Trustees was established.

First, it must be pointed out that the Act creates a trust corporation. This places the Act and by extension, the corporation in a special category distinct and apart from other statutory corporations established by the Legislature and which although have autonomy the Government exercises some control however attenuated that may be.

Because the Act is in a special category, any amendment thereto must be handled with care.



It must be emphasised that in contrast to other statutory corporations, by section 10(1) the Trust Fund **is not** a Government fund of the Territory and the capital and revenue of the Trust **is not** public money of the Virgin Islands and as such **is not** subject to control and accounting except as provided by this Act.

By section 10(3) the Trust is (a) **not** entitled to any immunity or privilege in the Territory; (b) **cannot** render the Government of the Virgin Islands liable for any debts, liabilities or obligations of the Trust; and (c) **is not** a public authority for any purpose and is taken **not** to have been constituted or established for a public purpose.

Under section 12(2), there is a requirement for a strong representation on the Board from the private sector of persons in Tourism, financial services as well as from those who may make contributions to the Board and not already represented on the Board. Additionally, there is representation on the Board from an academic or research organization ordinarily resident in the Territory; a representative from a non-governmental organization or community-based organization ordinarily resident in the Territory and an individual ordinarily resident in the Territory who may possess relevant knowledge, expertise or experience related to the purposes of the Act.

Section 12(3) of the Act prescribes exhaustively for certain qualification for potential members of the Board of Trustees.

Section 13 requires appointments of Board members to be made by the Minister after approval of Cabinet after a public advertisement of the qualifications and other criteria required for eligibility to be appointed to the Board and also affording the public the opportunity to nominate candidates for appointment to the Board. The form of advertisement is also prescribed.

It is perhaps important at this point to note that having regard to the scheme of the Act, the Minister and the Cabinet are constituted as agents (since the fund **is not** a Government funds to appoint and remove the Board and as such have fiduciary responsibility. Accordingly, just as a trustee has power to enable him to better perform his duties and to exercise those duties for the benefit of the trust, so too must the Minister and the Cabinet as "appointors" - and therefore fiduciaries - of the Trust Corporation, when exercising the power to appoint and remove the members must bear in mind that the powers granted to them are for the ultimate purpose of taking part in the administration of the trust for the interest of the Trust and no other.

In my considered view, and against the backdrop of the foregoing, the appointment and removal process enshrined in the Act is more in harmony with the objects and purposes of the Act than the propose removal of the Members at the discretion of Cabinet. By providing sunlight in the current removal process, the Minister and Cabinet secure the requisite protection from any allegation of breaches or abuse of fiduciary responsibility that may bedevil removal at their discretion.



I note in passing that section 15 provides for Board members to be appointed for a term of three (3) years but eligible for reappointment if qualified. There is no legal obligation to renew an appointment which has lapsed by effluxion of time. The Minister and the Cabinet have the opportunity to remove a board member for stated reasons during the term, as well as a discretion not to renew at the end of a term.

The provisions of the Act in relation to the Trust Corporation is informed and founded on common law principles of trust. Accordingly, a discussion of these principles is perhaps apposite.

In the case of **Hospital Products Ltd v United States Surgical Corp**(1984)156 CLR 41 at 96-97 Mason J in the High Court of Australia described the scope of a fiduciary relationship in the following words:

“The accepted fiduciary relationships are sometimes referred to as relationships of trust and confidence or confidential relations..viz....trustee and beneficiary, agent and principal.....the critical feature of these relationships is that the fiduciary undertakes or agrees to act for or on behalf of or in the interests of another person in the exercise of a power or discretion which will affect the interests of that person in a legal practical sense. The relationship between the parties is therefore one which gives the fiduciary a special opportunity to exercise the power or discretion to the detriment of that other person who is accordingly vulnerable to abuse by the fiduciary of his position”

The Minister and Cabinet as “appointors” are agents having fiduciaries responsibility described in the above citation. They are entrusted with powers which are to be exercised consistent with the purposes of the trust. It has been said that it is partly because the fiduciary’s exercise of the power or discretion can adversely affect the interest of the person to whom the duty is owed and because the latter is at the mercy of the former that the fiduciary comes under a duty to exercise his power of discretion in the interest of the person to whom it is owed. It has been stated more specifically in **The Matter Of The Representation Of Jasmine Trustees Limited [2015] JRC 196**, (a case in a Jersey Court) that the power to appoint trustees is a fiduciary responsibility, requiring the trustee:

- i. to act in good faith and in the interests of the beneficiaries as a whole;
- ii. to reach a decision open to a reasonable appointor;
- iii. to take into account relevant matters and only those matters; and
- iv. not to act for an ulterior purpose. This harkens back to the discretionary principles explained in the first paragraph under the rubric discussion.

In the light of all of the above, particularly the emphasis that (i) the trust is not a Government property; (ii) the Government is not liable for the trust and (iii) the elaborate scheme in the appointment of the board members, as well as, the basis for their removal that the Government must reconsider its proposal to amend the Act; particularly the proposed amendment to remove Members for ascertained justifiable reasons.



And I so advise.



Baba Aziz¹
Attorney General



CABINET MEETING NO. 9 OF 2019

Published



· 15 May 2019 · Premier's Conference Room, Road Town

· **Agenda No:** C/2/AGEN/14/2019 (/agendas/17)

Present

| | | |
|---|-------------------------------------|--|
|  (/minutes/15/minute_items/530/edit) The Governor | H. E. Augustus J. U. Jaspert |  (/minutes/15/minute_items/530) |
|  (/minutes/15/minute_items/531/edit) The Premier | Hon. Andrew A. Fahie |  (/minutes/15/minute_items/531) |
|  (/minutes/15/minute_items/532/edit) Minister for Education, Culture, Youth Affairs, Fisheries and Agriculture | Dr. the Hon. Natalio Wheatley |  (/minutes/15/minute_items/532) |
|  (/minutes/15/minute_items/533/edit) Minister for Transportation, Works and Utilities | Hon. Kye Rymer |  (/minutes/15/minute_items/533) |
|  (/minutes/15/minute_items/535/edit) Minister for Health and Social Development | Hon. Carvin Malone |  (/minutes/15/minute_items/535) |
|  (/minutes/15/minute_items/536/edit) Attorney General | Hon. Baba Aziz |  (/minutes/15/minute_items/536) |


Absent

| | | | |
|--|--|-----------------------------|--|
|  (/minutes/15/minute_items/537/edit) Overseas on Official Business | Minister for Natural Resources, Labour and Immigration | Hon. Vincent Wheatley |  (/minutes/15/minute_items/537) |
|--|--|-----------------------------|--|


Cabinet Officials

Cabinet Secretary

Ms. Sandra
Ward

 (/minutes/15/minute_items/544)


In Attendance

 (/minutes/15/minute_items/540/edit)
Permanent Secretary (Acting)

Mrs.
Elvia
Smith-
Maduro

For
Agenda
Item
Memo
No.
125/2019

 (/minutes/15/minute_items/540)

 (/minutes/15/minute_items/541/edit)
Deputy Financial Secretary

Ms.
Alva
McCall

For
Agenda
Item No.
126/2019

 (/minutes/15/minute_items/541)

Commencement and Opening Prayer

 (/minutes/15/minute_items/542/edit)

The Chairman called the meeting to order at 10:00am. The prayers were said by the Premier and Minister of Finance Hon. Andrew A. Fahie.

Matters Arising

There were no matters arising from the Minutes.

Matters for Consideration



INFORMATION PAPER - NO. 153/2019 - BY



Deliberations

1. The Governor presented this paper.
2. The Chairman invited comments.
3. In reviewing Appendix A - List of Early Recovery Projects, the Premier noted that the costings for the projects were not listed. The Premier therefore asked the Chairman for the specific costs per projects.
4. The Chairman said the Cash Assistance Programme listed an amount. However, the Chairman pointed out that it would be difficult to list the specific amounts per project because the UK's support was in the form of technical assistance, human resources (UK prison officers and engineers) and other services. In addition, UK support was provided to all of the hurricane affected Overseas Territories such as Anguilla and the Turks and Caicos Islands.
5. The Premier asked about the \$80M given by the UK Government and its use. The Chairman responded that he could not provide a breakdown of the \$80M.
6. Members further reviewed Appendix A and discussion ensued on the various projects and the overall UK support.

7. The Minister for HSD enquired about the operational cost of the Recovery and Development Agency (RDA) and that he would like to receive that information.
8. ***Action By:***
9. The Cabinet asked that the Cabinet Secretary liaise with Mr. Paul Bayly, CEO of the RDA and request the RDA's budget and operational costs.
10. The Deputy Premier asked about the possibility of grants through technical support or establishing UK departments to GoVI departments relationships.
11. The Chairman stated that this question could be another discussion on UK support focusing on the Conflict, Stability and Security Fund (CSSF). He said the Territory had benefited from this fund in the areas of increasing the the police armed services and other areas. The Chairman advised that funds are limited but that a further discussion could be held on this matter.
12. Discussion shifted to Government buildings.
13. The Premier enquired about the status of the repairs to the Central Administration Complex. He expressed concern that the repairs project was not at an advanced stage.
14. The Chairman mentioned that the Deputy Governor was currently working on a report on the status of government owned buildings.

15. The Premier and Minister of Finance referenced the Cabinet decision, which is recorded as "Consultancy Service for Engineering and Architectural Design, Construction Supervision and Contract Management for the Rehabilitation of the Central Administration Complex"(Memo No. 004/2019). This decision agreed with the recommendation of the Central Tender Board to award OBMI International (OBMI) the contract for Consultancy Services for Engineering and Architectural Design, Construction Supervision and Contract Management for the Rehabilitation of the Central Administration Complex in the amount of two million, seven hundred and four thousand, forty dollars and thirty-four cents (\$2,704,040.34), and for the Ministry of Finance and the Ministry of Communications and Works to negotiate a contract in an effort to obtain a lower price.
16. The Premier and Minister of Finance pointed out that he proposes to have the aforementioned decision rescinded with a view to having the Ministry of Transportation, Utilities and Works lead on the rebuild of the Central Administration Complex and therefore retain the \$2.7M.
17. Discussion followed on the matter.
18. Cabinet decided to instruct the Ministry of Finance to rescind Cabinet decision Memo No. 004/2019 and prepare the requisite paper for next week's meeting.
19. The Chairman also stated that he would have the Deputy Governor provide the Cabinet with an update, as an Information

Paper, on the state of Government owned buildings to be presented at next week's meeting.

Decision Sought

20. Cabinet noted:

- a. that the UK provided substantial humanitarian support in the immediate aftermath of the disasters of 2017 with over \$80M going to support the affected Overseas Territories (Anguilla, Turks and Caicos Islands and British Virgin Islands);
- b. that UK funding has delivered approximately £14.6M of support to the GoVI early recovery projects;
- c. that all but one of the UK funded early recovery projects have now completed and transitioned to either the RDA or the relevant Ministry;
- d. that the Memorandum of Understanding attached as **AppendixB** between GOVI and the UK transferring all early recovery project assets to GOVI still needs to be

executed;

e. that the UK Government is committed to providing further support for the longer recovery in the form of a UK loan guarantee of up to £300M;

f. that the UK is currently supporting the long-term recovery and development effort through a £10M grant and that the effectiveness of this support to date will be reviewed in May to June 2019; and

g. that the UK FCO and the GOVI Ministry of Finance each have a Memorandum of Understanding with the RDA to support the RDA's operational costs.



(/minutes/15/minute_items/519/edit)

**Memorandum - NO. 154/2019 - BY THE
PREMIER - Appointment of New Board
Members to the BVI Ports Authority Board
(/memorandums/191)**



(/minutes/15/r

Deliberations

21. The Premier presented this paper.
22. Regarding the captioned paper, the AG referenced his comments at **Appendix H** stating that in appointing Board members, the Cabinet should consider their

competencies and capabilities against the objectives of the British Virgin Islands Ports Authority and in particular its functions under Section 4 of the Act. He mentioned that there was no reference of the skills set of the nominees in the Cabinet paper.

23. The Chairman also asked about the skills set of the proposed Board membership. The Premier responded that all proposed members, with the exception of one, manage and operate related businesses.
24. The Chairman said it was important that Board members possess the skills set and knowledge relevant to international security, maritime skills and other related areas to ensure the required response to any threats of shutdown of the Territory's ports or other factors. He added that the related skills set are justifiable reasons to be a member on a respective Board.
25. The Premier stated that he was confident in the ability and skills of the proposed membership to be appointed to the BVI Ports Authority Board.

Decision Sought

26. Cabinet amended item (a) and:
 - a. approved the appointment of the following persons to the British Virgin Islands Ports Authority Board effective 16th May, 2019:
 - i. Mr. Nathaniel Isaac as Chairman for a period of three (3)

years;

ii. Ms. Roxane
Sylvester as
Member for a
period of three (3)
years;

iii. Mr. Vincent Wattley
as Member for a
period of three (3)
years;

iv. Mrs. Patsy Lake as
Member for a
period of three (3)
years;

v. Mrs. Tamarie
Wheatley-Hodge as
Member for a
period of two (2)
years;

vi. Mr. Damien
Lettsome as
Member for a
period of two (2)
years;

vii. Mr. Keith Flax as
Member for a
period of one (1)
year;

viii. Financial Secretary,
ex-officio;

ix. Permanent
Secretary/Premier's
Office, *ex-*
officio;and

x. Managing Director,
BVI Ports Authority,
ex-officio.

27. b. decided that an expedited extract be issued to allow the decision of the Cabinet to be acted upon before the confirmation of the Minutes.
-



(/minutes/15/minute_items/520/edit)

**Memorandum - NO. 155/2019 - BY THE
PREMIER - Amendment to the Virgin Islands
Climate Change Trust Fund Act, 2015
(/memorandums/187)**



(/minutes/15/r

Deliberations

28. The Premier presented this paper.
29. The Attorney General referenced his comments outlined in Appendix A and pointed out that he had advised against the proposed amendment to the Act. The AG informed the Cabinet that the Climate Change Trust Fund is not a Government fund of the Territory.
30. In response, the Premier stressed that he would not be party to any organisation or Trust Fund that was established by the Government and thereafter was not under the auspices of or could not be directed by the said Government. However, the Premier said he was willing to have further discussions with the Attorney General on the matter to ensure that both perspectives were taken into consideration.

Decision Sought

31. The captioned paper was deferred for two (2) weeks to allow the Attorney General and the Premier to have further discussions on the proposed amendments to the Act.



(/minutes/15/minute_items/521/edit)

**Memorandum - NO. 156/2019 - BY
MINISTER OF FINANCE - Temporary Office
Accommodation - Department of Motor**



(/minutes/15/r

Deliberations

32. The Minister of Finance presented this paper.
-

Decision Sought

33. Cabinet decided:
- a. that the Government of the Virgin Islands enter into a lease agreement with Henry Harrigan on a month-to-month basis for the rental of premises located at Virgin Gorda South Registration Section, Block 4840B, Parcel 275 at the rate of \$1,300 per month to temporarily accommodate the Department of Motor Vehicles, Virgin Gorda Branch;
 - b. that payment of rent be met from Head 27614201, Subhead Rent of Offices 521100;
 - c. that the Deputy Governor's Office instruct the Attorney General's Chambers to vet the lease prepared by the landlord; and
 - d. that an expedited extract be issued to allow for the implementation of Cabinet's decision before the confirmation of the minutes.



(/minutes/15/minute_items/522/edit)

**Memorandum - NO. 126/2019 - BY
MINISTER OF FINANCE - Waiver of Tender
Process for the Purchase of the New
Immigration Border Management System
(/memorandums/85)**



(/minutes/15/r

Deliberations

34. The Minister of Finance presented this paper.
35. The Chairman welcomed to the meeting the Acting Permanent Secretary (PS) in the Premier's Office Mrs Elvia Smith-Maduro and the Deputy Financial Secretary Ms. Alva McCall.
36. The Chairman invited comments from Members for the team.
37. The Minister for Transportation, Utilities and Works commented that he noted the Government would be paying for the Border system over a five (5) years and enquired if other companies had been considered.
38. The Acting PS/PO responded that they had considered four (4) other border management providers but that some offered systems that were security focused more than a border system. In their view, the other companies did not meet the Territory's requirements.
39. The Chairman asked the team if the four (4) companies were considered why was the public tendering process not used. The team confirmed that a short-list of qualified

companies was compiled but that in aftermath of Hurricane Irma, the Ministry was attempting to expeditiously reestablish the Territory's border system.

40. The Minister for HSD asked the team if the proposed API legislation/border system had been adopted by other destinations. The Acting PS said St. Kitts/Nevis, Antigua and Grenada.
41. The Chairman noted the \$6.4M cost and asked what arrangements were in place for factors such as change of scope, maintenance, international requirements and the ability to ensure costs did not exceed \$6.4M.
42. The Acting PS said that based on discussions with providers, the \$6.4M price is set and she confirmed that there is room for further negotiations on the change of scope. The Acting PS said they actually anticipate the proposed price to decrease because the wider use of the technology would drive costs down.
43. Regarding the contract, the AG told the team that the Chambers would require a proper understanding of what the company would provide, inclusive of the deliverables to avoid the Government encountering any legal challenges in the future. He added that the scope of works is very important and that this section should be clear.
44. To ensure that the government did not have any surprises in the coming weeks, the Minister for HSD asked the team who prepared the Request for Proposal (RFP). The Acting PS said it was a collaborative

effort among the Premier's Office, Immigration Department and the Department of Information Technology. She said they also contacted other jurisdictions that currently use this border management system to learn of their successes and challenges.

45. The Deputy Financial Secretary (DFS) said the RFP usually originates with the requesting Ministry. Recognising the importance of an effective RFP and to minimise any gaps, the DFS informed the Cabinet that the resources of the Procurement Unit would need to be strengthened to be in a position to assist departments in reviewing draft RFP.
46. The Acting PS added that the Premier's Office also consulted with the Immigration Department, the Royal Virgin Islands Police Force, Her Majesty's Customs and the Civil Registry and Passport Office.
47. The Chairman asked the team if the government owns the data and software. The Acting PS said yes government would own the data but would pay a software license. She added that the government would own the software because it is customised to suit the Territory's needs.
48. The Acting PS also informed the Cabinet that the provider has committed to hiring Belongers trained in Information Technology, whom the company would train in the use and management of the border management system. They would provide annual training for locals.

49. The Chairman asked if the security is cloud or server based. The Acting PS responded that because of the sensitive information, the security will be server based to ensure that no entity or person can access the system. She said there will be two servers. One will be used as the primary server and the other as an alternate.
50. The Chairman said that the cloud has strong security protocols.
51. The Chairman thanked the Acting Permanent Secretary and the Deputy Financial Secretary for the information shared during the discussion of the captioned paper. He also thanked them for the extensive work done and for recognising the security component and its impact on the economy. The team was excused from the meeting.
52. Cabinet decided that this decision should not be issued as an expedited extract so that it can be further reviewed during the confirmation of the Minutes at next week's meeting.

Decision Sought

53. Cabinet:
 - a. noted that the National Security Council endorsed and agreed that immediate action should be taken to purchase a new Border Management System (BMS) from Canada Bank Notes to replace the legacy (EnTrex) BMS that would enhance the Territory's security

capabilities; mitigate against the existing border threats and bring the Territory's immigration and security services in line with international standards as detailed in the proposal;

b. decided that following an evaluation of a short list of four (4) border management providers, that the formal tendering process be waived for the purchase of a new Border Management System (BMS) to replace the legacy (EnTrex) BMS, which would enhance the Territory's security capabilities, mitigate against the existing border threats, and bring the Territory's immigration and security services in line with international standards;

c. decided that the scoping requirements and negotiation for a contract be taken forward with Canada Bank Notes (CBN) for the design and supply of the new border management system by the Premier's Office and Ministry of Finance with the Immigration Department ("the Department") in the anticipated amount of six million four hundred and forty thousand dollars **(\$6,440,000.00)** payable in annual installments of one million two hundred and eighty eight thousand dollars **(\$1,288,000.00)** over a period of five (5) years as detailed in the proposal; and

d. decided that following negotiations, the Ministry of

Finance instruct the Attorney General's Chambers to draft the contract.



(/minutes/15/minute_items/523/edit)

**INFORMATION PAPER - NO. 157/2019 - BY
MINISTER FOR TRANSPORTATION, WORKS
AND UTILITIES - Complimentary Customized
Registration Plates for the Virgin Islands
Search and Rescue (VISAR) Non-Profit
Organization (/papers/24)**



(/minutes/15/r

Deliberations

54. The Minister for Transportation, Works and Utilities presented this paper.
55. The Deputy Premier and Minister for Education, Culture, Agriculture, Fisheries, Sports and Youth Affairs asked if customised licence plates could be used for fundraising campaigns. The Minister for Transportation, Works and Utilities responded that organisations would not benefit monetarily because the proceeds would be deposited in the government's coffers.
56. Cabinet noted that the Governor is the Patron of VISAR.

Decision Sought

57. Cabinet noted:
 - a. that Virgin Islands Search and Rescue (VISAR), an independent, volunteer-based lifeboat service organization funded mostly by charitable donations, has requested a donation

of one pair of Customized Motor Vehicle Registration Plates bearing the identification mark **VISAR** from the Minister for Transportation, Works and Utilities;

- b. that VISAR intends to register the customized pair of plates on the organization's new Kia motor vehicle;
- c. that the Minister for Transportation, Works and Utilities intends to honour VISAR's request for a complimentary pair of Customized Motor Vehicle Registration Plates;
- d. that the goodwill gesture by the Minister for Transportation, Works and Utilities is in recognition of the vital role VISAR voluntarily plays in Search and Rescue operations in the Virgin Islands' Territorial Waters; and
- e. that the Ministry of Transportation, Works and Utilities (MTWU) will underwrite the Department of Motor Vehicles' cost price of Eighty-five Dollars and No Cents (\$85.00) for the pair of plates, a difference of nine hundred fifteen dollars and no cents (\$915.00) in revenue where the customer would have paid one thousand dollars and no cents (\$1,000.00) for a pair of Customized Registration Plates personalized with the identification mark **VISAR**.



(/minutes/15/minute_items/524/edit)

**Memorandum - NO. 158/2019 - BY
MINISTER FOR HEALTH AND SOCIAL
DEVELOPMENT - BVI Health Services
Authority Revenue and Expenditure Budget**



(/minutes/15/r

Deliberations

58. The Minister for Health and Social Development presented this paper.
59. The Deputy Premier and Minister for Education, Culture, Agriculture, Fisheries, Sports and Youth Affairs said he is concerned about the escalating costs at the BVI Health Services Authority. The Minister said that before assuming office, he had actively questioned the National Health Insurance model. He had noticed the high health care costs and if efforts were not taken to effectively manage the various ailments, the high costs had the potential to bankrupt the Territory; therefore, the Minister said it was time to arrest the current medical crisis. The Minister would welcome the introduction of a strategy that works.
60. The Premier assured the Deputy Premier that he would actively address this matter and seek to reduce the high costs of health care. The Premier stated that he was committed to ensuring that Peebles Hospital offers the services it should despite similar services being offered by the private practitioners.
61. The Premier reiterated that healthcare will be addressed as a priority area. Additionally, he would ensure that this Government institute cardiology services at Peebles Hospital. He commented that the Government currently expends about \$42M

to pay for 100 percent NHI coverage for the Police, Fire Officers, Prison Officers the elderly and children.

62. The Chairman asked if the government was considering medical tourism as an additional revenue generating source. The Minister for HSD responded that the new Board has been charged with building services and establishing the relationships with persons who can assist in advancing medical tourism.

Decision Sought

63. Cabinet:
- a. considered and approved the BVI Health Services Authority's Revenue and Expenditure Budget for the Financial Year 2018/2019; and
 - b. decided that the BVI Health Services Authority's Revenue and Expenditure Budget for the Financial Year 2018/2019 be tabled at the next convenient sitting of the House of Assembly.
-



(/minutes/15/minute_items/525/edit)

Memorandum - NO. 159/2019 - BY
MINISTER FOR HEALTH AND SOCIAL
DEVELOPMENT - Actuarial Review of the
National Health Insurance Plan
(/memorandums/40)



(/minutes/15/r

Deliberations

64. The Minister for Health and Social Development presented this paper.

65. Members discussed the decision sought and agreed that they would like to review the recommendations contained in the said Report, which are to be implemented by the Social Security Board and the Ministry of Health and Social Development, as appropriate.

66. Members also said that they would not approve the additional policy recommendations outlined at **Appendix D** for immediate implementation since the Cabinet would have to approve the recommendations at a later time. Therefore, the Cabinet decided to only receive the report on the Actuarial Review of the National Health Insurance Plan.

Decision Sought

67. Cabinet received the report on the Actuarial Review of the National Health Insurance Plan.



(/minutes/15/minute_items/526/edit)

Memorandum - NO. 160/2019 - BY
MINISTER FOR HEALTH AND SOCIAL
DEVELOPMENT - Revocation of



(/minutes/15/r

Deliberations

68. The Minister for Health and Social Development presented this paper.
 69. Cabinet agreed that 16th May, 2019 should be the effective date of revocation of appointments for members on the BVIHSA Board.
-

Decision Sought

70. Cabinet:
 - a. decided that the appointment of the following members of the British Virgin Islands Health Services Authority Board be revoked effective 16th May, 2019:
 - i. Professor Joseph Federick, member, appointed for three (3) years with effect from 1st May, 2018 to 30th April, 2020;
 - ii. Ms. Alva McCall, member, appointed for three (3) years with effect from 19th March, 2018 to 18th March, 2020;
 - iii. Mr. Romeo Frett, member, appointed for two (2) years with effect

from 15th January, 2019 to
14th January, 2021;

iv. Dr. Yvonne Renee Venzen,
member, appointed for
two (2) years with effect
from 15th January, 2019 to
14th January, 2021;

v. Mrs. Kishelle Blaize-
Cameron, member,
appointed for two (2)
years with effect from
15th January, 2019 to 14th
January, 2021;

b. noted that appointment of new
members to the Board will be
submitted via a separate
Cabinet paper; and

c. decided that an expedited
extract be issued to allow the
decision of the Cabinet be acted
upon before the confirmation of
the minutes.

Matters for Mention



(/minutes/15/minute_items/527/edit)

Meeting of the National Disaster Management Council



(/minutes/15/minute_items/527)

71. The Chairman informed the Cabinet that he had called a meeting of the Meeting of National Disaster Management Council earlier this week to discuss mass event planning with a focus on the events to be held in the Territory over the weekend from 14th to 16th June, 2019.



(/minutes/15/minute_items/528/edit)

Shock Responsive Symposium




(/minutes/15/minute_items/528)


72. The Minister for Health and Social Development informed the Cabinet that he would attend a Shock Responsive Protection Symposium in the Turks and Caicos Islands from 25th to 28th June, 2019.

Confirmation and Signing of the Minutes

Minutes for meeting No. C/2/MEET/8/2019 (/minutes/14)
were confirmed.

 (/minutes/15/minute_items/529)

Adjournment

 (/minutes/15/minute_items/543/edit) The Chairman adjourned the meeting at 1:55pm.

Our ref: l4p/lN78034/0007/l4p

withers ^{BVI}

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16 September 2021

BVI Commission of Inquiry
Room RB 1.11
22 Whitehall, London
SW1A 2EG

By email: rhea.harrikissoon@bvi.public-inquiry.uk

Dear Mr King

BVI Commission of Inquiry ('COI')

We write further to the hearing of today, 16 September 2021.

At the end of the hearing, the Commissioner stated that the Premier had accepted that the revocation of the Climate Change Trust Fund Board was 'illegal'. The Premier was surprised to hear his evidence so described, as he does not consider that it is an accurate summary of what he said. He is very troubled by the Commissioner's statement, because it may be that the Commissioner misunderstood his evidence on this point. We raise this at the earliest opportunity so that there can be no mistake that the Premier does not accept this view.

Yours sincerely



Withers BVI

cc. Hon. Dawn J Smith, Attorney General

direct: 
e-mail: 

Withers BVI is a law firm.
A list of our partners may be inspected at the above address.
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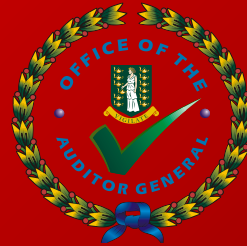
Government of the
Virgin Islands

2016 REPORT

OF THE
AUDITOR GENERAL
ON THE
ACCOUNTS OF
THE VIRGIN ISLANDS



"Towards Greater Accountability"



Government of the
Virgin Islands

Audit Office

Report of the
AUDITOR GENERAL
For The Year Ended 31 December 2016





Contents

| | |
|--|----|
| Letter to the Honourable Minister of Finance..... | 1 |
| Audit Certificate | 2 |
| Statement of Assets and Liabilities..... | 4 |
| Statement of Changes in Fund Balances..... | 4 |
| Statement of Operations by Economic Classifications | 6 |
| Statement of Operations by Ministry | 7 |
| PART I..... | 8 |
| Audit Mandate | 8 |
| Audit Independence | 9 |
| Audit Report | 9 |
| Submission and Transmission of Accounts | 10 |
| Financial Regulations & Significant Accounting Policies..... | 10 |
| Modified Cash Basis..... | 10 |
| Currency..... | 10 |
| PART II..... | 11 |
| Government Operations | 11 |
| Financial Management Areas of Focus..... | 11 |
| IPSAS Implementation | 11 |
| Performance Overview | 13 |
| Recurrent Revenue..... | 14 |
| Recurrent (Operating) Expenditure..... | 16 |
| Excess Expenditure..... | 17 |
| Development Fund Activity..... | 18 |
| Assets | 20 |
| Liabilities & Public Debt | 22 |
| Other Funds..... | 23 |
| PART III | 24 |
| Statutory Authorities and Trusts | 24 |
| Contingent Liabilities..... | 25 |
| Public Accounts Committee | 26 |
| Acknowledgements..... | 26 |



Audit Issues

| | | |
|----------------|--|----|
| Audit Issue 1: | <i>Arrears of Revenue (Accounts Receivable)</i> | 15 |
| Audit Issue 2: | <i>Excess Expenditure</i> | 17 |
| Audit Issue 3: | <i>Procurement Weaknesses</i> | 19 |
| Audit Issue 4: | <i>Ministerial Development Projects</i> | 19 |
| Audit Issue 5: | <i>Assets</i> | 20 |
| Audit Issue 6: | <i>Pension Fund and Public Pension Obligations</i> | 23 |
| Audit Issue 7: | <i>Contingency Fund Balance</i> | 23 |



OFFICE OF THE AUDITOR GENERAL GOVERNMENT OF THE VIRGIN ISLANDS

P.O. Box 174, Road Town, Tortola, Virgin Islands
Telephone: (284) 468-4144, Facsimile: (284) 468-4148

Honourable Andrew Fahie
Premier and Minister of Finance
Ministry of Finance
Road Town, Tortola
Virgin Islands

21 March 2019

Sir,

I forward herewith, my Report on the Accounts of the Government of the Virgin Islands for the year ended 31 December 2016, in accordance with the provisions of Section 109(3) of the Virgin Islands (Constitution) Order 2007.

Sincerely,

Sonia M. Webster
Auditor General



OFFICE OF THE AUDITOR GENERAL GOVERNMENT OF THE VIRGIN ISLANDS

P.O. Box 174, Road Town, Tortola, Virgin Islands
Telephone: (284) 468-4144, Facsimile: (284) 468-4148

Audit Certificate

Statement of Assets and Liabilities
Statement of Changes in Fund Balances
Statement of Operations
For the Year 2016

I have audited the financial statements of the Government of the Virgin Islands which comprise of the Statement of Assets and Liabilities, Statement of Changes in Fund Balances and Statements of Operations for the year ended 31 December 2016. These were examined together with the accompanying schedules and notes submitted by the Accountant General.

Management's Responsibility for the Consolidated Financial Statements

Management (the Financial Secretary and Accountant General) is responsible for the preparation and fair presentation of these financial statements in accordance with International Public Sector Accounting Standards (IPSAS) and for implementing and maintaining a system of internal controls to provide reasonable assurance that assets are safeguarded, transactions are properly authorized and recorded in compliance with legislative and regulatory requirements, and reliable financial information is available on a timely basis for preparation of financial statements that are free from material misstatement whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with the International Organisation of Supreme Audit Institutions (INTOSAI) standards and with the provisions of section 109(2) of the Virgin Islands (Constitution) Order. Those standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

Scope of the Audit of Financial Statements

An audit involves performing procedures to obtain evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.



I believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our qualified audit opinion.

Basis for Qualified Opinion

Qualification arising from the under-valuation of Central Government Assets

The financial statements for the year ended 31 December 2016 were prepared on a modified cash basis which incorporated fixed assets and long term debt. Whereas long term debt, as it pertains to borrowings, has been verified based on supporting records and independent confirmations, there has been no comprehensive documentation of government assets for years prior to 2013.

The amount of \$146,198,616 disclosed in the statements for Property Plant and Equipment reflect only the historical cost value of assets that were purchased in 2013 and onwards. It does not take into account assets acquired or constructed in the years prior to 2013. These include government land, buildings, vehicles, equipment, furniture and infrastructural assets such as bridges, roads and retaining structures. This results in the material understatement of asset values in the financial statements.

Qualification arising from non-conformation with IPSAS

The Public Finance Management (Amendment) Act, 2012 requires the financial statements to be prepared in conformity with International Financial Reporting Standards (IFRS) or more specifically the public sector equivalent, IPSAS (International Public Sector Accounting Standards). IPSAS are standards developed to improve the quality of financial reporting of governments and their agencies by bringing them more in line with private sector reporting. The impetus is to move the public sector away from cash basis to accrual basis accounting and to consolidate the financials of central government with all its owned entities and statutory boards into one set of financial statements for more complete information to facilitate informed decision making.

While there has been ongoing reform of the financial statements in line with these standards, there has not yet been a formal adoption of IPSAS standards and the government's statutory boards have not been prepared for transformation to the new standards which is required to enable consolidation of all public accounts. Challenges to this process include resources limitation, inconsistencies in preparation of financial statements across the public sector and the absence of focused efforts to coordinate and implement an IPSAS transition for the entire public service.

Qualified Opinion

In my opinion, except for the effects of the matters described in the Basis for Qualified Opinion paragraphs, the financial statements present fairly in all material respects the financial position of the Government of the Virgin Islands as at 31 December 2016, and its financial performance and fund balances for the year then ended.

Sonia M. Webster
Auditor General
21 March 2019



GOVERNMENT OF THE VIRGIN ISLANDS
STATEMENT OF ASSETS AND LIABILITIES
AS AT DECEMBER 31, 2016

| (Figures in US\$) | 2016 | 2015 |
|--------------------------------------|--------------------|--------------------|
| ASSETS | | |
| Current Assets | | |
| Cash and Cash Equivalent | 19,618,200 | 31,357,777 |
| Public Officers Advances | 967,859 | 1,343,920 |
| Other Advances | 1,139,033 | 1,081,325 |
| Advances to Agencies | 15,726,724 | 9,563,751 |
| Current Accounts | 519,066 | 537,082 |
| Postmaster Receivables | 531,026 | 482,858 |
| Total Current Assets | 38,501,908 | 44,366,713 |
| Non-Current Assets | | |
| Property, Plant and Equipment | 146,198,616 | 142,651,733 |
| Investments | 89,948,494 | 82,250,272 |
| Total Non-Current Assets | 236,147,110 | 224,902,005 |
| Total Assets | 274,649,018 | 269,268,718 |
| LIABILITIES | | |
| Current Liabilities | | |
| Postmaster Deposits | 432,328 | 432,958 |
| Bank Overdrafts | 5,447,531 | 2,808,027 |
| Other Refundable Deposits | 16,550,958 | 14,844,389 |
| Total Current Liabilities | 22,430,817 | 18,085,374 |
| Non-Current Liabilities | | |
| Borrowings | 99,272,498 | 103,061,319 |
| Total Non-Current Liabilities | 99,272,498 | 103,061,319 |
| Total Liabilities | 121,703,315 | 121,146,693 |
| Net Assets | 152,945,703 | 148,122,025 |
| Supported by: | | |
| Consolidated Fund | (5,159,764) | 11,916,543 |
| Development Fund | 90,193,990 | 84,853,971 |
| Emergency/Disaster Fund | 1,119,803 | 1,117,002 |
| Pension Fund | 1,068,211 | 1,055,023 |
| Reserve Fund | 65,723,463 | 49,179,486 |
| Total Fund Balances | 152,945,703 | 148,122,025 |





GOVERNMENT OF THE VIRGIN ISLANDS
STATEMENT OF CHANGES IN FUND BALANCES
For the Financial Year ended December 31, 2016

| (Figures in US\$) | Consolidated Fund | Development Fund | Emergency/ Disaster Fund | Pension Fund | Reserve Fund | Total Fund Balances |
|--|---------------------|-------------------|--------------------------|------------------|-------------------|---------------------|
| Balance as at January 1, 2016 | 11,916,543 | 84,853,971 | 1,117,002 | 1,055,023 | 49,179,486 | 148,122,025 |
| Changes in Fund Balances attributable to: | | | | | | |
| Surplus/(Deficit) for Financial Year 2016 | 13,279,743 | - | - | - | (15) | 13,279,728 |
| Investment Income | 57,552 | 241,205 | 2,801 | 13,188 | 442,112 | 756,858 |
| Transfers from Local banks | - | - | - | - | 6,190,532 | 6,190,532 |
| Dormant Accounts Claims | - | - | - | - | (10,281) | (10,281) |
| Transfers from the Reserve Fund | 78,371 | - | - | - | (78,371) | - |
| Transfers to the Reserve Fund | (10,000,000) | - | - | - | 10,000,000 | - |
| Transfers from the Development Fund | 3,667,334 | (3,667,334) | - | - | - | - |
| Transfers to the Development Fund | (14,797,854) | 14,797,854 | - | - | - | - |
| Capital Acquisition | (2,584,857) | 2,584,857 | - | - | - | - |
| Debt Financing | (6,776,596) | 6,776,596 | - | - | - | - |
| Development Fund projects | - | (16,355,185) | - | - | - | (16,355,185) |
| Capitalized Expenditure | - | 962,026 | - | - | - | 962,026 |
| Changes in Fund Balances | (17,076,307) | 5,340,019 | 2,801 | 13,188 | 16,543,977 | 4,823,678 |
| Balance as at December 31, 2016 | (5,159,764) | 90,193,990 | 1,119,803 | 1,068,211 | 65,723,463 | 152,945,703 |






**GOVERNMENT OF THE VIRGIN ISLANDS
STATEMENT OF OPERATIONS BY ECONOMIC CLASSIFICATIONS
AS AT DECEMBER, 31 2016**

| (Figures in US\$) | 2016 | 2015 |
|--------------------------------|--------------------|--------------------|
| REVENUE | | |
| Recurrent Revenue | | |
| Payroll Taxes | 49,672,317 | 49,812,030 |
| Property Taxes | 2,824,334 | 3,227,392 |
| Taxes on Goods and Services | 185,577,058 | 198,084,352 |
| Taxes on International Trade | 38,998,206 | 36,407,774 |
| Taxes on Transactions | 7,377,611 | 12,460,593 |
| Sale of Goods and Services | 15,042,704 | 15,307,182 |
| Grants | 4,020,980 | 3,058,385 |
| Other Revenue | 3,209,529 | 1,881,582 |
| Total Recurrent Revenue | 306,722,739 | 320,239,290 |
| EXPENDITURE | | |
| Recurrent Expenditure | | |
| Employee Compensation | 118,370,594 | 120,284,789 |
| Goods and Services | 72,759,970 | 69,056,175 |
| Finance Cost | 4,105,476 | 4,303,651 |
| Subsidies | 273,627 | 380,361 |
| Grants | 70,868,089 | 54,998,928 |
| Social Benefits | 13,057,985 | 12,119,844 |
| Other Recurrent Expenditure | 13,949,703 | 19,350,566 |
| Total Expenditure | 293,385,444 | 280,494,314 |
| Operating Surplus | 13,337,295 | 39,744,976 |





GOVERNMENT OF THE VIRGIN ISLANDS
STATEMENT OF OPERATIONS BY MINISTRY
AS AT DECEMBER 31, 2016

| (Figures in US\$) | 2016 | 2015 |
|--|--------------------|--------------------|
| REVENUE | | |
| Recurrent Revenue | | |
| Constitutional Bodies | 736,599 | 678,073 |
| Office of the Governor | 4,719,567 | 3,283,651 |
| Office of the Premier | 3,441,027 | 3,165,404 |
| Ministry of Finance | 280,101,175 | 294,346,113 |
| Ministry of Natural Resources & Labour | 8,488,539 | 8,679,118 |
| Ministry of Education and Culture | 1,577,136 | 1,642,167 |
| Ministry of Health and Welfare | 574,919 | 594,684 |
| Ministry of Communications and Works | 7,083,777 | 7,850,080 |
| Total Recurrent Revenue | 306,722,739 | 320,239,290 |
| EXPENDITURE | | |
| Recurrent Expenditure | | |
| Constitutional Bodies | 7,654,133 | 7,910,024 |
| Office of the Governor | 33,423,061 | 34,554,540 |
| Office of the Premier | 26,564,685 | 26,048,550 |
| Ministry of Finance | 28,571,337 | 35,545,984 |
| Ministry of Natural Resources & Labour | 11,333,955 | 12,909,894 |
| Ministry of Education and Culture | 53,692,910 | 53,203,698 |
| Ministry of Health and Welfare | 56,646,016 | 42,898,088 |
| Ministry of Communications and Works | 54,737,691 | 46,700,048 |
| Statutory Charges | 20,761,656 | 20,723,488 |
| Total Expenditure | 293,385,444 | 280,494,314 |
| Operating Surplus | 13,337,295 | 39,744,976 |





PART I

Audit Mandate

1. The audit of the accounts of the Government of the Virgin Islands for the year ended 31 December 2016 was carried out in accordance with the provisions of Section 109 of the Virgin Islands (Constitution) Order 2007 and the Audit Act 2003, hereinafter referred to as the Act.

2. The Act prescribes, inter alia, for the appointment, tenure of office, powers and duties of the Auditor General, for the submission of annual statements by the Accountant General, and for examination and audit of those statements.

3. The Statutory duties of the Auditor General, as contained in sections 11(1) and 14 of the Act, are as follows:

11. (1) The Auditor General, acting in accordance with section 109 of the Constitution, shall undertake an audit of the accounts of the House of Assembly and all Government departments and offices, including the Public Service Commission, for each financial year.

14. In performing his duties under this Act, the Auditor General shall, in particular, satisfy himself

- a. that funds have been used for purposes approved by law and for no other purposes;
- b. that each payment and receipt was made or received in accordance with the law;
- c. that adequate instructions have been given to ensure
 - (i) that money is collected, paid and accounted for in accordance with the law, and
 - (ii) that property is received, held, issued, sold, transferred, destroyed, and accounted for in accordance with the law, and that those instructions are being complied with; and
- d. that adequate records are being kept
 - (i) of the collection and payment of money;
 - (ii) and of the receipt, custody, issue, sale, transfer or destruction of property.



Audit Independence

4. The Office of the Auditor General derives its independence from the Constitution and the Audit Act 2003 which provides its mandate, reporting and management structure and endows the office with full discretion to discharge its functions.

5. In addition, the Office adopts INTOSAI Independence standards and Code of Ethics. INTOSAI's independence standards postulate:

- i. The existence of an appropriate and effective Constitution and Statutory/Legal framework;
- ii. Independence of SAI heads;
- iii. Sufficiently broad mandate and full discretion in the discharge of functions;
- iv. Unrestricted access to information;
- v. The right and obligation to report on work;
- vi. The freedom to decide the content and timing of audit reports and to publish and disseminate them;
- vii. The Existence of effective follow-up mechanism on recommendations;
- viii. Financial and managerial/administrative autonomy and the availability of appropriate human, material and monetary resources.

6. The areas which present challenges to the Office's independence include occasional lack of full access to information and the absence of adequate staffing.

7. Subject to the above, the Office has complied with the INTOSAI Independence and Code of Conduct principles in the performance of audits and have qualified areas where the non-achievement of these standards are likely to impact our reporting and audit opinion.

Audit Report

8. Part one of this report outlines the Audit Office's mandate, independence and the government's general accounting policies. Part two deals with government's operations and related audit issues where they arose. Part three provides a status of statutory boards' audits and Public Accounts committee activity where applicable.

9. Audit Issues highlighted throughout this report are matters that are considered sufficient to warrant disclosure. If unaddressed these could lead to additional qualifications to the accounts in subsequent reports.



Submission and Transmission of Accounts

10. The financial statements for 2016 were received for audit 1 October 2018 and the final amended statements submitted on 6 March 2019.

11. The financial statements comprised a Statement of Assets and Liabilities, Statement of Operations by Economic Classifications, Statement of Operations by Ministry and Statement of Changes in Fund Balances as appended to this report. These were accompanied by other supporting statements and notes including, but not limited to, statements of Public Debt; Cash and Cash Equivalents; Property Plant and Equipment; and Investments.

12. Section 11 of the Act prescribes, that the Auditor General shall cause the accounts to be examined and audited and shall, prepare and transmit to the Minister a report upon his examination and audit of all accounts relating to public moneys, stamps, securities, stores and other Government property, together with a copy of the Statement of Assets and Liabilities and the Annual Abstract Statement duly certified by him.

13. The Accountant General's submissions did not include an Abstract Statement which traditionally records the revenue and expenditure activity of the Consolidated and Development funds along with the changes in the other Balance Sheet items. The current legislation needs to be updated to adopt the more modern format of the statements. My transmission of the 2016 accounts includes signed copies of the Statement of Assets and Liabilities, Statements of Operations and Statement of Changes in Fund Balances.

14. The audit examination was performed on the Financial Statements and supporting schedules which are presented on pages 17-107 of the Accountant General's 2016 Report.

Financial Regulations & Significant Accounting Policies

15. The directions and instructions for the management of the financial and accounting activities of the government are provided by the Public Finance Management Regulations 2005 and any amendments thereto. These are supplemented by policy directives and circulars issued throughout the year by the Ministry of Finance.

16. The accounting policies of the Government of the Virgin Islands are based on provisions embodied in the Public Finance Management Act 2004, Public Finance Management Regulations, 2005 (as amended) and the Audit Act 2003, and are applied on a basis consistent with government accounting procedures.

Modified Cash Basis

17. The financial statements and supporting schedules were prepared on a modified cash basis of accounting. Revenue is recorded when received and expenses recorded in the period payments are made. Accruals were applied to long-term balance sheet items and the cash basis for short-term ones.

Currency

18. Amounts in respect of currency in this Report are expressed in United States dollars, except where stated otherwise.



PART II

Government Operations

19. The Government of the Virgin Islands operates a central accounting system in which all revenue is collected by, or on behalf of, the Treasury and deposited into accounts controlled by the Accountant General. All expenditure by government departments and ministries must be submitted to the Treasury with supporting information and documents to be processed and paid. This system allows for adequate control of public expenditure, by ensuring conformity with spending allotments and validating existence and relevance of the commitments submitted for payments.

20. The centralized system also facilitates compilation of the accounts with most of the government's financial records destined for, or passing through, the Treasury Department.

Financial Management Areas of Focus

21. The government's areas of focus as outlined in its 2016 - 2018 performance budget were:

- i. Maintain the recurrent surplus balance through revenue generating initiatives and expenditure efficiency measures;
- ii. Build the Reserve Fund balance by \$15 million;
- iii. Manage Pension Liability with the introduction of a contributory scheme
- iv. Maintain Borrowing ratios within Protocols limits;

The Revenue Generating Initiatives to be implemented included:

- a. Changing the charging base for import duties and customs tariffs;
- b. Collecting Passenger Taxes at sea ports of entry, Cruise passenger tax of \$7.00 per person and implementing the Tourist Arrival Environmental Levy;
- c. Changing the Work Permit structure and fees;
- d. Reviewing and revising the Marine Fee Structure;
- e. Increasing Hotel Accommodation Taxes from 7% to 10%;
- f. Collecting Telecommunications Royalties due to Government;
- g. Empowering revenue collecting agencies to enforce collections;

Expenditure Efficiency Measures included:

- a. Improved performance and efficiency of the Public Service;
- b. Reducing the cost associated with procuring goods and services and reduce subsidisation of public goods and services;
- c. Improving the financial management of Parastatals;
- d. Improving appraisal and assessment of projects to promote value for money on projects;
- e. Imposing budgetary controls to contain budget creep and offset new spending.

IPSAS Implementation

22. The government's financial infrastructural reform which commenced in 2013 includes implementation of International Public Sector Accounting Standards (IPSAS) for preparation and presentation of the public accounts. For the 2013 financial year the financial statements



were modified from cash basis to include elements of accrual accounting such as fixed assets and public debt. This has resulted in a more comprehensive set of statements and supporting schedules, lending to improved disclosure of government's financial standing.

23. Despite this, there has not been a full adoption of IPSAS, which requires consolidation of public sector accounts across all government owned entities. The financial statements of statutory boards continue to be prepared and submitted to the House of Assembly separately in-keeping with the individual legislations.

Performance Overview

24. During 2016 two ministries underwent restructuring of their departments and portfolios. The Ministry of Health and Social Development introduced departments of Aged Care Services; Social Protection; Children and Family Support Services; and Disability Services. In addition, departments for Community Services; and Public Health were reintroduced with revised portfolios. The Ministry of Natural Resources and Labour transferred some of its functions to the Land Registry which was renamed the department of "Land and Seabed Management" in 2016.

25. Government's operating activity in the Consolidated Fund saw reduced revenue collections and increased overall spending which nonetheless resulted in an operating surplus of \$13.3 million. This was insufficient to cover the approved transfers to the Development and Reserve Funds leading to an ending deficit balance on the Consolidated Fund of \$5.2 million. An overview of Government's operations for the 2016 financial year is below.

- i. Government's revenue dropped by 4.2% from \$320.2 million in 2015 to \$306.7 million in 2016 as five of the eight revenue streams experienced reductions in collections.
- ii. Expenditure increased by 4.6% from \$280.5 million to \$293.4 million. This was primarily due to government grants (to statutory boards and others) which increased by \$15.9 million from \$55.0 million in 2015 to \$70.9 million in 2016.
- iii. Government's operating surplus at year end was \$13.3 million. This continued a trend of declining results with surpluses of \$39.7 million in 2015 and \$64.4 million in 2014.
- iv. Total assets increased by 2.0% from \$269.3 million to \$274.6 million, despite a 37.4% (\$11.7 million) reduction in Cash from \$31.4 million to \$19.6 million.
- v. Investments increased by 9.4% from \$82.3 million to \$89.9 million which was a net result of increases in local term deposits from \$61.1 million to \$69.3 million and reduction in the value of international securities from \$7.4 million to \$6.9 million. Non-traded equities of \$13.7 million (Government's Investment in National Bank of the Virgin Islands) remained unchanged.
- vi. Total liabilities increased marginally by 0.5% from \$121.1 million to \$121.7 million.
- vii. Public debt decreased to \$99.3 million from \$103.1 million. Drawdowns of \$3.2 million were received on the Disaster Infrastructure loan and \$3.5 million on Road Infrastructure loan. Principal repayments of \$10.6 million were made in 2016.
- viii. The overall result at year end was a 3.3% improved net asset position on the balance sheet from \$148.1 million in 2015 to \$152.9 million at end of 2016.



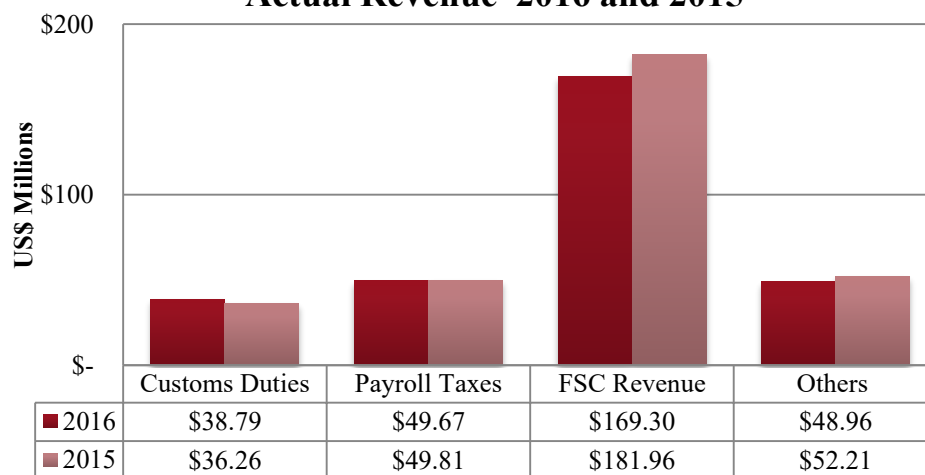
Recurrent Revenue

2016: \$ 306,722,739 2015: \$ 320,239,290

26. The Government's 2016 budget anticipated revenue of \$330.8 million. The actual collections totalled \$306.7 million. This was a shortfall \$24.1 million. An overview of government's revenue collection performance is below.

- i. Taxation revenue made up more than 92.7% (\$284.4 million) of the \$306.7 million received in 2016. The primary contributors were FSC (Financial Services Commission) Revenue \$169.3 million, Payroll Taxes \$49.7 million and Taxes on International Trade \$39.0 million with the remaining \$26.7 million made up of other miscellaneous taxes.
- ii. FSC revenue remained the government's primary income source in 2016, accounting for 55.2% of revenue. This source however fell short of its budgeted projection by \$13.9 million, and reported a 7.0% (or \$12.7 million) decline from the previous year's collections (2015: \$182.0 million).
- iii. Income from Payroll Taxes declined marginally from \$49.8 million in 2015 to \$49.7 million in 2016. Of the three major revenue sources, Customs Duties (classified under Taxes on International Trade) was the only one to achieve growth in 2016 increasing by 7.0% from \$36.3 million in 2015 to \$38.8 million in 2016.
- iv. Revenue from Sales of Goods and Services dropped from \$15.3 million in the previous year to \$15.0 million in 2016. This was the result of reduced collections on Water and Sewerage Services fees and Postal Services revenue which dropped by 20.4% and 9.3% respectively.
- v. There was no reported revenue from the Tourist Arrival Levy; Cruise Passenger Taxes; and Telecommunications Licensing fees which were projected to generate \$1.9 million, \$5.0 million and \$1.0 million respectively.

Actual Revenue 2016 and 2015





27. The government's electronic receipting system that is used by approximately 95% of the revenue collecting offices allows the Accountant General to monitor revenue collection and reporting activity throughout the service from her desk. The Inland Revenue Department and the Post Office use collection programs that are tailored to their functions.

28. Due to logistics and connectivity issues a small number of offices use manual receipting which is more prone to manipulation and abuse.

AUDIT ISSUE 1: ARREARS OF REVENUE (ACCOUNTS RECEIVABLE)

There is currently wide scale non-compliance with provision 43.1 of the Public Finance Management Regulations requirement for Departments to submit statements of revenue arrears. This information is not presently used in the preparation of the financial statements as revenue is reported on a cash basis, but is relevant for decision making and will become necessary as the government advances efforts to introduce full accrual basis accounting.

Government offices, particularly those with primary revenue collection function such as the Inland Revenue Department may need to upgrade their systems and methodologies to allow for the timely compilation of such reports.



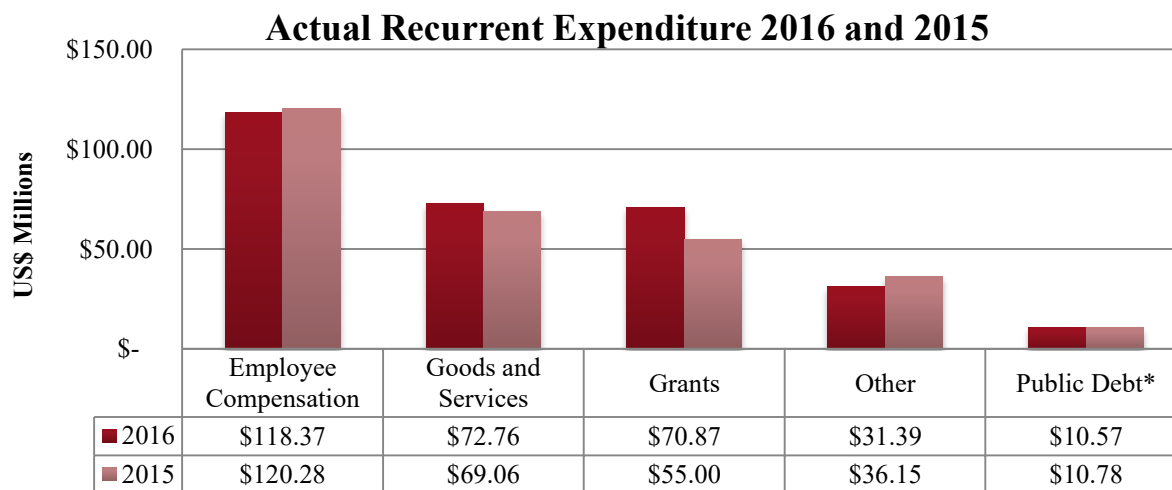
Recurrent (Operating) Expenditure

2016: \$ 293,385,444

2015: \$ 280,494,314

29. The 2016 budget provided \$286.6 million for recurrent (operating) expenditure. This provision was increased by one supplementary appropriation warrant to accommodate additional expenditure during the year. A synopsis of the recurrent expenditure is below.

- i. Operating expenditure for 2016 was \$293.4 million. This was an increase of \$12.9 million (4.6%) over the previous year.
- ii. Approximately \$118.4 million (40.3%) of the total recurrent expenditure was applied to personal emoluments and related staff costs. This was a decrease of \$1.9 million when compared to the prior year.
- iii. Goods and services totalling \$72.8 million accounted for 24.8% of recurrent costs. Payments under this head increased by \$3.7 million (5.4%) over the prior year amount of \$69.1 million.
- iv. Major expenditure under Goods and Services were Utilities \$39.2 million, (increased from \$30.8 million in 2015); Rent \$7.7 million (decreased from \$8.9 million) Supplies (including minor equipment) \$6.8 million (2015: \$7.1 million) and Consultancies \$4.3million.
- v. Grants (Subventions) accounted for 24.2% of the government's overall expenditure at \$70.9 million (\$55.0 million in 2015). Most of this (\$67.5 million) went to government supported statutory boards. Contributions of \$1.1 million were also made to Caribbean and International institutions with the remaining \$2.3 million going to other organisations.
- vi. The Ministry of Health and Welfare showed the greatest increase in recurrent expenditure, from \$42.9 million in 2015 to \$56.6 million in 2016. This was due to an increase in its contribution to statutory boards from \$27.4 million to \$41.3 million in 2016. This amount was paid to the National Health Insurance.



US\$ Millions * Not included in Recurrent Expenditure Amount



Excess Expenditure

30. Seven ministries/departments overspent their budgets in 2016. These are indicated in the schedule below.

| EXPENDITURE HEAD | Excess Expenditure |
|--------------------------------------|-----------------------|
| Deputy Governor's Office | (2,614) |
| Treasury | (263,291) |
| Water and Sewerage | (31,310) |
| Post Office | (74) |
| Department of Social Development | (782,095) |
| Ministry of Communications and Works | (32,773) |
| Facilities Management Unit | (124) |

31. The Deputy Governor's Office's excess expenditure was due to rent (office space and other) and consultancies.

32. The Treasury's excess was caused by payments made on Remittances and Agents fees of \$907,338 that exceeded the budgeted amount of \$586,900.

33. Payments on goods and services resulted in excess expenditure for the Water and Sewerage Department. This was related to the production of desalinated water, electricity and heavy equipment costs.

34. The excesses on the remaining four were the result of salaries and related staff costs.

35. The Department of Information and Public Relations also appears with an over-expended balance in the financial statements. This was the result of a mis-posting where expenditure was applied against an unused account number that did not contain the 2016 budget. Sufficient funding was provided under the appropriate account to properly cover the charges.

AUDIT ISSUE 2: *EXCESS EXPENDITURE*

In accordance with the provisions of Section 12(c) of the Public Finance Management Act, a supplementary estimate must be laid before the House of Assembly in respect of any excesses of the amounts appropriated for a particular purpose. As of writing the amounts had not been regularised. This process is normally follows the tabling of the financial statements in the House of Assembly.



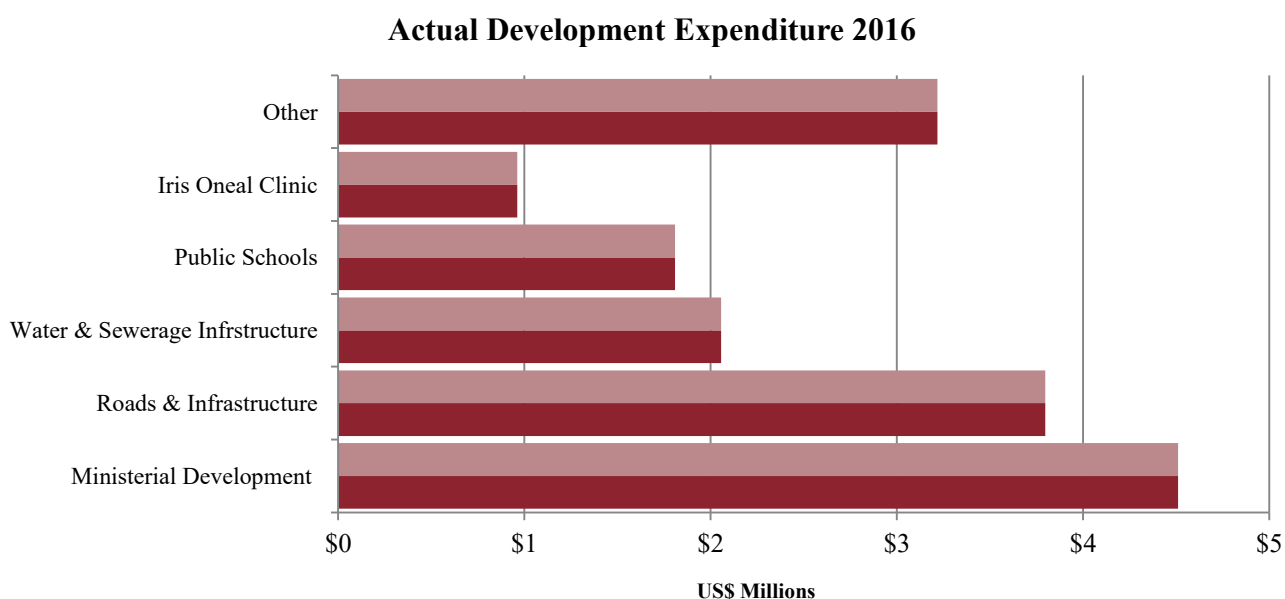
Development Fund Activity

Funding: \$ 21,815,655

Expenditure: \$ 16,355,186

36. The initial 2016 budget for the Development Fund provided for funding of \$40.0 million of which \$21.1 million was supported via borrowing and \$18.9 million from local revenues.

- i. The actual Development Fund receipts were \$21.8 million. This was comprised of \$15.0 million from local sources and \$6.8 million in loan funds.
- ii. Development spending decreased in 2016 to \$16.4 million from \$33.9 million in the prior year. Of the amount spent a total of \$1.0 million was capitalised and \$15.4 million expensed.
- iii. The Ministry of Communications and Works accounted for more than half of the government's development expenditure (\$9.6 million) in 2016. Major projects undertaken by this ministry included Road Infrastructure works \$2.7 million; National Sewerage Project \$1.5 million; and Civil Works Mitigation \$1.1 million.
- iv. Other major development fund spending occurred in the Ministry of Education (for Secondary Schools \$1.3 million) and in the Ministry of Health and Social Development (on the Iris O'Neal Clinic \$1.0 million).
- v. Non-Specific Ministerial Development spending accounted for \$4.5 million or 27.58% of development spending. Most of this occurred under the Ministry of Communications and Works (\$3.8 million) with each of the other ministries spending below one million dollars.





AUDIT ISSUE 3: PROCUREMENT WEAKNESSES

The issues relating to procurement weaknesses have been reported in previous Audit reports and were again present in 2016.

At the time of writing, the Ministry of Finance was advancing draft legislation to update the public procurement process and address the related issues.

AUDIT ISSUE 4: MINISTERIAL DEVELOPMENT PROJECTS

The “Development Projects” subheads provided to the ministries continue to present issues of non-transparency. Expenditure occurring within these accounts are not categorised by project, but by objects (materials, payroll, utilities etc). The object categories combine the activities of different projects thereby presenting difficulty in establishing:

- 1. What projects are being undertaken;*
- 2. The budgeted amount and actual expenditure for individual projects; and*
- 3. The legitimacy of related payment requests (and actual expenditure) as required by section 14(a) of the Audit Act.).*

There is a need for sub-ledgers to be introduced to enable each project undertaken under these subheads to be properly and transparently accounted for.



Assets

2016: \$274,649,018

2015: \$269,268,718

37. Government assets comprise of cash, investments, land, buildings, equipment as well as infrastructural developments such as roads, bridges and retaining walls.

- i. Government's most significant asset, Property, Plant and Equipment, increased by \$3.5 million from \$142.7 million in 2015 to \$146.2 million. This was primarily due to 44.9% increase in machinery and equipment.
- ii. Investments, the government's second largest balance sheet asset, increased from \$82.3 million in 2015 to \$89.9 million. This comprised of Term Deposits \$69.3 million; International Securities \$6.9 million and an equity investment in the National Bank of the VI of \$13.7 million.
- iii. The cash position dropped from \$31.4 million to \$19.6 million. This amount includes funds at government disposal as well as deposit accounts where monies are being held for other persons or agencies and cannot be used for government purposes. Deposit accounts in 2016 totalled \$16.6 million.
- iv. Advances to agencies increased from \$9.6 million to \$15.7 million. The balances on this account were BVI Health Services Authority \$1.5 million; BVI Port Authority \$7.0 million; and BVI Airways \$7.2 million.
- v. The overall balance for advances (\$17.8 million) exceeded the statutory limitation at year end which is computed at 1.5% of the total amount appropriated.

AUDIT ISSUE 5: ASSETS

Depreciation

No depreciation has been applied to the assets recorded from the prior year(s) in the statement of assets and liabilities. Accounting standards require consistency in adoption, and the inclusion of long term assets on the balance sheet introduces an accrual standard that requires the application of depreciation to ensure that the values are fairly stated.

The affected items on the Statement of Assets and Liabilities are Fixed Assets and the Development Fund Balance. Also affected are the supporting schedules for Development Expenditure and related notes detailing the method and application of Depreciation Expenses.

Non Recognition of Infrastructure Assets

Investment in infrastructure assets (roads, bridges, retaining walls etc.) during the year under review were not added to the asset register and are not disclosed in the Statement of Assets and Liabilities. This contributes to the ongoing undervaluation of public assets on the statements.



Prior Period Assets Valuation

Assets acquired prior to 2013 are not reported on the statements. A valuation exercise is required to ensure that there is full accounting for government's assets. Unrecorded assets comprise office buildings, schools, community centers, machinery, equipment, vehicles and infrastructure assets (such as roads, bridges, ghuts, retaining walls etc).

Asset Register

The Asset Register for property plant and equipment requires additional details to allow for accurate identification of the assets recorded. The present register does not provide an asset identification number (serial # / VIN) or information about its location or department to which it is assigned. The format and content of this document needs to be revised and improved so that items can be verified and updated as needed.



Liabilities & Public Debt

2016: \$121,703,315 2015: \$121,146,693

38. Current liabilities refer to government debts that are expected to be paid off within the next 12 month period. Obligations that become due more than one year into the future are categorized as long term or non-current liabilities.

- i. Total liabilities increased marginally by 0.5% from \$121.1 million in 2015 to \$121.7 million. An increase in current liabilities of \$4.3million was offset by a \$3.8 million reduction in the public debt.
- ii. The public debt (loans received by the government) is the most significant government liability. This dropped from \$103.1 million in 2015 to \$99.3 million in 2016. During the year additional loan financing was received for Disaster Preparedness Infrastructure (\$3.2 million) and Road Rebuilding (\$3.5million). Repayments were made during the year of \$10.6 million. This does not include \$5.0 million shown on the Statement of Government Debt for the Line of Credit.
- iii. The \$99.3 million loan obligation was made up of \$13.2 million in foreign loans, \$51.3 million from local commercial banks and \$34.8 million from BVI Social Security Board. The interest payments on the public debt loans in 2016 totalled \$4.1 million which is consistent with prior years.
- iv. Borrowing for the New Peebles Hospital Project made up 72.0% of the Public Debt with a balance of \$71.4 million. Other loans were for Beef Island Airport (Terminal and Runway) \$4.2 million; Road Improvement Infrastructure \$14.4 million; Disaster Infrastructure & Hurricane Rehabilitation \$7.6 million and Water Projects (various) \$1.6 million.
- v. Other Refundable Deposits was \$16.6 million in 2016. This made up 13.6% of government liabilities. Within this account is credit balance for Accounts Payable of \$19.6 million which is made up of outstanding cheques issued by the government that were undrawn at year end. Also included is a debit balance of \$13.5 million for BUPA (health insurance payable).
- vi. Bank Overdraft balance increased from \$2.8 million to \$5.4 million in 2016. This is made up of two accounts held in a local bank. The overdraft represents cheques that were issued but not yet presented to the bank for payment.



Other Funds

2016: \$ 67,911,477

2015: \$ 51,351,511

39. Where legislation or regulations stipulate that monies are to be kept separate from the Consolidated Fund for purposes specified, an independent fund account is established and maintained for such purpose. These Funds are included on the face of the government's Statement of Assets and Liabilities. There were three such funds at 31 December 2016.

- i. The Reserve Fund's balance increased from \$49.2 million to \$65.7 million due to a transfer from the Consolidated Fund of \$10.0 million, deposits from dormant client accounts from commercial banks of \$6.2 million and interest income of \$442,112. Bank charges of fifteen dollars incurred in the commercial banks dormant accounts is disclosed as a "Deficit" on the Statement of Changes in Fund Balances.
- ii. The Emergency Disaster Fund received interest income of \$2,801 in 2016 and recorded a balance of \$1.1 million at year end. The fund did not record any payment activity during the year.
- iii. The Pension Fund received interest income of \$13,188 but did not record any other activity. The balance at year end was \$1.1 million.

AUDIT ISSUE 6: *PENSION FUND AND PUBLIC PENSION OBLIGATIONS*

As previously reported, the government supports a fully funded pension system for qualifying public servants and legislators. Over a ten year period pension and gratuities payments have more than doubled from \$7.8 million in 2006 to \$16.6 million in 2016. Currently the government's pension obligations far exceed the balance held in its Pension Fund of \$1.1 million.

An actuarial assessment is required to facilitate the introduction of adequate provisions to support this liability. This requirement is especially relevant pending the implementation of IPSAS standards, which require pension obligations to be disclosed as liabilities in public sector financial reporting.

AUDIT ISSUE 7: *CONTINGENCY FUND BALANCE*

The Contingency Fund, which was adopted to meet unplanned urgent and unforeseen need for expenditure was written out of the accounts in 2012 and may have been rendered obsolete through the practice of issuing advances for unforeseen expenditure. The status of this fund needs to be reviewed and a decision taken on whether it should be re-instituted and used as intended.



PART III

Statutory Authorities and Trusts

40. Government grants to Statutory Boards totalled \$67.5 million in 2016 and accounted for 23.0% of Government's recurrent expenditure. More than half of this 61.2% was contributed to National Health Insurance with other major contributions going to the BVI Tourist Board and HL Stoutt Community College. The schedule below refers.

| Grants to Statutory Boards | 2016 | 2015 |
|-------------------------------|-------------------|-------------------|
| BVI Health Services Authority | - | 25,212,082 |
| BVI Tourist Board | 10,532,500 | 10,093,646 |
| HL Stoutt Community College | 8,890,800 | 8,890,800 |
| BVI Airport Authority | 2,000,000 | 2,610,700 |
| National Health Insurance | 41,326,300 | 2,200,621 |
| Financial Investigation Unit | 1,620,500 | 1,662,500 |
| VI Festival & Fairs Committee | 2,456,150 | 1,131,767 |
| BVI Recreation Trust | 700,000 | 875,000 |
| National Parks Trust | - | 338,500 |
| Wickhams Cay Dev. Authority | - | 143,813 |
| | <u>67,526,250</u> | <u>53,159,428</u> |

41. Other government agencies not mentioned in the above schedule are self-supporting and do not require government subvention.

42. Each agency is required to produce audited financial statements which are tabled before the House of Assembly.

43. The financial statements of the British Virgin Islands Electricity Corporation, H Lavity Stoutt Community College and the British Virgin Islands Social Security Board were audited by accounting firms on behalf of the Auditor General.

44. The accounts of the National Bank of the Virgin Islands are examined by an auditor appointed for this purpose by the Governor in accordance with section 37 of the National Bank of the Virgin Islands Ordinance, Chapter 100. Auditors for the Port Authority are appointed by the Authority with the approval of the Minister in accordance with the British Virgin Islands Ports Authority Act 1990.

45. All of the larger statutory agencies are staffed with either a financial controller or a full time accountant. These are, for the most part, current in the compilation and audit of their annual accounts. The smaller agencies are often not staffed, but operated by committees functioning on a part time, as-needed basis. Most of these committees include a treasurer, yet for these there continue to be major difficulties in compilation and submission of statements of accounts.



46. The government does not require statutory authorities to produce financials prior to providing financial subventions, consequently there is no incentive for these agencies to adopt prudent financial practices and thus no accountability. Self-financing agencies such as the Prospect Reef Management Company which operates without a functioning board and is unable to present any audited financial statements are equally unaccountable and require oversight.

47. Of particular concern are the agencies that have never undergone any audit review, and those that are three or more years delinquent with audits.

48. At the time of writing the last confirmed status of the audits for the various boards and trusts were as shown in the schedule that follows.

| Statutory Authority or Board | Last Audited |
|---|--------------|
| BVI Social Security Board | 2016 |
| BVI Tourist Board | 2017 |
| Financial Investigation Agency | 2017 |
| Financial Services Commission | 2017 |
| National Bank of Virgin Islands | 2017 |
| BVI Electricity Corporation | 2016 |
| HL Stoult Community College | 2014 |
| National Parks Trust | 2014 |
| BVI Health Services Authority | 2015 |
| BVI Port Authority | 2013 |
| BVI Recreation Trust | 2013 |
| BVI Airport Authority | 2012 |
| Telecommunication Regulatory Commission | 2015 |
| Prospect Reef Management Company | 2007 |
| V I Festival & Fairs Committee | 2006 |
| Wickhams Cay Development Authority | 2004 |

Contingent Liabilities

49. Loans negotiated on behalf of Statutory Boards, Trust and other Government sponsored bodies are usually guaranteed by the Government. In the event that these entities are unable to meet their repayment obligations, this responsibility falls on the Government.

- i. Contingent liabilities increased by \$23.5 million from \$56.4 million in 2015 to \$79.9 million in 2016.
- ii. This increase was the result of drawdowns on one new loan issued to the Electricity Corporation of \$15.6 million, one loan issued to the Scholarship Trust Fund Board \$0.7 million and one loan issued to the BVI Ports Authority for the Cruise Pier Development of \$15.0 million.



- iii. Contingent liabilities balance at year end was made up of \$28.4 million for the BVI Electricity Corporation, \$4.5 million for the Scholarship Trust Fund Board and \$47.0 million for the BVI Port Authority.

Public Accounts Committee

50. The Public Accounts Committee (PAC) is a Select Committee of the House of Assembly which is constituted under Standing Order No. 73 of the House of Assembly Rules. Its functions are:

- a. to consider the accounts of Government in conjunction with the Auditor's Report;
- b. to consider any Special Report submitted by the Auditor General under Section 20(3) of the Audit Act;
- c. to report to the House of Assembly in the case of any excess or unauthorised expenditure of funds, the reason for such expenditure;
- d. to report to the House of Assembly in the case of any shortfall of revenue, the reason for such shortfall;
- e. to report to the House of Assembly any case of apparent extravagance or waste of public funds;
- f. to propose any measure it considers necessary to ensure that public funds are properly brought to account and are economically spent.

51. The Public Accounts Committee is composed of four members of the House of Assembly (two opposition members and two backbenchers from the Government side) with the Leader of the Opposition serving as Chairman. Attempts to convene meetings during the course of the year were unsuccessful due to the absence of a quorum.

Acknowledgements

52. I am appreciative of the audit staff for their dedication and professionalism in performing their duties throughout the year and to the Accountant General and members of her staff for their valuable cooperation. I am also appreciative of those Accounting Officers and members of their staff who assisted through their cooperation.

OFFICE OF THE AUDITOR GENERAL
Road Town, Tortola
Virgin Islands

POSITION STATEMENT BY THE CHAIRMAN OF THE BVI FINANCIAL SERVICES COMMISSION ADDRESSED TO THE COMMISSION OF INQUIRY

Dated this 4th day of June, 2021

INTRODUCTION

In a letter dated 26th May, 2021 and addressed to me as Chairman of the Board of Commissioners of the BVI Financial Services Commission, Mr. Andrew King, Senior Solicitor to the Commission of Inquiry (COI), writing on behalf of the Commissioner of the COI, requested my views on specific questions raised in the said letter and invited me to submit a Position Statement relative to those questions. I have been made to understand in the said letter that *“the COI has been established to determine whether there is evidence of corruption, abuse of office or other serious dishonesty that has taken place in public office in recent years, and if so what conditions allowed this to happen”*. In addition to this broad term of reference, I further understand that the COI *“is charged with making independent recommendations with a view to improving the standards of governance for the people of the British Virgin Islands and to make independent recommendations with a view to improving the operation of the agencies of law enforcement and justice”*.

2. A total of 20 questions – 12 on the subject of governance and 8 on the operation of the agencies of law enforcement and justice – have been raised by the COI in relation to which I have been invited to submit a Position Statement (as earlier noted). This submission therefore represents my Position Paper as Chairman of the Board of Commissioners.

3. I should point out, however, that as Chairman of the Board of Commissioners, my remit is tied to that of other colleague Commissioners and our duties are discharged as a collective body. An exception arises only where any particular statute places specific obligations on the Chairman which may be discharged by the Chairman to the exclusion of other Commissioners (but sometimes with reference to the Board). That is the case, for example, under the Financial Services (Exceptional Circumstances) Act, 2020. That Act empowers the Chairman, during a period of an exceptional circumstance declared by the Minister of Finance, to take decisions which ordinarily would have been taken by the Board. Where such decisions are taken, the Chairman is required to present them to the Board (whenever it meets in due course) for ratification. This power has been exercised during a period of two exceptional circumstances declared by the Minister: the first was in 2017 (under similar legislation enacted that year) following the passage of hurricanes Irma and Maria, and in 2020 following the declaration of the worldwide Covid Pandemic which resulted in the introduction of numerous restrictive measures.

4. Accordingly, the views and opinions expressed herein represent my personal views as Chairman in response to the COI request and in no way represent the views and/or opinions of the Board or the Commission and therefore do not bind either institution. In that context, the views and opinions represented herein are expressed truthfully and to the best of my knowledge, having regard to my period of service as Chairman from 1st May, 2006 to date (and prior to that as Deputy

Chairman). In acknowledging the role, mandate and powers of the COI, I stand ready to provide any clarification that may be required in relation to the responses provided to the questions raised by the COI.

HISTORY, STATUS AND GOVERNANCE STRUCTURE OF THE BVI FINANCIAL SERVICES COMMISSION

5. The BVI Financial Services Commission (“the Commission”) is the successor institution to the Financial Services Department. The Commission was established on 1st January, 2002. This followed the enactment of the Financial Services Commission Act in December 2001 and the issuing by the Governor of a Proclamation bringing the Act into force on 1st January, 2002. The Commission was thus established as the independent regulator of financial services business conducted in and from within the Virgin Islands.

6. Since its establishment, the Commission has had only 2 Chairpersons – Mr. Michael Riegels, QC served as first Chairman from 1st March, 2002 to 30th April, 2006, while I served as Deputy Chairman for the same period. I was appointed as Chairman with effect from 1st May, 2006 to date. The first Managing Director of the Commission (who was the Director of the Financial Services Department when it transitioned into the Commission) was Mr. (later Dr.) Robert A. Mathavious; he retired as Managing Director on 31st December, 2020 and is now succeeded by Mr. Kenneth Baker (previously the Deputy Managing Director, Regulation).

7. The mode of appointment of the Chairman and other members of the Board of Commissioners is outlined in section 5 of the Financial Services Commission Act, 2001 (FSCA). The appointment of the Chairman, Deputy Chairman and other members of the Board is essentially a political process as is evident in section 5 of the FSCA. In accordance with the requirements of section 5 of the FSCA, 2 of the members of the Board are persons appointed from outside the Virgin Islands. The purpose of this arrangement, as I understand it, is to strengthen the independence and good governance of the Board and broaden the experience base of the Board, having regard to the international nature of financial services business.

8. To complement the good governance of the Board, every Board member “*who has any direct or indirect personal, professional, business or pecuniary interest in any matter*” before the Board is legally obligated to declare such interest and withdraw from a meeting of the Board at which such matter is being discussed or decided. This is reinforced by, and applied in accordance with, the Board’s policy on managing conflicts of interest (see **Appendix 1**) through its Disclosure of Private Interests Form approved in 2014 (a copy is attached as **Appendix 2**). A similar disclosure requirement applies in relation to the staff of the Commission (a copy is attached as **Appendix 3**).

9. The Board’s functions are prescribed in section 6 of the FSCA and, on an annual basis, the Board meets directly with the Cabinet pursuant to section 51 (1) of the FSCA. The purpose of the meetings is essentially to discuss matters relating to:

“(a) the operation, management and performance of the Commission;

- (b) the initiatives and future direction of the Commission;*
- (c) Government policy with respect to the financial services industry;*
- (d) developments in the international markets and current international initiatives on regulatory and legal measures which may affect the Territory; and*
- (e) such other matters as either party may consider essential for strengthening the role of the Commission and enhancing the welfare of the Territory.”*

10. The Board has been meeting with the Cabinet regularly on an annual basis since 2002 (save in 2017 following the exceptional circumstances of hurricanes Irma and Maria which made such a meeting in that year impossible). The tenure and process for the resignation and removal of Board members are respectively outlined in sections 8 and 9 of the FSCA. As far as I am aware, the tenets of these sections are adhered to.

11. The Managing Director of the Commission is appointed by the Board after consultation with the Minister of Finance and is removable by the Board in accordance with his or her terms and conditions of employment. As an employee of the Commission, the Managing Director’s functions are outlined in section 10 of the FSCA, but also performs numerous other functions contained in other financial services legislation. It is the duty of the Managing Director (as per section 10 (3) of the FSCA) to ensure that:

- “(a) the resources of the Commission are utilised economically and efficiently;*
- (b) the internal financial and management controls of the Commission are adequate;*
- (c) the Commission is operated in accordance with principles of good governance; and*
- (d) the Commission fulfils its statutory obligations and properly discharges its functions.”*

12. In performing these specific functions, the Managing Director is assisted by a senior management team comprising 2 Deputy Managing Directors (Regulation and Corporate Services) and the Heads of Divisions – Legal, Policy Research and Statistics, Enforcement, Investment Business, Insurance, Human Resources and Finance. This senior management team (referred to by its acronym **AXIS** – Agile Executives for Impact and Strategy) meets regularly on a weekly basis on Mondays, or as the Managing Director may otherwise appoint, to consider Commission issues on which determinations are required to be made or simply to advise the Managing Director on appropriate courses of action.

13. The functions and powers of the Commission are generally and specifically outlined in the FSCA and other financial services legislation listed in Schedule 2 of the FSCA. In essence, the responsibility of the Commission is to independently regulate and supervise the conduct of financial services business conducted in and from within the Virgin Islands. In so doing, the Commission administers the FSCA and all financial services legislation, and collects fees arising

therefrom on behalf of the Government which it pays to the Government in accordance with the provisions of section 19 of the FSCA (Government Trust Account). The percentage of the fees collected which are to be applied for the purposes of the Commission and how that process is administered are provided in section 20 of the FSCA. In addition to the fees received and applied for the purposes of the Commission, the FSCA (in section 62 (1B)) provides for the Commission to receive and retain administrative penalties imposed for contravention of financial services legislation which prescribe the imposition of such penalties.

14. Within the structure of the Commission is established 2 committees, namely the Licensing and Supervisory Committee (LSC) and the Enforcement Committee (EC). The LSC is chaired by the Managing Director (in his absence by one of the Deputy Managing Directors or other Director as the Managing Director may designate) and comprises the 2 Deputy Managing Directors and the Directors of Legal, Policy Research and Statistics, Banking, Insolvency and Fiduciary Services, Investment Business and Insurance. Both the LSC and the EC are statutorily established under section 14 (1) of the FSCA. While the former deals with matters of regulation and supervision, the latter deals with issues of enforcement of financial services legislation. Generally, each of these 2 committees meets on a weekly basis to consider and decide on matters before it. Each of the committees has its own guidelines and operating procedures (which, because of their large size, can be produced to the COI separately if required) in terms of how they function and carry out their duties in the context of sections 16, 16A and 17 of the FSCA.

15. It is important to note that at the heart of the Commission's licensing regime (that is, in relation to applications for the grant of licences to carry on financial services business) is determining the fitness and propriety of applicants. The Commission is guided in this respect by Schedule 1A of the Regulatory Code, 2009 (Guidance Notes on Fit and Proper Test). The Guidance places emphasis on 3 fundamental principles, namely:

- (a) Honesty, integrity and reputation;
- (b) Competence and capability; and
- (c) Financial soundness.

16. Since its establishment, the Commission has enjoyed tremendous non-partisan political support from the elected leaders in the House of Assembly (the Legislative Council before that). It has over the years had good working relationships with successive governments and with Cabinet (the Executive Council before that). This, in my considered view, has been due largely to the professional and independent manner in which the Commission conducts its affairs. Successive governments have respected the independent role and functions the Commission plays in maintaining and sustaining the conduct of financial services business in and from within the Territory.

17. The Commission (and by extension the Territory) has benefitted from periodic international assessments of its regulatory, supervisory, compliance and international cooperation regimes. Over the years, the Commission's regimes have been assessed by the Caribbean Financial Action Task Force (CFATF), International Monetary Fund (IMF), Financial Stability Forum

(relying on the IMF assessment) and Group of Finance Centre Supervisors (GIFCS). These assessments mainly relate to the Commission's regulatory, supervisory, compliance, enforcement, anti-money laundering and countering the financing of terrorism (AML/CFT) and international cooperation regimes. The reports emanating from these assessments are publicly available on the Commission's website at www.bvifsc.vg and on the websites of the assessing institutions. Assessments by the Global Forum (GF) on information exchange on tax matters invariably relate, to some extent, on the legal and regulatory regimes administered by the Commission.

18. The structure and organogram of the Commission are published on the Commission's website. Similarly, the financial services legislation and the Commission's annual reports and work plan are published. The work of the Commission is aided by a number of guidelines and operating procedures (issued pursuant to the Commission's power under section 41A of the FSCA) which complement the laws administered by the Commission and, in some cases, deal with mere administrative matters, such as those relating to human resources matters.

19. The Commission is an ever-evolving institution that has to keep attuned to current and emerging standards of regulation, supervision, compliance and cooperation. As far as I am aware, it has not been tainted by any act of corruption, abuse of office or other serious dishonesty in public office that has affected its operations or the performance of its functions. The Board is in regular contact with the management team of the Commission through its regular monthly meetings and provides the necessary oversight with regard to the Commission's performance of its functions. This includes a rigorous oversight of the integrity of the Commission's finances to ensure good financial governance.

20. I now proceed to address seriatim the questions raised in your letter as follows:

A: MATTERS ADDRESSED - GOVERNANCE

(1) What do you understand by the term “good governance”?

The question is seeking my opinion. Good governance embraces numerous facets of good administration and includes transparency, integrity, vigilance, leadership and accountability. It also extends to taking appropriate steps to ensure compliance with established laws, policies, processes and procedures as part of the chain of ensuring efficiency, effectiveness and fairness in administration. As it relates to the Commission, it also extends to maintaining confidentiality of information pertaining to regulated persons and entities.

(2) What do you understand by the term “poor governance”?

The question is seeking my opinion. Anything that falls outside the scope of good governance (as above opined) may be viewed as a deficiency in good administration and therefore, as appropriate, characterised as constituting poor governance.

Maladministration and a failure to follow established rules and procedures or applying such rules and procedures unfairly undermine good governance.

(3) To what extent do you consider good governance to be important in sustaining public confidence in all elements of government?

The question is seeking my opinion. Good governance is the bedrock of good administration. That in turn engenders public confidence in government, both as an institution and as a system that the general public can rely upon to look after the public interest, and advocate grievances and seek redress, where considered appropriate.

(4) To what extent do you consider good financial governance to be important in sustaining public confidence in all elements of government?

The question is seeking my opinion. Good financial governance is just as important as good governance (asked and responded to in the immediately preceding question). Probity and transparency in financial dealings and/or transactions builds public confidence in the system of administration.

(5) As Chairman of the Financial Services Commission, what role, if any, do you have in ensuring there is good financial governance in the BVI and how you carried that out?

(a) As Chairman of the Financial Services Commission, my remit and that of colleague Commissioners (constituting the FSC Board) is defined by statute, namely the FSCA and other statutes that specifically place responsibility on the Chairman and/or the Board (for instance, the Financial Services (Exceptional Circumstances) Act, 2020 places certain obligations on the Chairman and the Managing Director of the Commission to take decisions that otherwise would be required to be taken by the Board and/or the Commission during a period of occurrence within the Territory of exceptional circumstances – whether natural disasters, public health emergencies or otherwise).

(b) My remit as Chairman (in the context of the Board of the FSC) may be found in section 6 of the FSCA. The Board’s monitoring and regulatory responsibilities are outlined in section 6 (1) to include (amongst other responsibilities):

“(c) monitoring and overseeing the management of the Commission by the Managing Director with the objective of ensuring that –

(i) the resources of the Commission are utilised economically and efficiently;

(ii) the internal financial and management controls of the Commission are adequate;

(iii) the Commission is operated in accordance with principles of good governance; and

(iv) the Commission fulfils its statutory obligations and properly discharges its functions;

(d) acting as trustee of the deposit accounts transferred to the Commission under section 21; [a provision transferring funds held in the Government account to the Commission as part of the transitioning of the then Financial Services Department to the Financial Services Commission – the provision is effectively spent]

(e) approving the estimates and work programme referred to in section 24; and

(f) approving the Commission's accounts under section 25.”

(c) My responsibility (and that of the overall Board) in ensuring good financial governance in the BVI is to strictly adhere to the above remit and provide efficient and effective oversight to the Commission in discharging its financial obligations. The Commission collects financial services-related statutory fees to pass on to the Government in accordance with the terms of the FSCA (specifically section 19 thereof). In this respect, the Board ensures the preparation and auditing of annual accounts (financial statements) which are submitted to the Cabinet for approval and subsequently laid before the House of Assembly.

(d) On a general level, the Board monitors the Commission's supervisory regime and how it is implemented/enforced to ensure, in particular, that appropriate good governance (including financial) rules are adhered to by licensees thereby maintaining financial stability (in the context of the financial services industry).

(6) As Chairman of the Financial Services Commission, what role, if any, do you have in monitoring and regulating financial services business carried out in or from within the BVI?

The responsibility of monitoring and regulating the conduct of financial services business in and from within the BVI is statutorily placed on the Commission. I and colleague Commissioners provide an oversight role to ensure efficient and effective performance by the Commission in the discharge of that responsibility. The Commission provides the Board with periodic reports relative to the regulation and supervision of licensees. This provides the Board with the opportunity to review these reports and flag areas that may benefit from improvement.

(7) What legal, regulatory and/or supervisory mechanisms, statutory or otherwise, make up the current system in place in the BVI to ensure good financial governance?

- (a) Please refer to the response to question (5) above with regard to the Board's statutory remit in ensuring good financial governance. In addition, the FSCA serves as the premier statutory benchmark for ensuring good governance, financial and otherwise. This Act is complemented by other financial services legislation listed in Schedule 2 of the same Act. The LSC and EC, coupled with the senior management body, AXIS (referred to formally as the Managing Director's Cabinet), serve as the Commission's frontline institutions in ensuring good financial governance within the Commission. Furthermore, the Commission has in place a directorate of finance which deals with the day-to-day administration of the Commission's finances and ensuring accountability. This is complemented by external auditors (currently BDO) to provide an independent layer of probity, accountability and overall good governance.
- (b) Externally, apart from the external auditors, the Commission is answerable to the Cabinet through its annual budgetary and reporting processes (respectively outlined in section 24 and section 27 of the FSCA). The Commission's annual estimates and work plan are laid before the House of Assembly (section 24 (5)), with the opportunity for the Managing Director and other senior staff of the Commission to appear before a Select Committee of the House to assist with and/or respond to matters related to the estimates and the work plan. The annual report (outlining the Commission's activities in a given year) is at the same time laid before the House of Assembly. The annual reports are publicly available on the Commission's website (the annual estimates and work plans can be made available to the COI if required).
- (c) Compliance inspection (carried out through the Compliance Inspection Unit) is a key feature of the Commission's supervisory mechanism. Periodic inspection of licensees is carried out on a risk sensitive basis and is founded on the Commission's Risk Assessment Framework and carried out in accordance with the Compliance Inspection Procedures Manual (which, because of their large size, can be produced to the COI separately if required). This process enables the Commission to know, apart from the annual reports submitted to the Commission by approved Compliance Officers in accordance with the FSCA and the Regulatory Code, 2009, the level of compliance of licensees and their risk appetite and what risk, if any, may be posed to the Territory by their activities. In addition, the Compliance Inspection Unit monitors compliance by licensees with recommended remedial measures to determine whether or not to make recommendations to the LSC for a licensee to be discharged from any further monitoring or whether further action should be undertaken.
- (d) The cumulative effect of the above mechanisms ensures proper conduct and good financial governance.

(8) What do you consider to be the strengths and weaknesses of that system?

Every established system can always benefit from improvement based on existing and emerging circumstances. The different layers of oversight – the House of Assembly, the Cabinet, the Board of Commissioners, the AXIS, the LSC, the EC and the external auditors – provide the appropriate strength in ensuring overall good governance of the Commission, whether in relation to administration, finance or otherwise. Lapses may, from time to time, occur in timely reporting or carrying out of obligations, but these generally fall to the minimum.

(9) What do you as Chairman of the Financial Services Commission consider should be taken to promote the strengths and remedying the weaknesses you have identified so as (if you have answered (3) and/or (4) above in the positive) to sustain public confidence in all elements of government?

- (a) The Commission engages actively in the regular review of all financial services legislation with the sole purpose of strengthening their operation/implementation, providing a financial services business-friendly environment, responding to industry concerns and/or recommendations, ensuring compliance with established international standards of regulation, supervision, compliance and cooperation, and ensuring the Commission has the relevant and appropriate tools with which to efficiently and effectively carry out its mandates outlined in section 4 of the FSCA and other related financial services legislation. This practice and statutory obligation must be continued to further engender public confidence in the management and operation of the financial services industry and generally promote good government.
- (b) Administrative and operational lapses require regular review and a continual assessment of staff skills and knowledge through enhanced resource mobilisation and training programmes. It is precisely for this reason that the Commission has established a Fund (called the Administrative Penalties Fund) whereby monies collected from the imposition of administrative penalties for breaches of financial services legislation are utilised to provide training to the Commission staff and other agencies (Police, Financial Investigation Agency, Customs, Immigration, Governor's Office, Office of Director of Public Prosecutions, Attorney General's Chambers, Ministry of Finance and International Tax Authority), in particular, in the areas of AML/CFT (including investigation and prosecution of money laundering and terrorist financing offences) and international cooperation.
- (c) In 2019, the Board approved and directed (with the engagement of an external consultant) a review of the operating structure of the Commission to better streamline the work of the institution. The results of that exercise will culminate in the gradual implementation of the recommendations arising therefrom. It is expected that when all the recommendations are fully implemented, we will see a further strengthening in the operations of the Commission, including lessening lapses in timely reporting and/or carrying out of obligations.

(10) What are the standards by which good financial governance is currently measured in the BVI?

I am not the person best placed to answer this question, considering the scope of my (and that of the Commission's) remit. However, in so far as the Commission is concerned, the responses provided in relation to paragraphs (4), (5) and (7) above are considered fundamental to ensuring good financial governance within and/or in the operation of the Commission.

(11) In what way, if any, do you consider those standards to be insufficient?

In relation to the Commission, the standards outlined in the responses to paragraphs (4), (5) and (7) are considered crucial for effective financial management and good governance. As with every system, unforeseen weaknesses may appear – whether through an implementation process or a legislative review process or otherwise. The functions and powers granted to the Board and the Commission respectively under sections 6 and 4 of the FSCA (and in other financial services legislation outlined in Schedule 2 of that Act) provide sufficient mechanisms for the timely and proper remediation of any shortcomings that may be identified in relation to good financial governance.

(12) What do you, as Chairman of the Financial Services Commission, consider should be taken to ensure that the standards of financial governance in place will sustain public confidence in all elements of government?

There is need for continual leveraging on the good relationship and confidence the Commission has been able to build with the central Government and its institutions in working harmoniously to ensure a financial services industry that is positively responsive to its clients and current and emerging standards of regulation, supervision, compliance and cooperation. In particular, the continuing support of the Government (Cabinet) and the House of Assembly to legislative proposals for the reform of financial services legislation and the financial services sector generally is key to sustaining public confidence in the work of the Commission vis-à-vis the Government.

B: MATTERS ADDRESSED – THE OPERATION OF THE AGENCIES OF LAW ENFORCEMENT AND JUSTICE

(1) How are the agencies of law enforcement and justice organised in the BVI in relation to criminal and other unlawful activities concerning financial services business?

(a) The broad nature of this question, in the context of the remit and scope of operation of the Commission, means that neither I nor the Commission is best suited to provide an unfaltering and comprehensive response to the question. However, in

terms of the work and operation of the Commission, the Commission has a cooperative relationship with certain agencies and institutions of government. The Commission was instrumental in the enactment of the Financial Investigation Agency Act, 2003 which led to the establishment of the Financial Investigation Agency (FIA). This was considered crucial in order to better support the work of the Commission in terms of identifying Commission licensed and unlicensed entities that may be engaged in unlawful or criminal activities (whether within or outside the Territory).

- (b) The Commission also has some nexus to the RVIPF, in that when certain offences are committed under financial services legislation by licensed entities, the offences are reported to the RVIPF for investigation and further action in liaison with the Office of the DPP.
 - (c) The Commission is a member of statutory and non-statutory bodies together with law enforcement agencies where there is a sharing of intelligence and other information which relate to or border criminal conduct. These bodies are the Joint Anti-money Laundering and Terrorist Financing Advisory Committee (JALTFAC) (established under the Proceeds of Criminal Conduct Act, 1997), Inter-Governmental Committee on AML/CFT Matters (IGC) (established under the Anti-money Laundering and Terrorist Financing Code of Practice, 2009). The non-statutory bodies are the Council of Competent Authorities (CCA) and National Anti-money Laundering Coordinating Council (NAMLCC) – these two bodies are currently the subject of statutory consideration respectively under the Criminal Justice (International Cooperation) Act, 1993 and the Proceeds of Criminal Conduct Act, 1997, with the latter already enacted but not brought into force as yet.
 - (d) The Commission has no direct nexus to the Courts in criminal matters affecting financial services business or persons within the financial services industry, save through the investigative and prosecution powers and authority of the RVIPF and Office of Director of Public Prosecutions.
- (2) **What particular responsibilities do you have, as Chairman of the Financial Services Commission, within the BVI system of law enforcement and justice in relation to criminal law and other unlawful activities concerning financial services business?**
- (a) As Chairman, none. However, the Commission has certain powers under various financial services legislation to impose sanctions for offences or breaches committed by licensees and other persons. Section 62 of the FSCA provides that Regulations made under that section “*may provide for the imposition by the Commission of administrative penalties on licensees that contravene a provision of this Act, any regulatory Code or any directive issued by the Commission*”. Accordingly, the Commission imposes administrative penalties for

offences/breaches committed under relevant financial services legislation. These are currently dealt with under the Financial Services (Administrative Penalties) Regulations, 2006 and under Schedule 4 of the Anti-money Laundering and Terrorist Financing Code of Practice, 2009.

- (b) Furthermore, section 56 of the FSCA empowers the Commission to impose a fine not exceeding the prescribed maximum on any person who commits an offence (under that Act or any financial services legislation) that carries the penalty of a fine and for which criminal proceedings have not been instituted. The exercise of the power is constrained by certain conditions and procedures that are prescribed in the section of the Act.
 - (c) Licensees and other persons who are engaged in unlawful activities that are not criminal in nature may be proceeded against in accordance with the Commission's enforcement powers prescribed in sections 37, 37A and 38 of the FSCA.
- (3) **What processes and systems are in place to monitor the effectiveness of the system of law enforcement and justice in relation to criminal and other unlawful activities concerning financial services business?**
- (a) The IGC – comprising the Commission and other law enforcement institutions (including those with a nexus to AML/CFT) – meets periodically (at least once every quarter) to share information and experiences in law enforcement matters that affect or involve (amongst other things) entities in the financial services industry and other persons which may relate to money laundering or terrorist financing activity. In addition, the IGC has a monitoring mechanism whereby each member institution of the IGC provides regular statistics of issues they are concerned with, and actions taken, being taken or contemplated with respect to their areas of responsibility – such actions, depending on a member institution's area of responsibility, may range from statistical data on suspicious activity reports received (affecting mostly financial services businesses), enforcement actions taken (mostly by the Commission), seizures, arrests, detentions and other actions relevant to members' areas of responsibility in relation to contraventions of the law for which action is either taken, being investigated, or under consideration for a decision (the statistics on these can be made available to the COI if required).
 - (b) In terms of the reports made by the Commission to the RVIPF, the Commission follows these up in writing when a report has taken too long without any update. This is carried out through the Commission's Enforcement Division. In addition, the Enforcement Division follows developments externally to identify BVI business companies that may be reported or mentioned adversely (in the media and in court documents or, in some cases, in reports received by the Commission) as being involved in criminal activity and/or are being prosecuted. The collection of such information enables the Commission to make an assessment of what action, if any, it may need to take against or in relation to the companies concerned.

(4) What, if any, challenges have there been/are there in relation to detecting, investigating and prosecuting matters concerning criminal and other unlawful activities relating to financial services business?

- (a) Reports submitted in the past to the RVIPF of offences committed by licensees and other persons with respect to financial services legislation had not resulted in prosecution (the statistics on these can be made available to the COI if required). Most of those offences related to persons carrying on financial services business without lawful authorisation. Invariably, in most if not all cases, the directors of the entities concerned were resident outside the Territory and/or the entities had been struck-off the register or been dissolved, and investigations had not proceeded beyond the local level and no charges were laid. As a consequence, the Commission has resorted to invoking its enforcement powers under sections 37, 37A and 38 of the FSCA to penalize entities or other persons that engage in committing offences under financial services legislation.
- (b) The fact that directors of most non-regulated BVI entities reside outside the jurisdiction gives rise to jurisdictional issues if those companies are engaged in any criminal conduct. The companies invariably do not conduct business in the BVI and any bank accounts or assets held by these companies reside outside the jurisdiction. In such cases, when suspected criminal activity comes to light, the Commission works closely with foreign regulatory and law enforcement authorities to obtain and disclose non-public corporate documents and information to assist in the detection of financial crime. The Commission has an obligation to do this under section 33C of the FSCA and it is proactive in its approach as demonstrated by its membership of the UK Financial Crime Information Network (FIN-NET) and the IOSCO Multilateral Memorandum of Understanding, which are used to assist and expedite international cooperation with foreign regulators and law enforcement agencies.
- (c) There have also been some challenges in ensuring the effective investigation and prosecution of suspected money laundering activities beyond the predicate offences. As a consequence, the Commission has committed and continues to commit resources to have officers of law enforcement agencies trained in AML/CFT investigations and prosecution.

(5) What impact, if any, has corruption, abuse of office or other serious dishonesty in public office, had on the way in which criminal and other unlawful activities relating to financial services business is carried out in the BVI in recent years?

The Commission is not aware of any particular incident of corruption, abuse of office or serious dishonesty in public office, whether within the Commission or in Government, which had or could have impacted the way in which any criminal or other unlawful activity relating to financial services business is carried out in the Territory.

- (6) **What impact, if any, has corruption, abuse of office or other serious dishonesty in public office, had on the way in which criminal and other unlawful activities relating to financial services business has been detected, investigated and prosecuted?**

The Commission is not aware of any act of corruption, abuse of office or other serious dishonesty in public office having any impact on the detection, investigation or prosecution of criminal or other unlawful activity relating to financial services business.

- (7) **What do you, as Chairman of the Financial Services Commission, consider to be the strengths and weaknesses of the system of law enforcement and justice in the BVI in relation to criminal and other unlawful activities relating to financial services business?**

The level of cooperation between the Commission and other law enforcement agencies in the Territory (through membership in the various committees referred to in paragraph (1) (c) above) is a great source of strength in sharing intelligence and experience in the detection and investigation of criminal activity that may impact the financial services sector and other aspects of public life that are relevant to ensuring a stable and business-friendly environment. Adequate resource mobilisation and training are considered essential, if not fundamental, to efficient and effective law enforcement; these will certainly benefit from improvement.


- (8) **What do you, as Chairman of the Financial Services Commission, consider should be taken to ensure that the strengths and weaknesses you have identified can be maintained or remedied respectively?**

(a) The cooperation between the Commission and other law enforcement agencies and related institutions should continue to be supported. In particular, the existing memoranda of understanding between them should be regularly reviewed to bring them up-to-date to better strengthen their relationships and level of cooperation and ensure, to the extent possible/feasible, a harmonized approach to the detection, investigation and prosecution of criminal conduct, especially as it relates to financial services business.

(b) Any shortcoming can be improved upon by ensuring a steady allocation of financial and human resources to secure the appropriate law enforcement tools and the desired level of expertise to undertake prosecution of financial crime offences. The training should be extended to the judiciary, in particular, in the area of money laundering and terrorist financing to develop a strengthened appreciation of emerging criminality in such areas, including the techniques criminals employ in committing these crimes and seeking to cloud their detection and/or frustrating their investigation and successful prosecution (in July/August 2014 the Commission provided financial support to the Judicial Training Institute of the Eastern

Caribbean Supreme Court to conduct training for judges in AML/CFT matters and international cooperation which was held in Anguilla).

21. I trust that this Policy Statement provides sufficient background information and addresses the questions raised by the COI's Letter under reference. Should further assistance be required from me in relation to the above, I will be happy to assist as best as I can.

Signed: 
Robin Gaul
Chairman
BVI Financial Services Commission


Cc: Managing Director
BVI Financial Services Commission

**BVI COMMISSION OF INQUIRY: LETTER OF REQUEST FOR INFORMATION/DOCUMENTS TO BVI
FINANCIAL SERVICES COMMISSION No.2**

INDEX TO DOCUMENTS PRODUCED

| Unique Reference No. | Document Description | Appendix No. referred to in FSC Response letter |
|-------------------------|--|--|
| 1. | Conflicts of Interest Policy FSC Board members | 1 |
| 2. | Disclosure of Interests Form Board Commissioners | 2 |
| 3. | Disclosure of Interests Form FSC Staff | 3 |

Index/Inventory to documents provided by Robin Gaul, FSC Board Chairman

Signed: 
4th June 2021

APPENDIX 1

Managing Conflicts of Interest – Board of Commissioners of the Financial Services Commission

Statutory Scope

By virtue of the provisions of the Financial Services Commission Act, 2001, a Commissioner who has any direct or indirect personal, professional, business or pecuniary interest in any matter which falls to be considered by the Board shall as soon as reasonably practicable, complete and submit to the Board Secretary a declaration of interest on the prescribed form for the attention of the Board. A Commissioner who has declared an interest in a matter being considered by the Board shall withdraw from any meeting whilst the matter is being considered and shall not express any view or take part in any vote on the matter. It is essential that this statutory obligation is strictly adhered to.

Nature and Scope of Conflicts of Interest

A conflict of interest is not necessarily capable of an exhaustive definition, although appropriate guidance can be provided to direct attention to specific matters which may give rise to conflicts in a Commissioner's discharge of his/her duties. Thus a conflict of interest may arise in various ways and under different circumstances, but essentially relates to a Commissioner having a direct or indirect personal, professional, business or pecuniary interest in a matter that is the subject of a decision of the Board of Commissioners; ultimately it becomes a question of fact and the application of good judgment to determine whether a specific matter brings a Commissioner into a conflict with the efficient, effective and independent discharge of his/her responsibilities.

Generally, a conflict of interest can be considered in three fundamental stages – these relate to identification, reporting and managing. Firstly, it is important that every Commissioner is able to identify factual matters and/or circumstances that present or are likely to present conflicts of interest with respect to any particular subject matter on which his/her decision or opinion is essential or required in the due execution of his/her duties. Secondly, where a conflict is identified, it should be notified to the Board Secretary, outlining the nature and scope of the conflict of interest. It is essential for a culture of openness to exist in relation to disclosure of conflicts of interest, otherwise the independence and credibility of the Board of Commissioners may be brought into disrepute. Thirdly, it is important that a mechanism exists for managing conflicts of interest. The Financial Services Commission Act, 2001 is instructive on the obligation to report a conflict of interest to the Board Secretary who is then required to inform the Chairman and other members of the Board. This process allows for the appropriate and effective management of conflicts of interests.

Conflicts of Interest on the Basis of Personal Relationships

A conflict of interest would normally arise with respect to a personal relationship where a Commissioner is in an affinity or consanguine relationship with a person whose matter is before

the Board for a decision. It also extends to a circumstance where a Commissioner lives in the same household with a person whose matter is before the Board for discussion or for a decision, even though the Commissioner has no legal affinity or consanguine relationship with that person.

Conflicts of Interest on the Basis of a Professional Relationship

A conflict of interest would normally arise with respect to a professional relationship where a Commissioner belongs to the same professional association with a person whose matter is before the Board for a decision. This extends to a situation where the Commissioner expects, or has been approached with a promise of, an assignment or some other benefit from the person. The benefit need not be pecuniary and may be intangible.

Conflicts of Interest on the Basis of a Business Relationship

A conflict of interest would normally arise with respect to a business relationship where a Commissioner is in the same business venture with the person whose matter is before the Board, whether as a partner, director, other office holder or shareholder of that venture. Any promise of inclusion in such a business venture, though yet to materialize, shall also be considered a conflict of interest, unless the fact of such promise is disclosed to the Board and the Board satisfies itself that the promise is not being or will not be relied or acted upon by the Commissioner concerned and his/her participation in the meeting concerning any specific matter will not affect his judgment and integrity regarding his/her participation or decision on that matter.

Conflicts of Interest on the Basis of a Pecuniary Interest

A conflict of interest would normally arise in relation to a pecuniary matter where a Commissioner has a financial interest in the outcome of a decision of the Board with respect to a matter before the Board. It would be unlawful for a Commissioner to receive any type of financial benefit for advancing a particular interest; similarly, a promise to advance an interest in anticipation of a financial benefit would qualify as a conflict of interest as the Commissioner's integrity and good judgment would have been impaired by what he/she anticipates from the outcome of a decision of the Board.

Rules Applicable to Conflicts of Interest

A conflict of interest may be either real or potential, and it must be capable of identification. Where a matter falls to be dealt with by the Board of Commissioners, the following rules apply to every individual Commissioner:

- (a) Where a Commissioner forms the view or suspects that he/she has a direct or indirect personal, pecuniary, professional or business interest in the matter, he/she must report it to the Board Secretary in advance of the meeting at which the matter is to be decided; having a personal, pecuniary, professional or business interest in a matter may entail gain for oneself or another in the outcome of a decision of the Board (which compromises or has

the potential to compromise the independent judgment of the Commissioner concerned and thus whittle the credibility of the Board);

- (b) The Commissioner concerned must submit a declaration of interest on the form prescribed for that purpose under the Financial Services Commission Act, 2001;
- (c) The nature and scope of the interest giving rise to the conflict of interest must be identified and notified;
- (d) The Commissioner must recuse himself/herself from participation in the proceedings in respect of the matter to which the conflict relates;
- (e) Where the Commissioner discovers during the proceedings of the Board that he/she has a conflict of interest in the matter which he/she could not have reasonably discovered prior to the meeting – as may occur with personal conflicts regarding family members that are operating independently under an unknown name without the knowledge of the Commissioner concerned – he/she must make the conflict known to the Board immediately and withdraw or recuse himself/herself from further participation in the proceedings in respect of the matter to which the conflict relates;
- (f) The Commissioner shall not have or exercise any vote in the proceedings at which the matter is being considered – in circumstances where the conflict of interest is discovered during the course of the proceedings – and shall comply with the requirements of paragraph (e) above;
- (g) In the event that a conflict of interest is discovered after a decision had been taken on the matter (whether or not the conflict could have been reasonably ascertained and reported), the Board shall revisit the decision; the Board may reach the same or another decision, but without the presence of the Commissioner to whom the conflict of interest relates. However, where the conflict of interest is of such a nature as the Board considers not to be sufficiently material and, having regard to the subject matter to which it relates, would have been unlikely to affect the decision taken, the Board may decline to revisit the decision;
- (h) Every disclosure of a conflict of interest shall be made honestly;
- (i) Where the Board delegates any responsibility to a Commissioner, it is the duty of the Commissioner to ensure that every reasonable measure is taken to avoid a conflict of interest in relation to the delegation, and every conflict of interest must be reported to the Board through the Board Secretary.

Powers of the Board in relation to Conflicts of Interest

Where a conflict of interest is identified in relation to a Commissioner, the Board

- (a) Shall Ensure that the Commissioner to whom the conflict relates does not attend or participate in the discussion or decision of the matter to which the conflict is connected;

- (b) Shall Consider whether the nature and scope of the conflict is of such a nature as to be remotely connected to the Commissioner and the likelihood of any appearance of bias or undue influence on the part of the Commissioner is very remote or zero; this power must be treated only on an exceptional basis, such as where the Commissioner's contribution to the discussion is essential to arriving at an appropriate decision;
- (c) May direct such other action to be adopted as, in the Board's view, is reasonable in all the circumstances of the matter concerned.

Ultimately, the Board recognizes that effective management of conflicts of interests in its decision-making process is key to good governance and its members must uphold the rules and procedures outlined above.



APPENDIX 2

DISCLOSURE OF PRIVATE INTERESTS

Board of Commissioners

Register of Interests

The Commission maintains a register of private interests for the Board of Commissioners and all its employees. The purpose of the Register is to record information of any pecuniary interest or other benefit which a Commissioner or employee receives that might reasonably be thought by others to influence his or her actions as a Commissioner, as an employee of the Commission or of any Committee established under the Financial Services Commission Act, 2001 (the “Act”).

Deadline for Disclosure

Every new Commissioner must disclose their private interests to the Commission before they take up their appointment.

Completion of the Form

Please refer first to the explanatory notes in each section of this Form for the details of the information which is required to be registered. If there is not enough space in any section of this Form for the information required, you may attach additional sheets. Each additional sheet must be signed by both the Commissioner and the Secretary to the Board of Commissioners.

Subsequent changes or additions to your disclosure of interests should be notified to the Secretary to the Board of Commissioners within one (1) month of any changes occurring.

NAME (Block capitals, please):

POSITION/TITLE:

1. DIRECTORSHIPS¹ :

Are you a director or principal of any entity regulated by the Commission or licensed to do business in the British Virgin Islands?

☐

Yes

☐

No

If yes, please list the names of the companies, briefly stating the nature of each company's business and indicating whether the company is regulated by, or involved in any business relationship with, the Commission.

| Name of Company | Nature of Company's Business | Regulated Entity (Y/N) | Business Relationship(Y/N) |
|----------------------|------------------------------|------------------------|----------------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
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| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |

¹Notes: (i) You should include directorships which are individually unremunerated but where remuneration is paid through another company in the same group.

(ii) In this category and category 2, "remunerated" should be read as including allowances or benefits.

2. REMUNERATED EMPLOYMENT, OFFICE, PROFESSION :

Do you receive payments or income from, or have a pecuniary interest of any kind in, any employment, office, trade, profession or vocation (apart from your position with the Commission)?

☐ Yes ☐ No

If yes, please set out the details shown in the table below.

| Name of Company | Nature of Company's Business | Regulated Entity (Y/N) | Business Relationship(Y/N) |
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3. GIFTS, BENEFITS AND HOSPITALITY:

In the past year, have you or your spouse received any gift or material advantage of a value greater than \$100.00 from any company, organization or person which in any way relates to your position with the Commission?²

☐ Yes ☐ No

²Notes: (i) You should include any hospitality given and services or facilities offered free or at a price below that generally available to members of the public.

(ii) You should include not only gifts and material advantages received personally by you and your spouse, but also those received by any company or organisation in which you (or you and your spouse jointly) have a controlling interest.

| Date of Gift (DD/MM/YYYY) | Donor | Description | Value |
|------------------------------|-------|-------------|-------|
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4. OVERSEAS VISITS

Have you or your spouse made any overseas visits relating to or in any way arising out of your position with the Commission where the cost of the visit was not wholly borne by yourself or by the Commission?

☐ Yes

☐ No

If yes, please list relevant visits in chronological order.

| Countries Visited | Dates of Visits (DD/MM/YYYY) | Who Paid? |
|-------------------|---------------------------------|-----------|
| | | |
| | | |
| | | |

5. SHAREHOLDINGS

Do you have *(either yourself or with or on behalf of your spouse or children)* interests in shareholdings in any company regulated by the Commission or licensed to do business in the British Virgin Islands?

☐ Yes ☐ No

If yes, please set out the details shown in the table below.

| Name of Company | Nature of Company's Business | Regulated Entity (Y/N) | Business Relationship(Y/N) |
|-----------------|------------------------------|------------------------|----------------------------|
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6. PERSONAL RELATIONSHIPS

Do you have a spouse³, child⁴ or relative⁵ employed at a senior level in any entity regulated by or providing services to the Commission?

☐ Yes ☐ No

If yes, please set out the details shown in the table below.

³'Spouse' means the husband or wife of the person making the declaration or any person who is living with that person in the circumstances of husband and wife at the date of the declaration

⁴'Child' means a son or daughter of any age and includes a child born out of wedlock, an adopted child, a step-child or a child of the family; and

'child of the family' means a child of both the person making the declaration and/or his spouse and any other child, who has been accepted and treated by both the person and his spouse as a child of their family.

⁵'Relative' in relation to the person making the declaration means:

(a) a spouse or child of that person; (b) a brother or sister of that person; (c) a brother or sister of the spouse of that person; or (d) a parent, grandparent or grandchild of that person

| Name | Position | Entity | Relationship |
|------|----------|--------|--------------|
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7. GOVERNMENT AND COMMUNITY BOARDS, GROUPS AND ORGANISATIONS

Are you a member of:

- (i) any board or committee formed, organised by or otherwise connected to the Government of the Virgin Islands or to any statutory body organised under the laws of the Virgin Islands;
- (ii) any professional or private sector organisation having any business with the Commission or in any way involved in the financial services industry in the Virgin Islands?
- (iii) any investment club or similar organisation;
- (iv) any community groups and organisations in the Virgin Islands?

☐ Yes

☐ No

If yes, please set out the details shown in the table below.

| Organisation | Purpose | Status (eg. Member, Chairperson) | Duration (How long have you been a member) |
|--------------|---------|-------------------------------------|---|
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8. OTHER INTERESTS

Are there any other interests which you think are likely to influence, or likely to be perceived as influencing, your actions or professional judgment in discharge of your responsibilities as a member of the Board of Commissioners?

☐ Yes ☐ No

If yes, please give details.

9. DECLARATION

I, , do solemnly declare that all statements made and all information contained in this disclosure of interests form are true and accurate to the best of my knowledge, information and belief and that if there is any material change in the activity (ies) in which I am, or my spouse or relative are, engaged that may give rise to a breach of the Financial Services Act, 2001, Part [] of the Criminal Code, I will immediately declare it in writing.

Signature:

Date:

(DD/MM/YYYY)

Name:

Signature:



DECLARATION OF PRIVATE INTERESTS

The Commission maintains a register of private interests for all its employees. The purpose of the Register is to record information of any financial or other interest or any benefit which an employee receives that might reasonably be thought by others to influence his or her actions as an employee of the Commission or as a member of any committee established under the Financial Services Commission Act, 2001.

Deadline for Disclosure

Every new employee must disclose their relevant private interests to the Commission before they take up employment with the Commission. All employees must renew their disclosure annually.

Completion of the Form

If there is not enough space in any section of this Form for the information required, you may attach additional sheets. All additional sheets must be signed by the employee and their divisional director.

Any changes or additions to the disclosures made in this form must be notified to your divisional director and the Ethics Officer within 1 month of the changes or additions.

NAME:

POSITION/TITLE:

DIVISION:

NAME (Block capitals, please):

POSITION/TITLE:

DIVISION:

1. DIRECTORSHIPS¹

Are you a director of any entity (including a “dba”) regulated by the Commission or licensed to do business in the British Virgin Islands?

☐

Yes

☐

No

If yes, please list the names of the entity, briefly stating the nature of each entity’s business and indicating whether the entity is regulated by, or involved in any business relationship with, the Commission.

| Name of Company | Nature of Company’s Business | Regulated Entity (Y/N) | Business Relationship(Y/N) |
|-----------------|------------------------------|------------------------|----------------------------|
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¹Code of Conduct, paras 4.1.2 (b) and 4.5.8

²Notes: (i) You should include directorships which are individually unremunerated but where remuneration is paid through another company in the same group.

(ii) In this category and category 2, “remunerated” should be read as including allowances or benefits.

2. REMUNERATED EMPLOYMENT, OFFICE, PROFESSION.

Do you receive payments or income from, or have a financial interest of any kind in, any employment, office, trade, profession or vocation (apart from your position with the Commission)?³

☐

Yes

☐

No

If yes, please give the name of the entity (including a dba), the nature of the entity's business, whether the entity is regulated and whether the entity has a business relationship with the Commission.

| Name of Company | Nature of Company's Business | Regulated Entity (Y/N) | Business Relationship(Y/N) |
|-----------------|------------------------------|------------------------|----------------------------|
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3. GIFTS, BENEFITS AND HOSPITALITY.

In the past year, have you, your spouse or child received any gift or material advantage of a value greater than \$100.00 from any company, organization or person which in any way relates to your position with the Commission?⁴

☐

Yes

☐

No

³ An employee does not have to disclose that they receive income from units of rental property attached to their private dwelling under this section. However, if they own or have an interest in rental property occupied or paid for by any entities or individuals regulated, supervised or approved by the Commission that interest may have to be declared at question 8.

⁴ (i) You should include any hospitality given and services or facilities offered free or at a price below that generally available to members of the public.

(ii) You should include not only gifts and material advantages received personally by you and your spouse, but also those received by any company or organisation in which you (or you and your spouse jointly) have a controlling interest.

If yes, please state:

| Date of Gift (DD/MM/YYYY) | Donor | Description | Value |
|------------------------------|-------|-------------|-------|
| | | | |
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4. OVERSEAS VISITS

Have you or your spouse made any overseas visits relating to or in any way arising out of your position with the Commission where the cost of the visit was not wholly borne by yourself or by the Commission?

☐

Yes

☐

No

If yes, please list relevant visits in chronological order.

| Countries Visited/Purpose | Dates of Visits (DD/MM/YYYY) | Who Paid? |
|---------------------------|---------------------------------|-----------|
| | | |
| | | |
| | | |

5 SHAREHOLDINGS

Do you have (either yourself or with or on behalf of your spouse or children) interests in shareholdings in any entity regulated by the Commission or licensed to do business in the British Virgin Islands? ☐ Yes ☐ No

If yes, please list the details shown in the table below.

| Name of Company | Nature of Company's Business | Regulated Entity (Y/N) | Business Relationship (Y/N) |
|-----------------|------------------------------|------------------------|-----------------------------|
| | | | |
| | | | |
| | | | |

6 PERSONAL RELATIONSHIPS

Do you have a spouse⁵, child⁶ or relative⁷ employed at a senior level in any entity regulated by or providing services to the Commission?

☐ Yes ☐ No

If yes, please list the details shown in the table below.

| Name | Position | Entity | Relationship |
|------|----------|--------|--------------|
| | | | |
| | | | |

⁵'Spouse' means the husband or wife of the person making the declaration or any person who is living with that person in the circumstances of husband and wife at the date of the declaration

⁶'Child' means a son or daughter of any age and includes a child born out of wedlock, an adopted child, a step-child or a child of the family; and

'child of the family' means a child of both the person making the declaration and/or his spouse and any other child, who has been accepted and treated by both the person and his spouse as a child of their family.

⁷'Relative' in relation to the person making the declaration means:

(a) a spouse or child of that person; (b) a brother or sister of that person; (c) a brother or sister of the spouse of that person; or (d) a parent, grandparent or grandchild of that person

7. RELATIONSHIPS WITH RELEVANT ORGANISATIONS

Please list the names of any company or other entity that is regulated, or seeking to be regulated, by the Commission with which:

- (a) you have any ongoing formal loan arrangements under which you have borrowed a capital sum of \$10,000 or more and which you expect to continue to exist for more than six months;
- (b) you have (or have had) a dispute or significant arrears on a mortgage or other loan product.

Note: Please tick if applicable

Organisation:

Loan: Yes ☐ No ☐

Dispute/Arrears: Yes ☐ No ☐

Organisation:

Loan: Yes ☐ No ☐

Dispute/Arrears: Yes ☐ No ☐

Organisation:

Loan: Yes ☐ No ☐

Dispute/Arrears: Yes ☐ No ☐

Organisation:

Loan: Yes ☐ No ☐

Dispute/Arrears: Yes ☐ No ☐

8. GOVERNMENT AND COMMUNITY BOARDS, GROUPS AND ORGANISATIONS

Are you a member of:

- (i) any board or committee formed, organised by or otherwise connected to the Government of the Virgin Islands or to any statutory body organised under the laws of the Virgin Islands?
- (ii) any professional or private sector organisation having any business with the Commission or in any way involved in the financial services industry in the Virgin Islands?
- (iii) any group of investors who pool money or make joint investments?
- (iv) any other community club, group or organisation in the Virgin Islands?

Yes

No

If yes, please list the details shown in the table below.

| Organisation | Purpose | Status (e.g. Member Chairperson) | Duration (How long have you been a member) |
|--------------|---------|--|--|
| | | | |
| | | | |
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| | | | |

9. OTHER INTERESTS⁸

Are there any other interests which you think are likely to influence, or likely to be perceived as influencing, your actions or professional judgment in discharge of your responsibilities as an employee of the Commission?

☐ Yes ☐ No

If yes, please give details.

10. DECLARATIONS

I, ,

- 10.1. confirm that I have read and understood the Commission's Code of Conduct.
- 10.2. solemnly declare that all statements made and all information contained in this form are true and accurate to the best of my knowledge, information and belief and that if there is any material change in the activity(ies) in which I am, or my spouse or relative is, engaged that may give rise to a breach of the Financial Services Act, 2001, Part IV of the Criminal Code, 1997 or my contract of employment with the Commission, I will immediately declare it in writing.

Signature:

Date:

(DD/MM/YYYY)

⁸ Please see notes at item 2. In this section, please include any required disclosures pursuant to 4.5.7 of the Code which are not already included in the disclosures made in parts 1-7 of this form.

STATE OWNED ENTERPRISES AND STATUTORY BODIES MONITORING FRAMEWORK PAPER

6/1/2016
Ministry of Finance
Macro-Fiscal Unit



Table of Contents

| | |
|----------------------------------|----------|
| Introduction..... | 1 |
| Background..... | 4 |
| Monitoring Framework..... | 4 |
| Communication..... | 6 |
| Monitoring and Reporting..... | 6 |
| Legislation | 6 |
| Conclusion | 5 |

INTRODUCTION

A formal and central oversight function for monitoring the financial and operational performance of Statutory Bodies (SBs) and State Owned Enterprises (SOEs) is sorely missing in the public sector. Also, while SOEs and SBs tend to have individual governing legislation, no legal criteria or specific legislation exist for determining the establishment of a SOE/SB, and supporting the governance function of SOEs/SBs by central government.

The Ministry of Finance has developed a framework to guide and support the oversight of SOEs and SBs. Work commenced in developing this framework in 2014. Some of the main accomplishments include extensive training both locally and overseas, a legislative review, information gathering through surveys and financial statements, sensitization across government and SOEs/SBs, formation of a Monitoring Group, analysis of the financial performance of SOEs/SBs, and preparation of Performance Monitoring Guidelines for SOEs and SBs, along with the relevant accompanying documents.

The main purpose of this paper is to provide a detailed description of the framework developed by the Ministry of Finance for the monitoring of State-owned Enterprises (SOEs) and Statutory Bodies (SBs) in the British Virgin Islands (BVI). The main objective of the framework is to ensure that the financial and non-financial performance of SOEs and SBs are in line with government's policy priorities for SOEs and SBs. The components of the framework are Communication, Monitoring, Reporting, and Legislation. The first three of these components are defined within the BVI's Performance Monitoring Guidelines. While the last component relates to the amendment of the current PFM Act, 2012 and/or the preparation of new legislation to reflect the requirements of the framework for SOEs/SBs.

Administration of the Performance Monitoring Guidelines, along with the required legislation is critical to the implementation of this framework, and would ensure that SOEs/SBs are more accountable for their performance.

BACKGROUND

A Statutory Body is a legal entity formed by government that engages in non-commercial activities on behalf of government and is principally funded by government subventions. State Owned Enterprises are companies or statutory corporations engaged in commercial activity and recover most of their expenses from user charges, tariffs or prices from the goods and services they sell or provide. They are either government owned or the government is the major shareholder. This distinction is necessary since each category will require varying levels of reporting under the monitoring framework.

Based on the above definitions, there are nine Statutory Bodies and eight State Owned Enterprises in the Virgin Islands engaged in various activities including health care, education, financial services, tourism, transportation and telecommunication. Each is governed by an Act, and overseen by a Board of Directors. The majority of these entities are provided with a grant from Government directly through contributions from the consolidated fund. In 2015 this amounted to \$56.9 million or approximately 20% of recurrent expenditure. Some bodies withhold a percentage of revenue collected on behalf of the Government of the Virgin Islands to fund their operations. In the case of the Financial Services Commission, in 2015, this amount was 11.5% of financial services related fees.

Currently, there is no focal oversight function for monitoring the financial and operational performance of Statutory Bodies (SBs) and State Owned Enterprises (SOEs). There are also no formal criteria for determining the establishment of a SOE/SB. In addition, there is no specialised legal arrangement specifically supporting the governance function of SOEs/SBs.

Although some reporting requirements are contained in various laws governing Statutory Bodies and State Owned Enterprises, in practice, there is untimely submission of Annual

Reports and Financial Statements. In some cases, no information has been submitted to Central Government over the last couple of years. It is also unclear as to the role of the Ministry of Finance or portfolio ministries in assessing this information. Central Government, therefore, does not have a good grasp of whether or not these bodies are meeting their statutory objectives, whether their objectives are in fact in line with the overall purpose of the Statutory Body or State Owned Enterprise, and if they are utilising their financial resources optimally.

There have been instances of duplication of functions between SOEs/SBs and central government; salaries and wages in SOEs/SBs are unaligned with government levels; there may be inefficiency in operations; and large contingent liabilities pose increasing risk to central government.

One of the objectives of the Government's fiscal strategy contained in the Medium Term Fiscal Plan (2016-2018) is to 'ensure that all Statutory Bodies and State Owned Entities practice sound financial management and achieve their performance objectives and that these objectives are in line with the overall goals of Central Government'. This involves developing a function within the Government to review the operations and financial performance of Statutory Bodies and State Owned Entities.

The Ministry of Finance has developed a comprehensive framework to guide and support the oversight and monitoring of Statutory Bodies and State Owned Entities. Implementation of this monitoring framework would ensure that SOEs and SBs are more accountable for their performance which would consequently strengthen government's overall commitment to deliver sound financial management, good governance, accountability, and transparency.

WORK ACCOMPLISHED

During the period 2014 to April 2016, surveys were conducted, summary reports for each SOE/SB were prepared, sensitization meetings were held with top managers, SOEs/SBs, and PSs, formation of an implementation/monitoring group, creation of databases, and extensive training. The surveys conducted were:

1. SOE Management Assessment with sections on budget, reporting, and financial administration. Thirteen of the 17 SOEs/SBs responded; and
2. SOE Assessment of Procedures and Practices with sections on government relations, performance monitoring, and transparency and disclosure. Three of the 17 SOE/SBs responded.

Summary draft reports on each SOE/SB were prepared. The reports were broken down into the following sections:

- a. brief on objectives, date formed, and responsible portfolio ministry;
- b. key performance indicators;
- c. key financial ratios; and
- d. key data on operations.

Various meetings were held with the Financial Secretary, top Managers, SOEs and SBs, and the Permanent secretaries of the various Ministries to sensitize them about the structure and requirements of the framework, and its potential benefits to government and the SOEs/SBs.

Most of the ground work required for the implementation of this framework was completed by the Macro-Fiscal Unit of the Ministry of Finance. However, the Implementation / Monitoring Group formed by the Ministry of Finance played a pivotal role in key aspects of the implementation process. The main tasks accomplished by the Group were the review of the PMG, a comprehensive review of the legislations for SOEs/SBs, and participation in sensitization meetings with SOEs/SBs.

Other key tasks accomplished towards the implementation of the framework included the creation of various databases, including a financial analysis database, and extensive training by the International Monetary Fund's Caribbean Regional Technical Assistance Center (CARTAC), and by BDO locally.

MONITORING FRAMEWORK

The main objective of the framework is to ensure that the financial and non-financial performance of SOEs and SBs are directly aligned with government's policy objectives and priorities for SOEs and SBs.

The components of the framework are **Communication, Monitoring, Reporting** and **Legislation**. The first three components are clearly defined in the BVI's Performance Monitoring Guidelines for SOEs and SBs (See **Appendix B**). The key elements of the Performance Monitoring Guidelines (PMG) are:

- a. Establishing SOE and SB specific objectives that relate to the overall objectives of Government;
- b. Establishing KPIs that operationalise these objectives and provide a high-level means of assessing performance;
- c. Measuring performance against the Key Performance Indicators;
- d. Reporting this performance, both internally and externally as required; and
- e. Taking action where performance falls short of expectations.

COMMUNICATION

The PMG stipulates the levels of communication between the Portfolio Ministries, SOEs/SBs, and the Ministry of Finance required for the effective implementation of this framework (see **Section 2 of the PMG**). It should be noted that based on a review of most of the Acts of the SOEs/SBs, the level of communication between the SOEs/SBs and their Portfolio Ministries is clearly defined. However, the level of communication between the SOEs/SBs and the Ministry of Finance either doesn't exist or is vaguely mentioned. Therefore, for the level of communication required for the effective implementation of these guidelines, legislative changes would have to be made.

The role of the Ministry of Finance within the guidelines is the oversight of the financial performance of SOEs and SBs (guidance, advice, co-ordinate). This oversight will be facilitated through:

- a. Timely and consistent financial reporting;
- b. Strategic and annual plans consistent with the Government's financial objectives and budget subventions;
- c. Financial Performance consistent with the targets in the Strategic and Annual Plans;
- d. Capital financing, capital commitments and capital management consistent with Government's overall capital financing arrangements;
- e. Financial risks to Government, including government guarantees, are appropriately managed; and
- f. Facilitate communication and coordination between Portfolio Ministries and SOEs/SBs.

The role of the Portfolio Ministries within the Guidelines is to ensure that the non-financial performance of the SOE/SB is consistent with the Government's policy objectives. This will be facilitated through:

- a. Agreement to any non-commercial obligations with the SOE/SB including the cost of those obligations and potential budget financing, and to seek Cabinet approval as necessary (documentation of agreement);
- b. Agree to any capital financing needs of the SOE/SB and seek Cabinet approval for those funds as necessary; and
- c. Monitor the non-financial performance of the SOE/SB and brief the Minister and Cabinet as necessary.

The role of the SOEs/SBs within the Guidelines is to prepare the relevant planning documents, and report performance against these documents. This will be facilitated through:

- a. Developing a clear strategic plan consistent with the Government's overall objectives;
- b. Preparing budget and forecast financial information for the next three years;
- c. Identifying any future capital proposals and funding requirements and preparing proposals for these;
- d. Identifying key performance indicators (KPIs) that will allow Government to track financial and non-financial performance; and
- e. Completing mid-year and yearly reports on their performance.

MONITORING AND REPORTING

The PMG outlines a comprehensive monitoring and reporting framework which includes the preparation of a 3-year strategic plan (template attached), annual work plan (template attached), half-yearly and yearly reports (Appendices A and B of PMG), and progress meetings (at mutually agreed dates and times) between the Portfolio Ministries, Ministry of Finance, and SOEs/SBs. The PMG is accompanied by a Letter of Expectation which outlines the government's agenda for SOEs/SBs, its expectations of SOEs/SBs, its requirements of SOEs/SBs for financial transparency and accountability, and a summary of the requirements of SOEs/SBs under the PMG.

The monitoring process is spearheaded by the Ministry of Finance under the oversight of a Monitoring Group. This Group comprises civil servants from the Budget Unit, Macro-Fiscal Unit, Ministry of Finance, Internal Audit, Auditor General, Treasury and the Portfolio Ministries. It is primarily tasked with:

- a. Assisting with the development of reports and briefing documents on the financial and non-financial performance of SOEs/SBs;
- b. Reviewing the capital financing needs of SOEs;
- c. Reviewing SOEs/SBs strategic and annual work plans;
- d. Providing advice and assistance to SOEs/SBs for preparing various documents; and

- e. Monitoring compliance of SOEs/SBs to guidelines.

Sections 3 and 4 of the PMG outline the requirements for monitoring and reporting. Section 3 contains the planning framework which includes the strategic plan and annual work plan. While Section 4 details the reporting cycle and its link to strategic planning through these areas:

1. the key obligations of the Ministry of Finance, Portfolio Ministries and SOEs/SBs;
2. Negotiating strategic plans and annual work plans;
3. Reporting performance;
4. Key dates, and SOEs/SBs covered by the PMG; and
5. Financial reporting and auditing.

The annual cycle for monitoring and reporting is shown in the attached flow chart “SOEs/SBs Annual Monitoring Cycle”.

LEGISLATION

All of the Acts of the SOEs/SBs support the involvement of their respective Portfolio Ministries, but do not support the involvement of the Ministry of Finance, and the reporting requirements as stipulated under BVI’s Performance Monitoring Guidelines. Currently, the only evidence of legislative support for the involvement of the Ministry of Finance is as stated in Section 45A(4) of the PFM Act, 2004(as amended).

“(4) Ministries and Statutory Bodies shall provide to the Financial Secretary,

(a) within six months of the end of the financial year

(i) annual audit reports;

(ii) debt and public private partnerships breakdown;”

To support this monitoring process including the letter of expectation, BVI’s PMG, and the involvement of the Ministry of Finance, changes would be necessary to the current PFM Act, 2004 (as amended). These changes should include but not be limited to:

- a. Definitions for a SOE, SB, and Portfolio Minister;
- b. Responsibilities of SOEs and SBs – accountability to Portfolio Minister and Minister of Finance, apply the same financial year as central government, maintenance of full and proper financial records, and submission of reports;
- c. Institutional arrangements on matters pertaining to financial governance and policy formulation and oversight of SOEs and SBs;
- d. Role of the Board of Directors;
- e. Strategic plans and annual work plans;
- f. Reporting, along with timelines;
- g. Statement of overall performance;
- h. Financial statements and audits;
- i. Ministers Power to issue directives;
- j. Use of funds and expenditure ceilings;
- k. Dividend Policy;
- l. Board composition;
- m. Borrowing, lending and guarantees; and
- n. Criteria for establishing an SOE or SB.

Alternatively, new legislation for SOEs and SBs can be developed with supporting policies and guidelines, such as, a dividend policy guideline and Salary negotiations guideline, and fiscal responsibility legislation. These supporting policies and legislation would strengthen an amended PMF Act or a new Act for SOEs and SBs. There are models of legislation from the Caribbean region that the BVI can utilize to modify the existing PFM Act or create new stand-alone legislation.

CONCLUSION

The Ministry of Finance is working fervently to secure Cabinet approval for the implementation of this framework by the end of June 2016. After this approval is secured, the tasks as outlined in the work plan will commence, with the first task being for the Monitoring Group and the Ministry to host a meeting with the SOEs and SBs. The main objectives of this meeting would be to further familiarise the SOEs and SBs with the framework and its requirements, to ascertain the key challenges that may be faced, and to develop workable solutions for these challenges.

Without the approval of the recommendations enclosed within this document, and the accompanying documents, the effectiveness of this framework will be grossly compromised.

This Document is the Property of the Government of the Virgin Islands

DATE:

M.P.:

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CABINET PAPER

No. /2014

CENTRAL GOVERNMENT OVERSIGHT OF STATUTORY BODIES

Memorandum by the Honourable Minister of Finance

DECISION SOUGHT

Cabinet is invited to decide that:

- (a) an oversight function be adopted to monitor the financial and operational performance of all Statutory Bodies.
- (b) the oversight function be developed along the lines identified in the “Improving Statutory Bodies Performance and Accountability” Action Plan (Appendix A).

BACKGROUND INFORMATION

1. By way of definition a Statutory Body is a legal entity formed by government that engages in certain commercial activities on behalf of government. They are expected to execute their functions optimally and efficiently and are not exempt from oversight from Central Government.
2. There are seventeen Statutory Bodies in the Virgin Islands engaged in various activities including health care, education, financial services, tourism, transportation and telecommunication. Each Statutory Body is governed by an Act, and overseen by a Board of Directors. Most Statutory Bodies are provided with a grant from Government directly through contributions from the consolidated fund. Some bodies such as the Financial Services Commission (FSC) withhold a percentage of revenue collected on behalf of the Government of the Virgin Islands to fund their operations. The table below provides a summary of the grants made to Statutory Bodies over the past five years.

| Statutory Bodies | Years and Grant Amounts |
|------------------|-------------------------|
|------------------|-------------------------|

RESTRICTED

380

| | 2008 | 2009 | 2010 | 2011 | 2012 |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|
| Financial Services Commission* | 0 | 0 | 0 | 0 | 0 |
| BVI Airport Authority* | 4,000,000 | 3,500,000 | 3,325,000 | 3,158,700 | 3,158,700 |
| BVI Port Authority* | 0 | 0 | 0 | 0 | 0 |
| Telecommunication Regulatory Commission | 0 | 74,084 | 100,000 | 0 | 0 |
| Social Security Board*** | 0 | 0 | 0 | 0 | 0 |
| BVI Electricity Corporation*** | 0 | 0 | 0 | 0 | 0 |
| National Bank of the VI*** | 0 | 135,845 | 137,582 | 137,007 | 135,652 |
| BVI Health Services Authority | 0 | 1,902,384 | 19,819,604 | 19,235,954 | 21,100,000 |
| H Lavity Stoult Community College | 11,950,000 | 11,050,000 | 11,115,000 | 11,112,600 | 11,115,000 |
| BVI Tourist Board | 10,240,000 | 13,260,002 | 9,710,900 | 15,000,000 | 10,230,900 |
| National Parks Trust | 1,433,509 | 952,976 | 1,424,170 | 1,156,100 | 1,156,327 |
| Scholarship Trust Board | 507,799 | 305,482 | 266,868 | 283,715 | 317,602 |
| Virgin Islands Festivals & Fairs Committee | 1,780,580 | 1,405,000 | 1,300,000 | 1,245,000 | 1,235,821 |
| Financial Investigation Agency | 300,000 | 736,000 | 700,000 | 1,000,000 | 1,000,000 |
| Prospect Reef** | 0 | 0 | 0 | 0 | 0 |
| Recreation Trust** | 0 | 0 | 0 | 0 | 0 |
| Wickhams Cay Development** | 0 | 0 | 0 | 0 | 0 |
| Total | 30,211,888 | 33,321,774 | 47,899,124 | 52,329,075 | 49,450,002 |

Source: Ministry of Finance

* FSC and BVIPA do not receive direct grants from Central Government but instead withhold a percentage of revenue collected on behalf of Government. BVIPA receives a grant and retains departure tax revenue.

** Grants are provided to these entities but not directly through the Grants subhead. Instead expenditure for these bodies is integrated in Central Government recurrent expenditure.

*** The classification of these bodies not clear. Are they Statutory Bodies or Public Corporations? The grants for NBVI are monies provided for capital increases.

3. Currently, there is no focal oversight function monitoring the financial and operational performance of Statutory Bodies. However a preliminary assessment revealed the following:
 - (a) Untimely submission of Annual Reports and Financial Statements by Statutory Bodies and, in some cases none have been submitted to Central Government.
 - (b) Currently, there is no single legislation outlining Government's oversight and monitoring function and the reporting and dividend requirements of Statutory Bodies.
 - (c) There is no established criterion for determining suitable candidates for Board membership of Statutory Bodies. Therefore Statutory Boards may not be performing their functions optimally.

- (d) Statutory Bodies are not efficiently managed. Prices charged are not market based and in some cases do not cover the administrative cost of performing the service. Salary structures are not in line with Government's structure and in certain instances the organisations are overstaffed. Unbudgeted operating expenditure or overspending is met by Central Government placing additional pressure on the consolidated fund.
 - (e) Grants to Statutory Bodies make up approximately 20 percent of the Government's recurrent budget.
 - (f) Apart from the FSC no other Statutory Body has remitted a dividend to Central Government and there is not a policy providing for the payment of dividends and identifying what the size of the dividend should be.
 - (g) Ambiguity exists in terms of how certain entities should be classified. For example is the National Bank of the Virgin Islands (NBVI) a Statutory Body or a public corporation? If they are classified as the latter what level of oversight should be extended to public corporations?
 - (h) Currently Central Government does not have a good grasp of whether or not these bodies are meeting their statutory objectives, whether their objectives are in fact in line with the overall purpose of the Statutory Body and if they are utilising their financial resources optimally - most of which comes from Central Government. Therefore, a comprehensive assessment is needed to determine the financial and operational performance of Statutory Bodies. This will set the foundation for developing the oversight function for these entities.
 - (i) Criterion does not currently exist to determine what constitutes a Statutory Body. The present listing of Statutory Bodies should be revisited once standards have been established to determine whether they should remain a Statutory Body, be placed under direct control of Central Government or privatised.
4. Approval of the Action Plan for Improving the Performance and Accountability of Statutory Bodies will ensure an initial assessment of financial and operational performance is conducted on the existing Statutory Bodies and that there is a framework in place going forward for monitoring Statutory Bodies.

CROSS-MINISTRY CO-ORDINATION

5. The Ministry of Finance will be spearheading this initiative but will require support from other Ministries and Departments. It is envisioned that the working group responsible for implementing the action plan will be made up of representatives from various Ministries and Departments.

LEGAL IMPLICATIONS

6. Certain Laws governing Statutory Bodies will need amending to reflect Government's oversight function and additional requirements.

FINANCIAL IMPLICATIONS

7. Financial Implications will be determined at various stages of implementation of the Action Plan.

CONCLUSION

8. Honourable Members are asked to concur with the Decision Sought.

Dr. D. Orlando Smith
Minister of Finance

Appendix A: Action Plan - Improving Statutory Bodies Performance and Accountability

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CABINET PAPER

No. /2016

**CENTRAL GOVERNMENT OVERSIGHT OF STATUTORY BODIES AND STATE OWNED
ENTERPRISES**

Memorandum by the Honourable Minister of Finance

DECISION SOUGHT

Cabinet is invited to:

- (a) decide that the financial and non-financial performance of State Owned Enterprises/Statutory Boards (SOEs/SBs) be monitored by the Ministry of Finance and the Portfolio Ministries using:
 - i. Definitions for a SOE and a SB;
 - ii. The BVI's Performance Monitoring Guidelines;
 - iii. An accompanying Letter of Expectations to the Guidelines;
 - iv. Annual General Meeting with SOEs/SBs, Ministry of Finance, and Portfolio Ministries;
 - v. Meetings with Portfolio Ministries, Ministry of Finance and SOEs/SBs;
 - vi. A Pilot Study of the framework commencing in July 2016 spearheaded by the Ministry of Finance to facilitate the modification of any of the mechanisms that form part of the framework; and
 - vii. A Monitoring Group spearheaded by the Ministry of Finance to analyse and report on the performance of the SOEs/SBs.
- (b) approve the full implementation of the framework in 2017 through:
 - i. an amended PFM Act with a section for SOEs/SBs, along with supporting legislation, such as a dividend policy, wage and salary negotiation guidelines, and a fiscal responsibility legislation for expenditure;
 - ii. preparation and presentation of annual summary reports on SOEs and SBs to Cabinet by the Ministry of Finance and the Portfolio Ministries;
 - iii. the development of an evaluation framework for SOEs and SBs; and

- iv. establishing criteria (check list of requirements) for formation of an SOE/SB, using the definitions "Dependent State-Owned Entity" and "Independent State-Owned Entity".

BACKGROUND INFORMATION

1. A Statutory Body is a legal entity formed by government that engages in non-commercial activities on behalf of government and is principally funded by government subventions. State Owned Enterprises are companies or statutory corporations engaged in commercial activity and recover most of their expenses from user charges, tariffs or prices from the goods and services they sell or provide. They are either government owned or the government is the major shareholder.
2. Based on the above definitions, there are nine Statutory Bodies and eight State Owned Enterprises in the Virgin Islands engaged in various activities including health care, education, financial services, tourism, transportation and telecommunication. Each is governed by an Act, and overseen by a Board of Directors. The majority of these entities are provided with a grant from Government directly through contributions from the consolidated fund.
3. Currently, there is no focal oversight function for monitoring the financial and operational performance of Statutory Bodies (SBs) and State Owned Enterprises (SOEs). There is also no formal criteria for determining the establishment of an SOE/SB. In addition, there is no specialised legal arrangement supporting the governance function of SOEs/SBs.
4. Although some reporting requirements are contained in various laws governing Statutory Bodies and State Owned Enterprises, in practice, there is untimely submission of Annual Reports and Financial Statements. In some cases, no information has been submitted to Central Government over the last couple of years. It is also unclear as to the role of the Ministry of Finance or portfolio ministries in assessing this information.
5. There have been instances of duplication of functions between SOEs/SBs and central government; salaries and wages in SOEs/SBs are unaligned with government levels; there may be inefficiency in operations; and large contingent liabilities pose increasing risk to government.

6. One of the objectives of the Government's fiscal strategy contained in the Medium Term Fiscal Plan (2016-2018) is to 'ensure that all Statutory Bodies and State Owned Entities practice sound financial management and achieve their performance objectives and that these objectives are in line with the overall goals of Central Government'. This involves developing a function within the Government to review the operations and financial performance of Statutory Bodies and State Owned Entities.
7. The Ministry of Finance has developed a comprehensive framework to guide and support oversight and monitoring of Statutory Bodies and State Owned Entities. The main objective of the framework is to ensure that the financial and non-financial performance of SOEs and SBs are directly aligned with government's policy objectives and priorities for SOEs and SBs. **See Appendices (A to D).**

CROSS-MINISTRY CO-ORDINATION

8. The Ministry of Finance will be spearheading this initiative, but is receiving support from the other Ministries through their participation in the Monitoring Group.

LEGAL IMPLICATIONS

9. Certain Laws governing Statutory Bodies and State Owned Enterprise will require amendment to reflect Government's oversight function and additional requirements recommended under the performance monitoring guidelines.
10. The Public Finance Management (PFM) Act, 2004 should be amended to clearly outline the requirements of BVI's Performance Monitoring Framework (PMF) for SoEs/SBs.
11. Amendments to the PFM Act should be accompanied by a dividend policy, wage and salary negotiation guidelines, and fiscal responsibility legislation for expenditure by SoEs/SBs. These may be require a stand-alone Act, or be incorporated into existing legislation.

FINANCIAL IMPLICATIONS

12. There are no anticipated financial implications during the pilot or implementation of the performance monitoring framework. It is envisioned that in the longer term, closer monitoring of the financial and operational performance of SoEs/SBs will lead to Government achieving greater value for money in the services provided by these bodies.

CONCLUSION

13. Honourable Members are asked to concur with the Decision Sought.

Dr. D. Orlando Smith
Minister of Finance

Appendix A: SOEs and SBs Monitoring Framework Paper

Appendix B: BVI's Performance Monitoring Guidelines

Appendix C: Sample Letter of Expectations

Appendix D: 2016 – 2017 Work plan for the Implementation and Monitoring of the SOE/SB Framework



EVOLUTION. INNOVATION. TRANSFORMATION.
BUILDING A WORLD-CLASS PUBLIC SERVICE

PUBLIC SERVICE TRANSFORMATION FRAMEWORK

DEPUTY GOVERNOR'S OFFICE
GOVERNMENT OF THE VIRGIN ISLANDS
2019

Table of Contents

| | |
|--|-------------------------------------|
| FOREWORD | 3 |
| OUR TRANSFORMATION PRIORITIES | 4 |
| STRATEGY | 5 |
| 1. Where Are We Now? | 5 |
| 1.1 Context | 5 |
| 1.2 Progress Achieved to-date by Ministry | 7 |
| 2. Where are we going? | 14 |
| 2.1 National Vision and Public Service Vision | 14 |
| 2.2 Public Service Transformation | 16 |
| 3. How do we get there? | 18 |
| 3.1 Priorities – Government’s Policy Agenda | 19 |
| 3.2 Guided By – Good Governance | 26 |
| 3.3 Implemented Through - | 26 |
| IMPLEMENTATION PLAN | Error! Bookmark not defined. |
| 4. The Plan | 27 |
| 4.1 Planning – Objectives, and Purpose | 27 |
| 4.2 Ministry Transformation Plans | 28 |
| 4.2.1 Premier’s Office | 28 |
| 4.2.2 Ministry of Finance | 29 |
| 4.2.3 Ministry of Education, Culture, Youth Affairs, Fisheries and Agriculture | 29 |
| 4.2.4 Ministry of Natural Resources, Labour and Immigration | 29 |
| 4.2.5 Ministry of Transportation, Works and Utilities | 29 |
| 4.2.6 Ministry of Health and Social Development | 30 |
| 4.2.7 Deputy Governor’s Office | 30 |
| MONITORING AND EVALUATION | 31 |
| 5. Results-Based Performance Framework | 34 |
| 5.1 Performance Matrix | 34 |
| 5.2 Reporting – Governance Structure | 42 |
| CONCLUSION | 44 |
| Annexe 1: International Civil Service Index | 45 |
| Annexe 2: Visioning Day Report | 46 |

FOREWORD



His Excellency the Governor
Augustus Jaspert

“As Governor, I fully support the Public Service Transformation Programme because at its core is Government’s most important asset, public officers. The Public Service Transformation Programme is about enabling us all to redesign a Public Service that is efficient, resilient, proactive, adaptive, responsive and focused on serving the public with excellence backed with the highest good governance standards.

We are setting the trends on digitising our Public Service and public offer. We are setting the trends on excellence, efficiency and good customer and public service.

As Governor, I have the same fantastic reason to get up out of bed every morning as every other public officer. My job in a way is the same, it’s to get up and every morning to think ‘How best do I serve the public? How do I make people’s lives better? How do I make this fantastic Territory even better for the future?’ And that is what for me is the heart of Public Service Transformation Programme.”



Premier
Honourable Andrew A. Fahie

“Public is the key word in Public Service. The definition of “Transformation” in my paraphrased version simply means a change from one form to another where there will be no changing back. A caterpillar transforms into a butterfly but a butterfly can never change back into a caterpillar. Hence Public Service Transformation allows an opportunity for the Public Service to transform into a responsive, service-oriented, cost effective and accountable Public Service for enhanced delivery, that will transform the lives of the people of the Virgin Islands as well as anyone who does business with the Public Service.

As the Premier of the Virgin Islands, I welcome this initiative and look forward to seeing our already stellar Public Service move from good to great!”



Deputy Governor
David D. Archer, Jr.

“We are on the right side of history to shape a new and amazing BVI. This will be done through a dynamic and transformed Public Service with people at the core and delivery of exceptional world class services as a driver. This is Public Service Transformation.”

OUR TRANSFORMATION PRIORITIES

From the foreword, you will see that our leaders articulated their priorities including people, service and efficiency. These priorities have been captured in the diagram below which shows the Vision and the 3 broad strategies for the Public Service Transformation Programme:

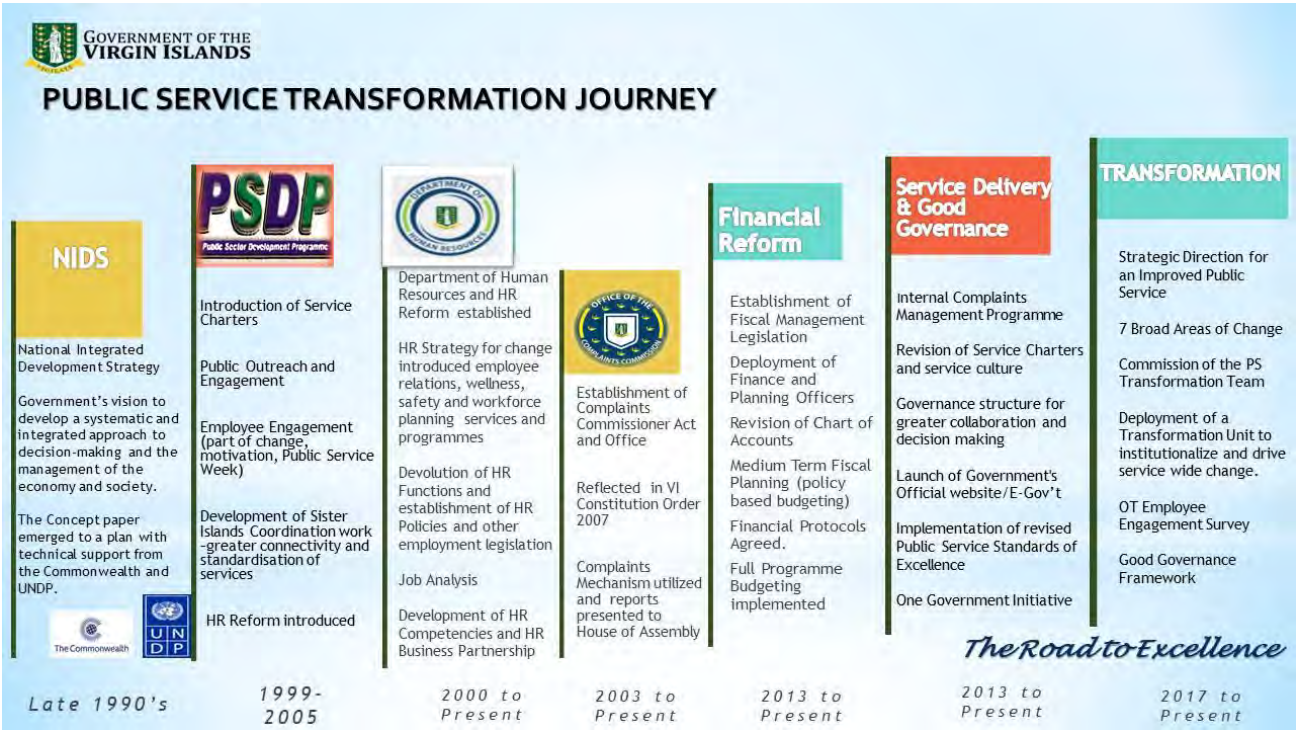


STRATEGY

1. WHERE ARE WE NOW?

1.1 Context

The Government of the British Virgin Islands (GBVI) have undertaken several Public Service Initiatives over the past 20 years, see Figure 1 below:




The previous initiatives were consistent with public service administration reform, however, the 1980s brought a shift as the U.K. paved the way to what was termed 'New Public Sector Management' (see <https://www.deepdyve.com/lp/emerald-publishing/from-public-administration-to-public-sector-management-understanding-peIKMTcJPo?key=emerald>).

Other commonwealth jurisdictions including Australia and Canada followed suit. In essence, the bureaucratic controls typical of Public Administration were no longer seen as 'fit for purpose', particularly in an environment that operated a Laissez-faire economic system, i.e. one that sought to encourage private-sector led growth through minimal intervention by government in the form of excessive regulation, privileges, imperialism, tariffs and subsidies.

The shift from public administration reform is important to note because it underpins why the Public Service Transformation Programme (PSTP) is a departure from this approach as used

by previous initiatives. The context and drivers for the Public Service Transformation Programme included several significant drivers of change that were impacting the Territory including:

- The flooding and hurricanes of 2017 which damaged over 80% of the Territory's infrastructure;
- Increased regulatory requirements by the principal rule-setting bodies for financial and tax rules namely the Organisation for Economic Cooperation and Development (OECD), its sister organisation, the Financial Action Task Force (FATF) and the European Union Commission;
- Increased costs to comply whilst revenues related to offshore banking and International Business Incorporations is slowing down across the Caribbean Region and challenges with Correspondent Banking Relationships which facilitates international trade and tourism;



*“Change fixes the past,
transformation creates
the future”*

- Tanmay Vora

- Climate Change, global warming and rising sea levels are converging, and the most notable impact is the increase in the frequency and severity of hurricanes, such as hurricanes Irma and Maria, both of which were category 5;

- Globalisation has made the world much more inter-connected and the British Virgin Islands can no longer look to their immediate neighbours (US Virgin Islands or other Caribbean Islands) as partners or competitors. In addition,

technology has led to a rapid rate and pace of change.

These drivers were unprecedented and forced the Territory to move beyond ‘business as usual’. If they were to be successful in rebuilding the Territory, a fresh and innovative approach would be needed; not just to defend against the threats but to leverage the many social and economic opportunities. The Government in office at the time of the hurricanes, and the subsequent administration, were all united on this one point. The hallmark of the new approach must be to develop the Territory for the benefit of all, placing the people as the central beneficiaries of all development.

It was recognised these opportunities could only be achieved if facilitated by a ‘World-Class’ Public Service. An analysis of public service delivery was conducted (see Annex 1) and revealed that to develop a ‘World-Class’ Public Service, in such unusual circumstances, would require moving beyond the common approach of public administration, and even public management; it required Public Service Transformation. The Public Service Transformation Programme was deliberately designed to be visionary and innovative as it was needed ‘for such a time as this’.

The need for a transformational approach was also recognised and reinforced by the Premier Honourable Andrew A. Fahie when in 2019 he said: “I am an unconventional leader for an unconventional time and my Government will do things in unconventionalways whilst upholding good governance”. While maintaining the key elements of traditional reform as set out by His Excellency Governor Jaspert who indicated “The sole purpose of the job is to serve people, to create opportunities for people and to serve those in need. My job is to take this fantastic Territory forward”.

1.2 Progress Achieved to-date by Ministry

In considering the development of the strategy, a review of the progress achieved prior to the development of the strategy was undertaken and is set out below.

PREMIER’S OFFICE

Leading Globally in Service Delivery

- Good Governance
 - ✓ Completed review of policy and planning and the design and development of a Strategic Policy and Planning Unit
 - ✓ Completed draft of Ministerial Code (in partnership with DGO)
- Customer-focused Organisation
 - ✓ BVI Tourist Board completed Hospitality Assured Programme Certification
 - ✓ BVI Tourist Board completed Replanting Seeds of Love Initiative
- Security
 - ✓ Completion of training by Department of Information and Public Relations in ‘Media Relations for Crisis Disaster Preparedness for Media professionals’

Developing highly skilled & adaptable Leaders and Employees

- Innovative Thinking and Doing
 - ✓ Conducted Project Management and Business Process Reengineering workshops across Government
 - ✓ Completed iWeek consultation on National Innovation Lab
- Change and Collaboration
 - ✓ Developed an e-Government Governance structure to support cross-functional working team
 - ✓ Established a cross-function working team for Work Permit e-Service

Agile, Lean, Digital and Green

- Streamlining Processes
 - ✓ Delivered Business Process Reengineering Training to officers across Government
 - ✓ Delivered Project Management Training to officers across Government
- Digitisation
 - ✓ Completed draft National ICT Policy, Strategy and Plan
 - ✓ Completed draft of E-Government Business case
 - ✓ Completed draft of E-Governance suite of legislation
 - ✓ Town and Country Planning completed BVI Open for Business Online Map application
 - ✓ VI Shipping Registry completed development & implementation of online portal for applications for receiving seafarer documents
 - ✓ Completed RDA Statement of Requirements for SMART City Analyst and developed new Terms of Reference for the same
 - ✓ Completed review and exploration of suppliers regarding e-Payment options

MINISTRY OF FINANCE

Leading Globally in Service Delivery

- Good Governance
 - ✓ Completed drafts of :
 - New Procurement Bill
 - New Public Financial Management Bill & Regulations
 - ✓ Completed survey to determine the procedures and practices of State Owned Enterprises (SOEs) and Statutory Bodies (SBs)
 - ✓ Completed review of legislation related to BVI SOEs and SBs
 - ✓ Completed review of non-legal components of Statutory Agencies' operations and design
 - ✓ Completed draft Performance Monitoring Guidelines for SOEs/SBs
 - ✓ Created database with Financial Indicators and Ratios
 - ✓ Worked with Caribbean Regional Technical Assistance Centre (CARTAC) to review case study of a suitable SOEs/SBs framework
 - ✓ Completed draft of 5 Corporate Governance principles to align Statutory Agencies and Central Government
 - ✓ Established an SOE Monitoring Committee/Working Group
 - ✓ Implemented vehicle usage policy (new & existing fleet)

Developing highly skilled & adaptable Leaders and Employees

- High Performance
 - ✓ Project Management Training and support delivered to ministries in collaboration with UNDP

Agile, Lean, Digital and Green

- Streamlining Processes
 - ✓ All revenue collecting Depts have been enabled to receive payment for any Government Service (no wrong door policy). Cabinet memo No.298/2017
- Digitisation
 - ✓ DoIT completed LOTUS network Infrastructure upgrade
 - ✓ Commenced upgrade JD Edwards System
- Adaptation and Greening
 - ✓ Completed configuration of DOCOVA to facilitate ministry scanning projects

MINISTRY OF EDUCATION, CULTURE, YOUTH AFFAIRS, FISHERIES AND AGRICULTURE

Leading Globally in Service Delivery

- Good Governance
 - ✓ Completed development and consultation on SMART Schools policy
- Customer-focused Organisation
 - ✓ Completion of sale of (i) livestock and (ii) contracting out non-core functions such as beach cleaning to re-focus agriculture on core service of regulation and enabling the expansion of the sector
 - ✓ Completed functional review of Agriculture and Fisheries and implemented recommendations to divest non-core functions, e.g. maintenance and management of beach facilities

Agile, Lean, Digital and Green

- Digitisation
 - ✓ Scanning project to digitise files
 - ✓ Implement additional functionality of POWER SCHOOL
- Adaptation and Greening
 - ✓ Commenced scanning of Ministry of Education Files using DOCOVA
 - ✓ Completed programme to support schools and private sector in achieving Green Globe and other Green Certifications in collaboration with DDM and Ministry of Natural Resources, Labour and Immigration

MINISTRY OF NATURAL RESOURCES, LABOUR AND IMMIGRATION

Leading Globally in Service Delivery

- Good Governance
 - ✓ Review of Immigration and Labour Policy and Legislation
- Customer-focused Organisation
 - ✓ Established a customer forum with BVI Finance to discuss Immigration concerns
 - ✓ Engaged key stakeholders as part of the Work permit proto-type testing
 - ✓ Completed development of an Immigration Guide for customers (in partnership with PO, Civil Registry & Governor's Office)
 - ✓ Completed customer Service training for Immigration enforcement officers
 - ✓ Completed review of Immigration and Naturalisation functions
 - ✓ Completed 'Immigration & You' Booklet with provides customer information on the immigration and naturalisation process
 - ✓ Established a customer forum with BVI Finance to discuss and resolve Immigration policy and process concerns
- Security
 - ✓ Completed review work on Advanced Passenger System (APS) for Immigration
 - ✓ Completed APS configuration and implementation of interim solution

Developing High Skilled and Adaptable Leaders and Employees

- Innovative Thinking and Doing
 - ✓ Work-Permits prototype cross-functional working group established

Agile, Lean, Digital and Green

- Streamlining Processes
 - ✓ Mapped and reengineered work permits processes
- Digitisation
 - ✓ Work Permits and Immigration Prototype designed and developed
 - ✓ Completed 2 rounds of User Acceptance Testing with key Stakeholders on Work Permit & Immigration Prototype
 - ✓ Completed migration of Work Permits and Immigration Prototype from LOTUS to MS Dynamics
- Adaptation and Greening
 - ✓ Commenced scanning of Immigration Departments Files using DOCOVA

- ✓ Completed programme to support schools and private sector in achieving Green Globe and other Green Certifications in collaboration with DDM and Ministry of Education, Culture, Youth Affairs, Fisheries and Agriculture

MINISTRY OF TRANSPORTATION, WORKS AND UTILITIES

Leading Globally in Service Delivery

- Good Governance
 - ✓ Implemented Government wide Vehicle Pool
- Customer-focused Organisation
 - ✓ Completed consultation via survey on Mass Transit
 - ✓ Completed plans for the redesign of Road Town to ease traffic congestion

Agile, Lean, Digital and Green

- Digitisation
 - ✓ Develop an online requisitions application for the new Facilities Management Unit (FMU)

MINISTRY OF HEALTH AND SOCIAL DEVELOPMENT

Leading Globally in Service Delivery

- Good Governance
 - ✓ Completed and strengthened Housing Assistance Grants Policy
- Security
 - ✓ Developed and Implemented Housing Assistance Recovery Programme and Material Assistance Programme following hurricanes (in partnership with MoF)

Agile, Lean, Digital and Green

- Digitisation
 - ✓ Completed consultancy to prepare for development and design of Health Information System and Social Benefits Registry
- Adaption and Greening
 - ✓ Completion of an MoU with Green VI
 - ✓ Completion of Consultancy for development of Sustainable Integrated Waste Management Strategy

DEPUTY GOVERNOR'S OFFICE

Leading Globally in Service Delivery

- Good Governance
 - ✓ Completed drafts of:
 - Public Service Management Bill,
 - Ministerial Code (in partnership with PO)
 - Integrity in Public Life Policy
- Customer-focused Organisation
 - ✓ Customisation of Public Service behaviours for Public Service Standards in alignment with the Territory's Customer Service Standards developed in partnership with BVI Tourist Board & Disney
 - ✓ Developed orientation toolkit for Public Service Standards and delivered to 1st cohort of Leadership Development Programme
 - ✓ Completed development and implementation of new Health & Safety Policy
 - ✓ Completed implementation of Virtual Customer Service Mailbox Initiative
 - ✓ Completed awareness sessions, configuration and installation of Customer Service Touch Terminals
 - ✓ Completed development and implementation of the Public Service Star Membership Club
 - ✓ Developed in collaboration with DoIT the Public Service Transformation Programme microsite to provide information on progress of the Programme
- Security
 - ✓ Review of Territory's Comprehensive Disaster Management Plan
 - ✓ DDM completed Installation of 24 Weather Stations
 - ✓ RVIPF took receipt of an deployed 2 Armed Response vehicles (donated by HMG)
 - ✓ Reestablishment of the Courts following Hurricanes in 2017Waste Management Strategy
 - ✓ Completed Cyber Security review with Dr. Levy and drafted NSC Information Paper
 - ✓ Justice Sector Review commenced and Inception Report completed
 - ✓ Completed Health and Safety Policy for the Public Service and Health and Safety Orientation and Training

Developing High Skilled and Adaptable Leaders and Employees

- High Performance
 - ✓ Conducted first Employee Engagement Survey using U.K. Civil Service Tool
 - ✓ Completed development of new Leadership programme in collaboration with GPI

- ✓ Completed development and implementing training needs analysis across Government (Skills profile)
- Change and Collaboration
 - ✓ Established Public Service Transformation Programme and Team
 - ✓ Revitalisation of GBVI Civil Service Association
 - ✓ Established Change Champions working group to address internal customer issues from engagement survey & otherwise
 - ✓ Completed Public Service Transformation launch to Public Officers, including several initiatives to maintain communication
 - ✓ Completed development of draft Change Management Tool kit and simple 'How To Guide for Leaders' flyer
 - ✓ Completed stand-alone Change Management and Culture Programme
 - ✓ Completed Draft Change Management Framework
 - ✓ Completed Public Service Transformation Communication Strategy
 - ✓ Scoped Compensation Review and gained Cabinet approval to undertake the same

Agile, Lean, Digital and Green

- Streamlining Processes
 - ✓ Completed review and concept paper to implement a Business Process Reengineering Centre of Excellence
 - ✓ Completed 'as-is' process mapping of recruitment process and reviewed two software application options to enhance recruitment
- Digitisation
 - ✓ Commenced implementation of HR component of JD Edwards Upgrade
 - ✓ Cabinet Office completed implementation of EXCOTRAC
 - ✓ Reviewed options for development and implementation of PSCTrac and Recruitment software
- Adaptation and Greening
 - ✓ Commenced scanning of HR Files using DOCOVA
 - ✓ DDM implemented Teen Certification Training (ESHS)
 - ✓ Completed programme to support schools and private sector in achieving Green Globe and other Green Certifications in collaboration with Ministry of Natural Resources, Labour and Immigration and Ministry of Education, Culture, Youth Affairs, Fisheries and Agriculture.

2. WHERE ARE WE GOING?

2.1 National Vision and Public Service Vision

National Vision

Following the 2017 hurricanes, a vision for the Territory was developed in the Recovery to Development Plan (RDP) 2018:

“The BVI will be a model for building stronger, smarter, greener and better, fostering a vibrant and innovative economy, cohesive and empowered society, nurtured and sustainable environment, resilient infrastructure, good governance and a high quality of life for all.”

In November 2019, the Recovery and Development Plan was revised to focus on Recovery with the Premier’s Office taking the lead on Development. As a result, a new National Vision was articulated as follows:

“By 2025, BVI will be a leading economy through Entrepreneurship, Innovation, Local Investment and Foreign Investment.”

Public Service Vision

The Vision for the Public Service is designed to support the National Vision.

A visioning day was facilitated by the Deputy Governor to share the new and innovative approach that would be taken to transform the Public Service (see Visioning Day Report, Annex 3). The new approach required starting with the end in mind since as mentioned above, transformation of the public service was no longer to simply be internally focused but was to enable and facilitate the achievement of the national vision. The visioning day considered what it meant to develop “A Vibrant and Sustainable Economy”. Each sector of the economy was considered and it was determined that the Territory would need to be ‘world-class’ in each sector. Public officers identified what ‘world-class’ would look like in practice for their respective areas, and then started the work to identify how the Public Service would facilitate those desired results. The outputs of the visioning day were summarised by Figure 1 below which was the original Public Service Transformation Model. This has since been revised in this Framework document to give more focus.

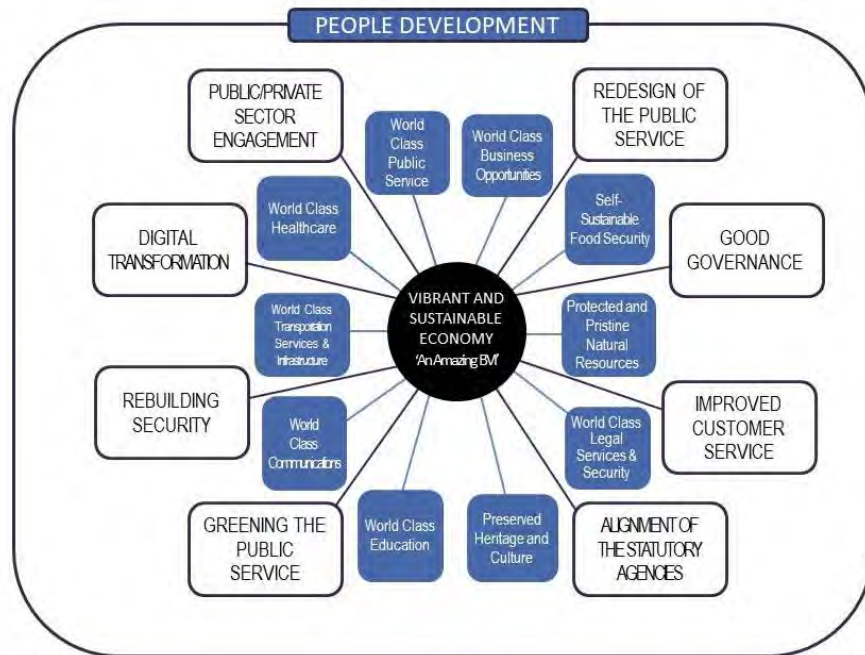


Figure 1 - Original Public Service Transformation Model

In addition to understanding what ‘world-class’ looked like in practice for each sector, participants at the visioning day exercise answered the question “what does a World-Class Public Service look like?” It was determined that the benchmark was to be within the top 5 public service organisations in the world according to the International Civil Service Effectiveness (InCISE) Index, see Section 4.2. At the Visioning Day, officers considered a ‘world-class’ public service would be:

- A respected customer-focused Public Service which is accountable, productive, innovative and unified.
- An efficient, transparent, technologically advanced organisation which delivers competent, prompt and fair services for the betterment of the Territory.
- A modern, highly motivated, accessible, customer-oriented organisation that delivers professional, relevant, efficient and cost-effective service that is transparent and ethically driven.
- An economically sustainable Public Service that is accountable to the people it serves.

This has been consolidated into the following Vision statement:

*A Respected, Trusted and Efficient Public Service
with People at the centre of all we do!*

2.2 Public Service Transformation

What is Transformation?

One of the critical components to the successful delivery of the Public Service Transformation programme is to help people understand what Transformation actually is, especially given the departure from the previous approach of public administration and reform. It is critical to paint a picture of what it will look and feel like beyond the vision. Figure 1 in the foreword, and shown again below, captures this. This is the simplified version of the revised Transformation Model.

What does Public Service Transformation look like in practice?



What It Will Be?

When the Public Service is transformed, the behaviours we will demonstrate are:

- ✓ Finding ways to do things differently and efficiently
- ✓ Being ambitious, always wanting to be better
- ✓ Preserving our environment and our culture
- ✓ One BVI working towards one agenda for the benefit of all
- ✓ Taking action

This will support our vision to become a “World Class Public Service that is respected, trusted and efficient with people at the centre of all we do”. This will be achieved through three broad strategies which are:

1. **Leading Globally in Service Delivery** – which is about delivery services efficiently and effectively to both our internal and external customers. To achieve this, we will benchmark ourselves against other world-class public service organisations using the International Civil Service Effectiveness (InCISE) Index. *See Appendix 1*
2. **Becoming Skilled and Adaptable Leaders and Employees** – which is about creating leaders and employees who can meet the challenges of what is none referred to as a VUCA world (volatile, uncertain, complex, and ambiguous).
3. **Becoming Agile, Lean, Digital and Green** – Traditional public service focuses on face-to face service delivery, however, in a technologically driven world the focus is on services as products. This strategy is about using world-class methodologies for the development of products and services through digitisation. Additionally, the BVI’s vision to be a World Class public service organisation must include being a ‘Green Leader’, given the desire of the British Virgin Islands to benefit from land and sea whilst preserving the Islands natural beauty.

The ultimate result of Public Service Transformation is to facilitate the national vision which has locally been coined as creating “An Amazing BVI”.

3. HOW DO WE GET THERE?

The Technical Model at figure 2 below communicates internally to our leaders, managers and technicians how we will execute the Public Service Transformation Programme.



3.1 Priorities – Government's Policy Agenda

The starting point is the Government's Policy Agenda which sets the tone for the whole country; re-enforcing that transforming the public service is not simply an internal focus. The Policy Agenda is structured using the National Results Framework, S.E.E.D¹ The Policy Agenda is a consolidation of the Government's policy priorities as articulated in the Budget Speech and the Speech from the Throne, see below

2020 Budget: Government's Strategic Policy Outcomes

| Government's medium- to long-term objective: <i>To make the BVI a financially and economically sustainable Territory; to make our people secure, physically, emotionally and economically, and to develop all-round resilience and competitiveness. – Budget Address 2020</i> | | |
|---|--|---|
| SEED | Medium - Term Development Strategy (SEED) Result Areas | Strategic Policy Outcomes |
| 1 Social | Quality health, wellbeing and social services | <p>1.1 Continue investment in acquiring international accreditation of the BVI Health Services Authority to verify and demonstrate the quality of the Territory's healthcare system</p> <p>1.2 Continue to improve access to healthcare provision within the Territory ensuring essential services are available on the Sister Islands and by strengthening the performance of the National Health Insurance System</p> <p>1.3 Protect present and future generations from the health, social, environmental, and economic effect that tobacco consumption and exposure has</p> <p>1.4 Develop and implement policies and strategies to reduce the number of cancer cases and deaths, within the territory and to improve the overall quality of life of cancer patients</p> <p>1.5 Prioritise support to the most vulnerable in the community including Senior Citizens and households recovering from the 2017 hurricanes</p> <p>1.6 Enhance the cultural development in the Territory whilst ensuring the preservation of the Virgin Islands' unique culture, traditional values, and pride of its people for future generations</p> |

¹ Social, Economic, Environmental and Direction (Governance)

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| | | <p>1.7 Strengthen and empower youth through effective policies and strategies that addresses the challenges and opportunities for achieving positive youth development, including the revision of the Virgin Islands National Youth Policy and Strategic Objectives</p> <p>1.8 Promote the importance of sport in the development of our people and as a viable component of the Tourism sector, and provide a comprehensive management mechanism to support all sports and recreation in the Territory, including establishing a National Sports Council</p> <p>1.9 Establish a regulatory framework for the gaming and betting industry, including sectors such as horse racing and the cruise industry, and undertake a public consultation to determine the Territory's desire to establish a framework to enable drag-racing as a sport</p> |
| | Quality education | <p>1.10 Ensure empowerment of our people through a commitment to evolving the education system to take account of technology, including SMART schools and to keep pace with the rest of the world</p> <p>1.11 Ensure our students become functional citizens within the territory by receiving the best possible instructions and training and creating a framework and environment that supports the development of good character</p> <p>1.12 Place Virgin Islanders at the centre of development activities (Virgin Islanders First) through expanding access to educational opportunities including the introduction of full Bachelors' and Masters' degrees and certifications on-island from internationally recognised, accredited universities through distance learning and facilitate public officers in pursuing qualifications to the Masters' and Doctoral level</p> <p>1.13 Enhance teaching standards and the supply of qualified teachers to provide quality education</p> |

| | | |
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| <p>2 Economic</p> | <p>Stable and growing economy</p> | <p>2.1 Attract foreign and domestic investment to enhance economic development, reduce unemployment, grow entrepreneurship, accelerate growth, and diversify the economy, by strengthening the Trade policy framework and the establishment of an Investment Promotion Agency</p> <p>2.2 Ensure the empowerment of local investors and local businesses in all sectors of the economy, inclusive of all, but not limited to tourism, health, entrepreneurship, agriculture and fisheries</p> <p>2.3 Enable the growth of entrepreneurship by opening up access to capital, and training for individuals and start-ups</p> <p>2.4 Establish the requirements for private investment funds to be recognised by the Financial Services Commission, the criteria to be satisfied for the Commission to grant recognition</p> <p>2.5 Develop and implement the policies, legislation, strategies and plans necessary to support EU Economic Substance Requirements</p> <p>2.6 Create a platform to drive green innovation, green diversification, and green expansion of the economy; including Green SMART products</p> <p>2.7 Increase Territories revenues from sailing including facilitating the registering of large ships under the International Maritime Conventions</p> <p>2.8 Reposition the Territory as the sailing capital of the world</p> <p>2.9 Develop and grow industries that support the Blue positioning the sea as an asset to be used sustainably to provide benefits for the people of this Territory.</p> <p>2.10 Place special focus on tourism to ensure it is a strong pillar of the economy establishing stronger linkages and involvement of all sectors within the Territory to ensure “one tourism” mandate and that the Virgin Islands remains on the bleeding edge of Tourism in the Region and Globally</p> <p>2.11 Increase support to strengthen the linkages between the</p> |
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| <p>2 Economic (contd)</p> | | <p>productive sectors of fishing, agriculture, and cultural heritage increasing the earning potential of fisher folk and farmers and developing the cultural industries including Film</p> <p>2.12 Develop a robust policy and regulatory framework that supports the contribution of AirBnB to the Territory's tourism sector</p> <p>2.13 Expand Airlift into the Territory to support the growth of visitor arrivals and develop and implement a framework for providing emergency airlift for visitors out of the Territory in times when disaster looms</p> <p>2.14 Develop the Territory as a major reliable shipping route within the Caribbean region including implementation of a competitive fee structure for cargo, import and export duties and flexible operating hours for the BVI Port.</p> <p>2.15 Establish the BVI as a location of choice for an Aircraft Registry, through implementation of a robust regulatory framework in the same way that the BVI's Shipping Registry operates</p> <p>2.16 Modernise existing agriculture and fishery legislation including drafting a national food production and land use policy, recovery of agricultural stations and restructuring Crown land designated for farming; and the undertake preparatory work needed to inform the establishment of a medical marijuana industry</p> <p>2.17 Continue the modernisation of the Labour and Immigration Department to create a labour market which is conducive to economic growth, investment and employment creation and is characterised by improved skills, equity, sound labour relations, respect for employment standards and worker rights and due respect to those who help to create economic opportunities while protecting our borders and preserving our natural resources for the benefit of all.</p> |
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| | Strong infrastructure | <p>2.18 Invest in infrastructure locally ensuring it can support the Digital Economy, Blue Economy and Green Economy.</p> <p>2.19 Improve the quality and standard of the Territory's physical infrastructure ensuring green building strategies, practices and technologies apply to all development, whether it is for public infrastructure, residential, or commercial buildings; this includes strengthening enforcement functions of Agencies such as the Planning Authority Board</p> <p>2.20 Improve road and drainage system ensuring redesign focuses on flood mitigation and building resilience and continue to rehabilitate roadways in Virgin Gorda and Jost Van Dyke</p> <p>2.21 Increase the Territories medium-term room stock to 5,000 to expand the overnight tourist visitor market</p> <p>2.22 Prioritise airport infrastructure development, built for resilience, to accommodate larger capacity aircraft at the airport and continue the upgrades and refurbishment of the airports at Anegada and Virgin Gorda</p> <p>2.23 Enhance cruise tourism, including better management and utilisation of the lands reclaimed outside of the Administration Complex</p> |
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| <p>3 Environment</p> | <p>Effective management of natural resources and natural environment</p> | <p>3.1 Balance the growth of the Blue and Green economy with the protection of our natural resources through sustainable environmental management and ecological integrity and the introduction of a National Beach Use Policy to provide a legal framework that ensures sustainability of our beaches</p> <p>3.2 Prioritise tackling Climate Change and Adaptation to ensure the Territory remains beautiful, clean, and has a healthy green environment</p> <p>3.3 Strengthen the legal framework for sustainable management of household waste, industrial waste, construction, demolition waste, and hazardous waste to protect health and the environment while improving the aesthetics of the Territory</p> <p>3.4 Improve the supply and management of the Territories water network through a comprehensive review and development and implementation of appropriate strategies</p> <p>3.5 Increase the efficient use of brown spaces (pro-poor urban environments) to reduce the impact on our natural environment and precious natural resources such as our immaculate beaches and stunning views.</p> <p>3.6 Ensure ship-owners partner with Government in preserving the natural environment, including being accountable and financially for removing wrecks</p> <p>3.7 Develop a package of incentives to promote and support clean energy systems such as solar and wind power generation equipment, hybrid vehicles and re-sale of electricity back to the grid to reduce the BVI's carbon footprint, harness our renewable resources, and save citizens and the Government millions of dollars that are presently being spent on imported fossil fuels</p> |
|--------------------------|--|---|

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| <p>4 Direction</p> | <p>Effective Governance</p> | <p>4.1 To provide a legal framework for the overall management, organisational structure, administration and proper establishment of the Public Service of the Virgin Islands</p> <p>4.2 Enhance good governance, including transparency, and accountability and preserve and promote the integrity of public officials and public institutions</p> <p>4.3 Strengthen archives and records management functions to ensure the preservation of public archives and records from an electronic perspective, and establish a National Archives for the preservation of historic documents</p> <p>4.4 Strengthen the capacity of our law enforcement agencies and their powers to ensure the protection and safety of victims and witnesses</p> <p>4.5 Strengthen policy and development planning within the Territory through the separation of Recovery and Development with the Premier's Office taking responsibility for the development of the Territory articulated through a National Sustainable Development Plan which provides a roadmap for the transformation of the Territory encompassing its economic, social, environmental, physical and climate resilient issues, and Government will support the Recovery and Development Agency to implement the Territory's Recovery Plan within 5 years</p> <p>4.6 Enhance democracy by strengthening Committees of the House of Assembly and providing a legal framework for the operation of the Youth Parliament</p> <p>4.7 Comprehensive digital transformation of the Public Service including e-payments for customers</p> <p>4.8 Develop a robust National ICT Policy and strategy Framework to support digital transformation of the Public Service and the Territory at large</p> <p>4.9 Enhance Public Financial Management including procurement and introduce the function of Contractor General, ensuring the Territory remains within the Protocols for effective Financial Management</p> |
|------------------------|-----------------------------|---|

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| | | 4.10 Strengthen and expand the Territories regional and international relationships, particularly with the European Union and United Nations to enhance cooperation and partnerships to manage the uncertainties of the future. |
| | Safety and justice for all persons | <p>4.11 Encourage fair and equitable business practices for consumers and businesses</p> <p>4.12 Improve Shipping Governance including identification, licencing of vessels and inspection vessels, Master and crews</p> <p>4.13 Develop a robust mechanism to address maritime safety including establishing an independent Marine Safety Investigation Authority</p> <p>4.14 Improve the standard and regulation of engineering practice in the BVI ensuring registration, licensing and strengthening enforcement to ensure compliance</p> <p>4.15 Improve efficiency, border management and the customer experience at ports of entry including the introduction of specialist Airport Police</p> |

3.2 Guided By – Good Governance

The Government Vision to propel the Territory as one of the leading economies both regionally and internationally to provide for the greatest social and economic benefit to all people. It is understood that to do this there needs to be an enhanced focus on good governance. This means implementing several key pieces of legislation to guide the governance of the Territory including a Whistleblowing Act, Integrity in Public Life Bill and a new Public Sector Management Bill. Progress on these bills can be seen at Section 1.2 above.

3.3 Implemented Through

The Public Service Transformation strategy aligns with the various National Plans and Frameworks (Policies, Legislation, Strategies, etc). These include amongst others, the National Sustainable Development Plan which is currently being developed, the National ICT Policy, Strategy and Plan, Ministerial Plans and Transformation specific Plans.

This framework document includes a comprehensive Implementation Plan at Section 4.

PLAN FOR IMPLEMENTATION

4. THE PLANNING TOOL

This section contains the Logical Framework that guides each Ministry. The planning methodology uses a top-down and a bottom-up approach. The top-down component consisted of developing a Logical Framework (Log frame), *see Annexe 3*. This is a planning tool to help design a programme by identifying the long-term objective for each priority (Objective), the short-medium term purpose (Purpose) and the products or services that the projects will deliver (Outputs). Guided by this, ministries will develop their Ministry Plans and the specific indicators for their ministries. Finally, a Results-based Performance Framework² was developed to assist in monitoring and evaluation of the overall programme.

4.1 Planning – Objectives, and Purpose

As mentioned, the log frame was used to develop the programme objectives, purposes and high-level outputs which are set out below. The purpose of each objective is broken down further in the log frame to ensure it is measureable and expected outputs at the programme level are articulated which helped ministries consider the types of activities and outputs they would deliver at the project level.

1. *Leading globally in service-delivery and innovation*

Long-Term Objective

The societal level change that this strategy is intended to deliver is: **Excellent customer experience and high levels of trust in Government**

Purpose

The purpose of this objective is to:

- Improve Good Governance
- Improve Customer Focus
- Redefine and deliver security for development

2. *Developing Highly Skilled and adaptable leaders and employees*

Long-Term Objective

The societal level change that this strategy is intended to deliver is: **People equipped to deliver high performance, lead change and develop innovative solutions**

² 'Logical Framework', or 'log frame', describes both a general approach to project or programme planning, monitoring and evaluation, and – in the form of a 'log frame matrix' – a discrete planning and monitoring tool for projects and programmes. *Source*

<https://www.betterevaluation.org/en/evaluation-options/logframe> [accessed 02/11/2019]

Purpose

The purpose of this objective is to:

- Improve performance
- Improve change management capability and collaboration
- Develop innovative thinking and doing capabilities

3. *Becoming Agile, Lean, Digital and Green*

Long-Term Objective

The societal level change that this strategy is intended to deliver is: **Effective, efficient, value-adding services consistent with world-class standards**

Purpose

The purpose of this objective is to:

- Streamline processes
- Increase digitisation
- Increase adaptation and greening practices

4.2 *Ministry Transformation Plans*

Each ministry will develop a transformation plan through engagement with relevant stakeholders with support from the Public Service Transformation team. In addition to being guided by the Log Frame, they will consider the Ministry's Mission Statement, the focus of the Ministers and their Strategic Plans.

The Ministry Mission Statements and some of the Ministerial priorities that have been articulated are outlined below:

Premier's Office

The Premier's Office articulates its Mission as:

To serve as the focal point for coordinating cross-sectorial policies and programmes and promoting the sustainable development of the Virgin Islands to ensure a well-informed, prosperous, cohesive and stable society.

The Honourable Premier said of his Government that:

"Over the next three years, our job will be to increase the efficiency and the quality of governance; seek greater local and international investments in the economy, particularly in tourism, marine industries, fishing, agriculture and information technology services; improve the education and other public infrastructure; build a secure environment in which to do business; support the development of small businesses; and create additional entrepreneurial opportunities and sustainable jobs". – Budget Address 2019

Ministry of Finance

The Ministry of Finance articulates its Mission as:

To provide strategic, economic and fiscal leadership that promotes the sustainable economic development of the Virgin Islands.

The Honourable Minister of Finance said of the work of his ministry that:

"Our job is simply not just to balance a budget but to help balance the lives of our people". – Budget Address 2019

Ministry of Education, Culture, Youth Affairs, Fisheries and Agriculture

The Ministry of Education, Culture, Youth Affairs, Fisheries and Agriculture articulates its Mission as:

To educate and develop life-long learners, promote cultural awareness and heritage preservation, facilitate youth empowerment and support sustainable livelihoods to improve the well-being of the people of the Virgin Islands.

Dr. the Honourable Natalio Wheatley said of his ministry's work that:

*"I will not take for granted the opportunity to shape the education system that has shaped me."*³

*"Agriculture is going to be moving forward and we have been putting the structures and elements in place to ensure that it happens."*⁴

Ministry of Natural Resources, Labour and Immigration

The Ministry of Natural Resources, Labour and Immigration articulates its Mission as:

To provide effective and efficient immigration regulation and management of natural resources for the Territory and to develop and empower the local workforce to meet national needs.

The Honourable Vincent Wheatley said of his ministry:

"...the Ministry of Natural Resources, Labour and Immigration continues its unwavering efforts to ensure that the young people of this Territory are afforded the opportunity to own a piece of land to build their home. Land ownership engenders a sense of pride and accomplishment and we want to do our best to get the young people of this Territory on the part of wealth creation and building a legacy for future generations." - Statement in the House of Assembly

Ministry of Transportation, Works and Utilities

The Ministry of Transportation, Works and Utilities articulates its Mission as:

³ Opening Speech for Education Week 2019

⁴ <http://gov.vg/media-centre/government-pledges-move-agriculture-forward>

“...dedicated to ensuring the continued development and maintenance of public infrastructure in keeping with international standards so that public utilities are reliable and affordable in support of an enhanced community life for every resident and visitor in the Virgin Islands”.

The Honourable Kye M. Rhymer said of his ministry:

“The Ministry of Transportation, Works and Utilities (MTWU) continues to forge forward toward the improvement of the infrastructure of our Virgin Islands...the government and the Ministry of Transportation, Works and Utilities, hope to reduce the inconvenience and loss to our residents due to the impact of inclement weather, to make the Territory safer and cleaner, and – coincidentally – create some job opportunities for our people.” – House of Assembly Statement on 31st July, 2019

Ministry of Health and Social Development

The Ministry of Health and Social Development articulate its Mission as:

“To provide leadership that promotes health, social well-being and a safe environment as positive resources for living and sustainable development.”

The Honourable Carvin Malone said of his ministry:

“...We continue to rebuild the health and social infrastructure through ongoing repairs to clinics, community centres and other critical facilities. These important projects, underpinned by a robust policy agenda that promotes inclusiveness and investment in people as our greatest resource, will set the Virgin Islands on a brighter path. Progress will not be met without challenges but together, the Government of the Virgin Islands remains committed to restoring hope and prosperity to all, while promoting a greener, healthier and safer Virgin Islands.” – 100 Days In Office, June 2019

Deputy Governor’s Office

The Deputy Governor’s Office and articulates its Mission as:

“To ensure effective public governance, strengthen democracy and human rights, promote economic prosperity and social cohesion, and deepen confidence in government and public administration.”

The Deputy Governor, Mr David D. Archer, Jr. said of his office:

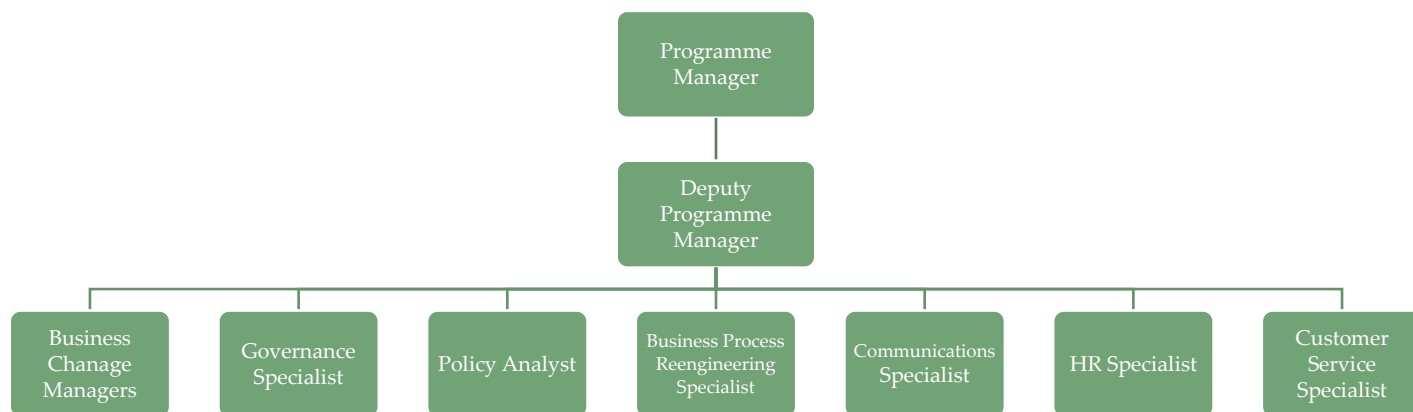
“The Public Service is on its way and the choice of not being successful is non-existent, because a successful service drives a successful economy. A stronger, smarter, greener, better and more efficient and effective BVI is therefore at the forefront of the work that must be done in the Public Service. The successful relationship between ministries and departments with the Recovery and Development Agency is paramount to a transformed Public Service and a newly recovered and developed Virgin Islands. With the competence of Senior Managers, Department Heads and the body of public officers, there is confidence that the foundation for an exceptional Public Service has already been laid. The plan is to merge this competence with a love for our clients and deliver services with pace, passion and empathy for those we serve.” – 1 Year In Office Report

4.3 Implementation Support Structure

The Ministries will be implementing their Ministry Transformation Plans supported by the Public Service Transformation Programme Team. The figure below shows the implementation support structure for the Programme.

It is envisaged that a permanent Public Service Transformation Programme Team will be implemented consisting of:

- Programme Manager
- Deputy Programme Manager
- Business Change Managers and
- Specialist Leads/Experts who progress the work that is core to the outcome of a World-Class Public Service namely:
 - Governance Specialist
 - Policy Analyst
 - Business Process Reengineering Specialist
 - Communications Specialist
 - Human Resources Management Specialist
 - Customer Service Improvement Specialist



A summary of the roles of the Public Service Transformation Team are set out below.

Programme Manager:

- Leadership – Provides leadership, direction and support to BCM's and through indirect reporting to Project Managers in the ministries. Develops programme strategy and high levels implementation plan.
- Reporting & Monitoring – reports to the Senior Responsible Officer on the current status and progress of the programme on a weekly basis, on the budget and any variances, on timelines and impacts on time lines, on change management/change adoption and communications and monitors the same.
- Engagement – responsible for briefing Ministry leads and other key stakeholders, and ensuring that operational staff and technicians are committed to the programme and are adequately represented on the cross-functional working teams, coaches and mentors programme team.
- Delivery – Facilitates capacity building in conjunction with HR and other stakeholders, ensures the implementation of project plans and transition plans on-time and in-budget and to meet KPI's.
- Managing – ensures effective programme management including contracting, procurement, change management, quality assurance and risk management, ensures that resources are being used appropriately (human & financial) and, ensures Programme team understand their roles
- Empowering – the BCM's, Project Managers/Coordinators to lead in their respective areas.

Business Change Manager

- Recommend resources needed to support change – Work with the Programme Manager to identify the projects, workstreams, resources and activities needed to implement required changes in their business area
- Planning – Develop a change transition plan for the project/workstreams in their business area that align with any organisational methodology for managing change developed by HR/Organisational, Development and Workforce Planning (ODWP) in conjunction with the change programme.
- Manage the change – By driving implementation of the transition plan; identifying challenges, solutions and actions to remedy the challenges and provide information to support the change communications plan
- Reporting & Monitoring – Report to the Programme Manager progress on the transition plan and any forecast exception to the delivery schedule and any risks

or issues that might jeopardise the programme, monitor and measure the realisation of benefits in their business area

- Collaboration – Understand the dependencies between the work they are responsible for, the work of other BCMs and the project managers
- Capability building – Ensure that the required capability is available and fit for purpose and is implemented in their business area in line with the programme plan. If not available, make recommendations on building capability to the Programme Manager.

Technical Specialists

The technical specialists are experts in their respective subject areas. Their role is to provide advice on the cross-cutting areas that impact every project and span all ministries. The specialists need not necessarily be full-time roles but could be drafted in as needed, save for the Business Process Reengineering, Communications and HR Specialists whose roles will be needed throughout the duration of the Programme.

In addition to the core Public Service Transformation Core Support Team, each Ministry has appointed a Project Manager/Coordinator the summary of the role is outlined below.

Project Manager/Coordinator

- Develop requirements for the project – Scope, outcomes, timelines and budget
- Manage the project – Develop a project plan with timelines, ensure activities are conducted on time and within budget, identify blockages/challenges and work with the project team to address
- Monitor and measure – Track budget (money and hours), identify issues concerning resources (human and financial), monitor and measure progress against the project plan and recommend any remedial action to ensure targets are met
- Reporting – Submit weekly/bi-weekly reports to the Programme Manager
- Collaboration – Be cognisant of and take action to leverage synergies with other initiatives across the programme, organisation and with other key stakeholders including external
- Change Management – Ensure a strong relationship and collaboration with Business Change Managers who are responsible for supporting and implementing change

MONITORING AND EVALUATION

5. RESULTS-BASED PERFORMANCE FRAMEWORK

A summary of the results that the Public Service Transformation programme is designed to achieve is set out in the model as follows:

- Improved accountability, transparency, and public financial management
- Enhanced Citizen participation
- Excellent Customer Service
- Increased employee morale and engagement
- Productive partnerships
- Reduced crime
- Strong leadership
- Skilled specialist technicians
- Strengthened change management and culture change capacity
- Greater efficiency and coordination
- Documented processes and systems in alignment with international standards
- Increased revenue generation
- Leading in 'green' practices

5.1 Performance Matrix

This is a high-level Results-Based Performance Management Matrix that aligns with the Planning Log frame. The Matrix has 3 results areas that align to *Leading Globally in Service Delivery*, *Developing Highly-Skilled and Adaptable Leaders and Employees* and *Becoming Agile, Lean, Digital and Green*. The Matrix establishes the high-level indicators by which the progress of the PSTP programme as a whole will be measured (see Matrix below). The Performance Framework aligns with the International Civil Service Effectiveness (InCISE) Index which will be used as a benchmark to progressing to a world-class public service. The InCISE Index can be seen at Annexe 1.

In addition, each Ministry will have its own Performance Matrix with indicators to measure the ministry projects.

In addition, the Performance Matrix will be linked to the National Performance Grid once the National Performance Framework is developed as part of the National Sustainable Social and Economic Plan.

Public Service Transformation – Results-Based Management Performance Framework

RESULTS INDICATOR: LEADING GLOBALLY IN SERVICE-DELIVERY

Impact Statement: Excellent citizen experience and high levels of trust in Government

| Outcomes | Output Statement | Output Indicators |
|--|--|---|
| 1. GOOD GOVERNANCE | | |
| <ul style="list-style-type: none"> % increase in Good Governance legislations <p><i>Outcome statement: Improved accountability, transparency and public financial management</i></p> | 1. Implement the required components of the OTs Good Governance Framework 1.2 Implement minimum E-Governance requirements and structure, see 2.1, 2.2 and 2.3 below | 1.1.1 # of policies and draft bills developed 1.2.1 100% Completion of design and development of an Information Commission/Data Commission |
| <ul style="list-style-type: none"> % increase in customer/citizen participation rate <p><i>Outcome statement: Purpose: Greater participation of citizens</i></p> | 1.3 Develop a robust public policy mechanism that includes public consultation as a key component 1.4 Design and implement mechanisms using ICT to engage customers/citizens – including policy and reporting on delivery | 1.3.1 # of consultations on new public policies held 1.4.1 # of ICT enabled mechanisms/Applications to engage and inform customers |
| <ul style="list-style-type: none"> % increase in compliance <p><i>Outcome Statement: Improved corporate governance for public sector bodies</i></p> | 1.5 Develop an Accountability Framework for Statutory Bodies | 1.5.1 # of Corporate governance principles implemented in Statutory authorities and aligned with central Government |
| 2. CUSTOMER-FOCUSED ORGANISATION (SAFE) | | |
| <ul style="list-style-type: none"> % reduction in crime, % reduction in reported accidents at work, % increase in customer perception of e-government security <p><i>Outcome statement: Improved Safety (Cyber Security, Data Protection, Health and Safety)</i></p> | 2 E-Governance policies developed 2.2 E-Governance legislations drafted and approved by Cabinet 2.3 Implement clearly defined e-governance structure which streamlines national coordination, implementation as well as monitoring and continuous evaluation of ICT initiatives; | 2.1.1 # of E-Governance Policies developed 2.2.1 # of E-Governance legislations drafted 2.3.1 Completed design and implementation of National ICT Council |
| <ul style="list-style-type: none"> % compliance with code of conduct and/or other standards <p><i>Outcome statement: Improved Authenticity (professionalism – aligned to code of conduct, knowledgeable about your specialism/service)</i></p> | 2.4 Development and implementation of appropriate codes and/or standards | 2.4.1 # of codes and/or standards developed |
| <ul style="list-style-type: none"> % increase in customer satisfaction – both internal and external <p><i>Outcome statement: Improved</i></p> | 2.5 Development and implementation of Customer satisfaction mechanisms/feedback tools | 2.5.1 # of customer satisfaction initiatives developed and implemented |

Public Service Transformation – Results-Based Management Performance Framework

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|--|--|--|
| <i>Friendliness (using a partnership approach and demonstrating customer first)</i> | | |
| <ul style="list-style-type: none"> % of transactions conducted in advertised timeframe, % of transactions completed right first time <i>Outcome statement: Improved Efficiency (completing transactions speedily, make it right-right away)</i> | <p>2.6 Development of benchmark time/duration for processes and/or transactions</p> <p>2.7 Development of LEAN processes (see 7.1.1)</p> | <p>2.6.1 # of processes benchmarked and time standard set & communicated to public</p> <p>2.6.2 # of transactions completed within required time-frame</p> |
| 3. SECURITY | | |
| <ul style="list-style-type: none"> % of policies and legislations aligned with the concept of security for development <i>Outcome statement: Redefining security in terms of 'security for development'⁵.</i> | <p>3.1 Development of security policies and practices in alignment with international security for development concepts (e.g. OECD, DAC)</p> | <p>3.1.1 # of policies and practices applying security for development</p> <p>3.1.2 # of legislation drafted and approved by cabinet in alignment with security for development concepts</p> |

⁵ Ensuring people and communities (i) live in peace, (ii) participate fully in the governance of their countries, (iii) their human rights are protected and (iv) have access to resources and necessities live in a physical environment conducive to health and well-being, *Source: OECD, DAC*

Public Service Transformation – Results-Based Management Performance Framework

RESULTS INDICATOR: HIGHLY SKILLED AND ADAPTABLE LEADERS AND EMPLOYEES

Impact Statement: People equipped to deliver high performance, lead change and develop innovative solutions

| Outcomes | Output Statements | Output Indicators |
|---|---|---|
| 4. IMPROVED PERFORMANCE (MY WORK) | | |
| <ul style="list-style-type: none"> % increase in employee engagement score <p><i>Outcome statement: Increase employee engagement</i></p> | <p>4.1 Development and implementation of solutions to address findings of employee engagement survey</p> | <p>4.1.1 # of solutions developed</p> <p>4.1.2 # of solutions implemented</p> |
| <ul style="list-style-type: none"> % increase in processing of transactions, and/or % decrease in time taken to process transactions <p><i>Outcome statement: Increase in speed of transactions</i></p> | <p>4.2 Organisational structures re-designed towards a flatter functional model</p> <p>4.3 Processes for key transactions re-designed so autonomy for decision making given to officers below PS and HoD.</p> | <p>4.2.1 # of organisation structures redesigned</p> <p>4.3.1 # of officers with increased decision-making powers</p> |
| <ul style="list-style-type: none"> 70% of results and/or targets achieved within specified timeframes <p><i>Outcome statement: Improved results that align with Government policy, strategic goals, and budget.</i></p> | <p>4.4 Review and revise strategic planning and budgeting mechanism and re-implement across Government</p> | <p>4.4.1 # No. of Ministry strategic plans developed that align Government policy, sector strategies and budget for the fiscal period 2020/23</p> |
| <ul style="list-style-type: none"> % increase in the number of international certifications Government holds <p><i>Outcome statement: Increase specialist and/or technical competence of employees</i></p> | <p>4.5 Identify current competencies (specialist knowledge, skills and abilities) across Government</p> <p>4.6 Identification and accreditation of Departments and/or individuals in key international certifications e.g. EMAP, INTOSAI, CIPD, ACCA)</p> | <p>4.5.1 100% completion of organisation-wide competency audit/profile</p> <p>4.6.1 # of Departments and/or Officers certified to International standards in technical/specialist area</p> |
| <ul style="list-style-type: none"> % increase in No. of strategic plans across Government % increase in employee engagement score related to “My manager % increase in employee engagement score related to “My manager | <p>4.7 Leaders attend and implement strategic planning tools and techniques</p> <p>4.8 Leaders attend the new Leadership Development programme and apply the learnings related to emotional intelligence, and motivation.</p> <p>4.9 Review and amendment to Performance Management system to ensure alignment with strategic</p> | <p>4.7.1 # of leaders who developed aligned strategic plans (see 4.4.1 above) for the fiscal period 2020/2023</p> <p>4.8.1 # of leaders who’ve demonstrated application of the learning from the new leadership development programme for the period Nov 2019 – Nov 2020</p> <p>4.9.1 # of performance reviews conducted properly and submitted to HR for the</p> |

Public Service Transformation – Results-Based Management Performance Framework

| | | |
|---|---|--|
| <i>Outcome Statement: Enhance Leadership capability⁶</i> | planning and budgeting and as a tool to focus on performance and development. | period Jan 2020 – Dec 2020 |
| 5.CHANGE & COLLABORATION (LEAD CHANGE) | | |
| <ul style="list-style-type: none"> % increase in No. of learning organisation programmes/training available across Government <p><i>Outcome statement: Public Service transformed to a 'learning organisation' (facilitates learning, change and teamwork)</i></p> | 5.1 Design and implement of a 'Growth Mindset' programme ⁷ | 5.1.1 Completion of the design and implementation of the 'Growth Mindset' programme by xx/xx/2020 |
| <ul style="list-style-type: none"> % of cross-functional projects successfully delivered (on time, in budget, adding value) <p><i>Outcome statement: Increase in team effectiveness, i.e. focus on solving problems, deliver results, resolve/use conflict constructively</i></p> | 5.2 Design and implementation of an 'Effective Team working' programme | 5.2.1 Completion of the design and implementation of the Effective team working programme by XX/XX/2019 5.2.2 # of cross-functional working teams being established across Government |
| <ul style="list-style-type: none"> % increase in projects where the people side of change was managed well <p><i>Outcome statement: Improved competence in leading and managing change</i></p> | 5.3 Development of tools and competencies to manage change well | 5.3.1 # of Leaders trained and applying change management techniques 5.3.2 # of change management tools and mechanisms developed |

⁶ Through (i) Leaders have up-to-date, valid knowledge of their clients, the organisation, and its context, (ii) Leaders know how their behaviour affects others and adjust to create a positive work environment and (iii) Leaders address performance issues appropriately and in a timely manner

⁷ Dweck, C, (2016) "What Having a Growth Mindset Actually means, Harvard Business Review Online - <https://hbr.org/2016/01/what-having-a-growth-mindset-actually-means> [Accessed 11/10/2019]

Public Service Transformation – Results-Based Management Performance Framework

6. INNOVATIVE THINKING & DOING

| | | |
|--|---|---|
| <ul style="list-style-type: none"> %increase in customer diagnosed service problems resolved <p><i>Outcome statement: Increased ability to turn ideas into solutions that deliver value to customers</i></p> | 6.1 Development and implement of a 'design thinking' programme | 6.1.1 Completion of development and implementation of design-thinking programme by XX/2020 |
| <ul style="list-style-type: none"> % increase in failed ideas in Innovation Lab <p><i>Outcome statement: Increased tolerance for taking calculated risks and for failing forward</i></p> | 6.2 Development, design and implementation of a Public Service Innovation hub (for developing, testing new ideas in a safe environment) | 6.2.1 Completion of the design, development and implementation of a Public Service Innovation hub |

RESULTS INDICATOR: BECOMING AGILE, LEAN, DIGITAL AND GREEN

Impact Statement: Delivery of effective, efficient, value-adding services consistent with 'world-class' standards

| Outcomes | Output statements | Output Indicators |
|---|---|---|
| 7. STREAMLINING PROCESSES | | |
| <ul style="list-style-type: none"> % of processes that completed within advertised time and show cost savings <p><i>Outcome statement: Improve efficiency of processes (time, money, resources)</i></p> | 7.1 Re-engineer processes to eradicate duplication of functions and focus on core services 7.2 Design, development and implementation of a Business Process Centre of Excellence | 7.1.1 # of processes that are of significant concern to the customer successfully reengineered to be LEAN and implemented (e.g. Work Permits, Naturalisations, Business licensing, Tax administration) 7.2.1 Completion of the design, development and implementation of the Business Process Centre of Excellence |

8. DIGITISATION

| | | |
|--|---|--|
| <ul style="list-style-type: none"> % increase in E-Government protection <p><i>Outcome Statement: Improved E-Governance Framework</i></p> | 8.1 Establishment of an appropriate robust policy, legal and regulatory framework | 8.1.1 100% completion of National ICT Policy, Strategy and Plan 8.1.2 100% implementation of e-Governance suite of legislation |
| <ul style="list-style-type: none"> % increase in e-service delivery options <p><i>Outcome statement: Transition Government to seamless, interoperable e-service delivery</i></p> | 8.2 Foundation service infrastructure, interoperability framework and enabling shared platforms are fully deployed to facilitate a seamless government; 8.3 Develop business case concerning procurement of an integrated government-wide digital platform | 8.2.1 Completion of design and implementation of foundation infrastructure. 8.3.1 100% Completion of the development of a business case for procurement |

Public Service Transformation – Results-Based Management Performance Framework

| | | |
|--|--|---|
| | 8.4 Implementation of seamless, effective and efficient e-Government services | 8.4.1 # of Government services reengineered, digitised and implemented as e-Services |
| <ul style="list-style-type: none"> % of policies that developed using valid statistical data <i>Outcome statement: Increased use of data to drive decision making and evidence-based policy</i> % increase in online/other channels to access Government information <i>Outcome statement: Increased availability of Government information online and via other service channels and is easy to access.</i> | 8.5 Develop and implement a Records and Information Management classification scheme and system for whole of Government (in accordance with international standards) 8.6 Establishment of Government Records Repository (start with key Ministries, Departments and Agencies (MDAs), e.g. Governor's Group, Ministry of Finance, etc.) 8.7 Develop Government customer Information documents for online/other channel access | 8.5.1 100% Completion of the development of a Government wide classifications scheme for RIM 8.5.2 100% Completion of the design and establishment of Records Repository for 3 key MDA's 8.6.1 # of key customer information documents for online/other channel access |
| 9. ADAPTATION/GREENING | | |
| <ul style="list-style-type: none"> % increase in Green practices across the service <i>Outcome statement: Increased use of green practices across Government by public officers</i> | 9.1 Development of National Environmental policies and legislation, including Waste 9.2 Ministries to develop and implement green practices plans | 9.1.1 100% Completion of Comprehensive Environmental Management Policy and legislation 9.1.2 100% completion of comprehensive Waste Management Policy and legislation 9.2.1 # of buildings using energy efficient lighting/light bulbs 9.2.2 # of buildings using energy efficient air conditioning units 9.2.3 # of Government offices using energy saving photocopiers 9.2.4 % reduction of use of water bottles across Government 9.2.5 # of MDA's complying with National Waste Policy, specifically concerning quality, use and disposal of ICT equipment. |
| <ul style="list-style-type: none"> % increase in the wellness aspect of the | 9.3 Ministries to intentionally monitor and address sickness in the work | 9.3.1 % reduction of sick days across Government |

Public Service Transformation – Results-Based Management Performance Framework

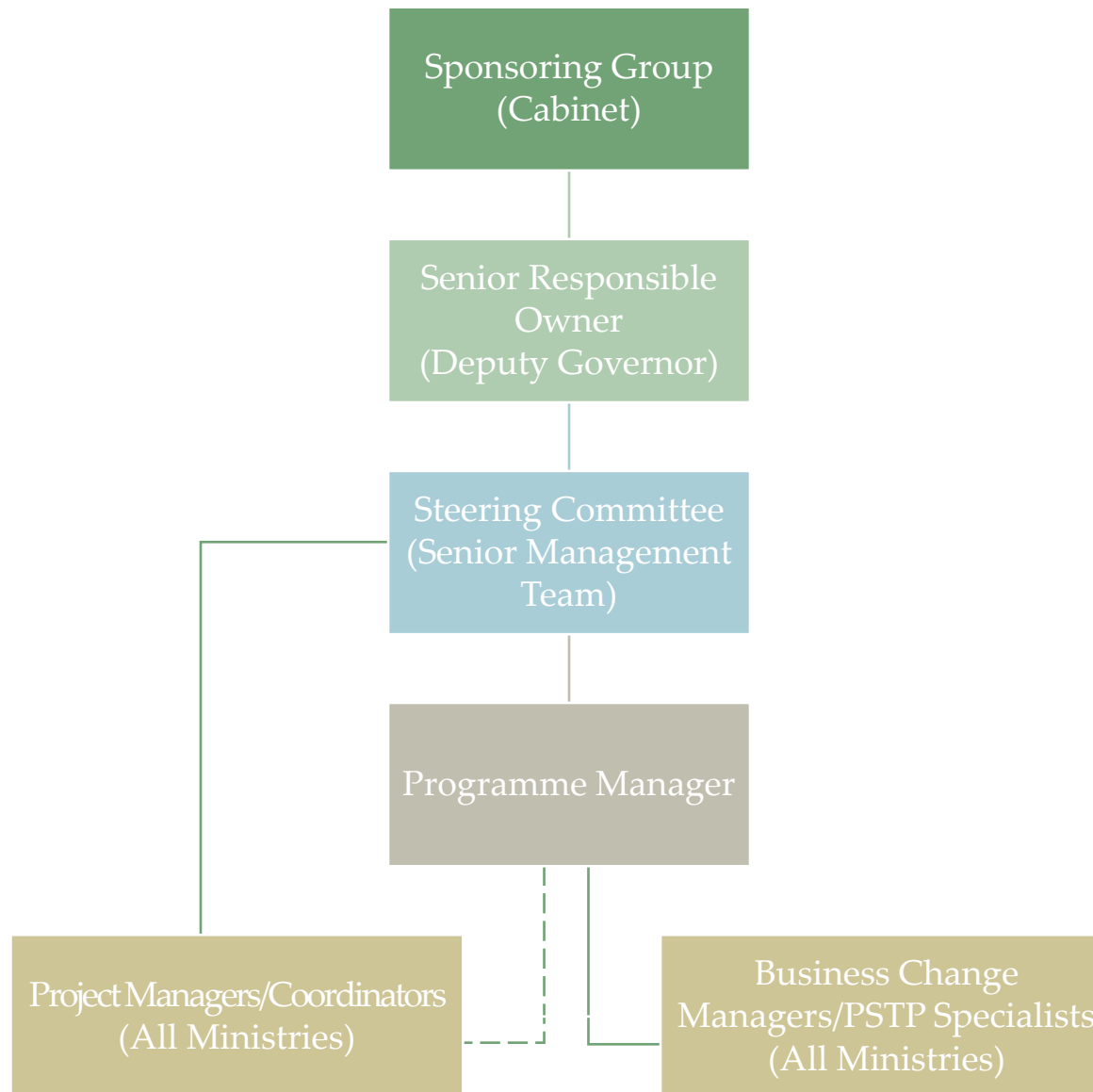
| | | |
|--|--|---|
| <p>employee engagement survey</p> <p><i>Outcome statement: Improved health and well-being of public officers</i></p> | place | |
| <ul style="list-style-type: none"> % increase in the visibility of Government in key regional/international forums concerning climate change/green practices <p><i>Outcome statement: Improve Government's reputation as a climate change/green leader locally, regionally and globally</i></p> | 9.4 Identify opportunities on regional/global level to champion climate change/green practices | 9.4.1 # of regional/international forums on climate change/green practices |
| <ul style="list-style-type: none"> % increase in Tourists and/businesses that took account of BVI's Green leadership in deciding to visit and/or do business in BVI) <p><i>Outcome statement: Use Green leadership to Improve Territory's competitive advantage as a great place to live and work (tourism and business)</i></p> | 9.5 Implement Green Leadership certification programmes in Government and Private Sector | 9.5.1 # of Government departments and Private Sector partners that achieve Green Leadership Certification |

5.2 Reporting – Governance Structure

The progress on the performance of the PSTP will be tracked through the Governance mechanism for the programme. The Governance Mechanism is set out below.

The structure provides for the Senior Management Team to be the Steering Committee to whom the PSTP Programme Manager will report. This allows for the Senior Management Team to be fully involved in the strategic management of the programme and by extension, the Public Service as it their mandate under the new Public Service Management Bill. The Deputy Governor is the Senior Responsible Owner and chairs the Steering Committee.

Each Ministry has appointed at least one Project Manager/Coordinator to manage all ministry projects reporting indirectly to the PSTP Programme Manager (identified by the dotted line). The Business Change Managers report directly to the Programme Manager and focus exclusively on helping ministries manage change, including culture change.



CONCLUSION

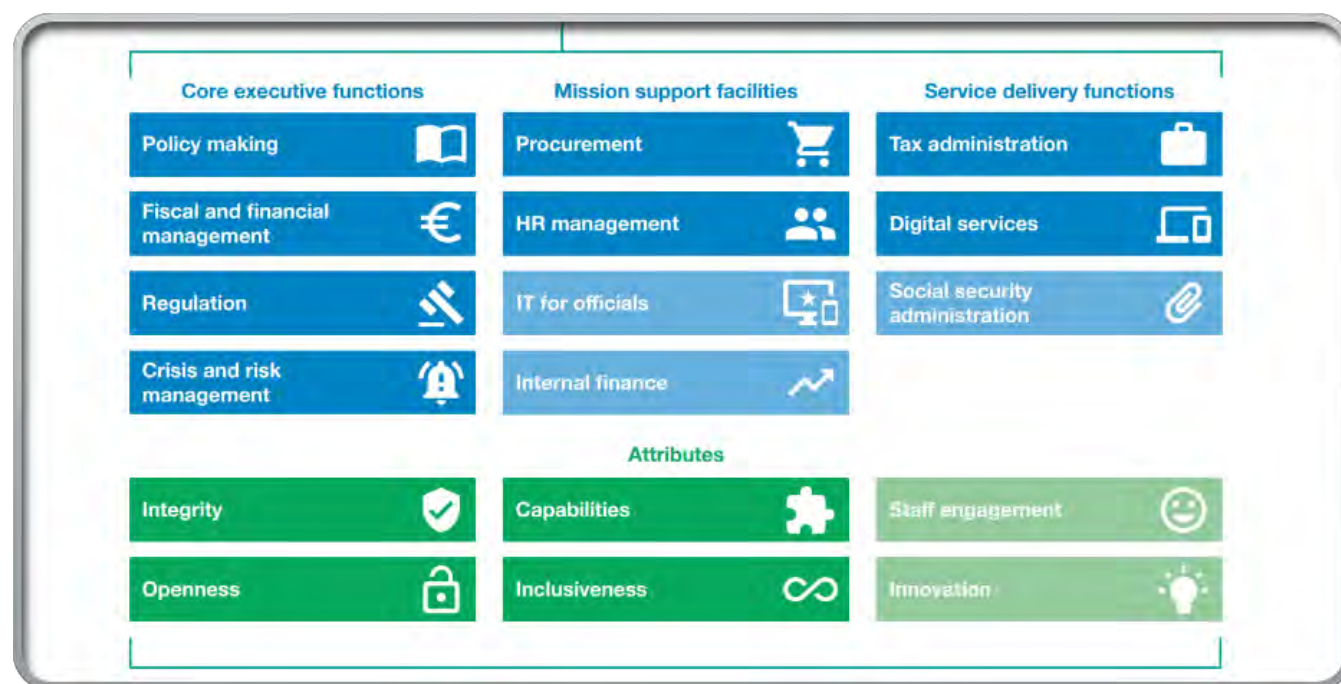
This Framework sets out the strategy for the Public Service Transformation Programme. The strategy reviews the drivers behind the programme, the work that has been done to date and the next steps. In addition, it articulates what the Programme is designed to achieve through the three broad strategies identified in the Model. The ultimate result of the Programme is to support the National Vision and deliver on the Public Service vision of

“World Class Public Service that is respected, trusted and efficient with people at the centre of all we do”.

The Framework also provides guidance through the Log Frame to the Ministries in the development of their Ministry Transformation Plans, and sets out the implementation support mechanism and governance structure. Lastly, the Framework includes a Results-Based Performance Matrix to ensure the success of the programme can be monitored and evaluated.

Annexe 1: International Civil Service Effectiveness (InCISE) Index

The diagram below outlines the indicators for the InCISE Index.



Annexe 2: Visioning Day Report

Public Service Transformation- Logical Framework

Annexe 3: Log Frame

| STRATEGY 1: LEADING GLOBALLY IN SERVICE-DELIVERY | |
|--|---|
| Long-Term Objective: To deliver excellent citizen experience and high levels of trust in Government | |
| Purpose | Outputs |
| 1. GOOD GOVERNANCE | |
| 1.1 Improved accountability, transparency and public financial management | <p>1.1.1 Implement the required components of the OTs Good Governance Framework</p> <p>1.1.2 Implement minimum E-Governance requirements and structure, see 2.1, 2.2 and 2.3 below</p> |
| 1.2 Greater participation of citizens | <p>1.2.1 Develop a robust public policy mechanism that includes public consultation as a key component</p> <p>1.2.2 Design and implement mechanisms using ICT to engage customers/citizens – including policy and reporting on delivery</p> |
| 1.3 Improved corporate governance for public sector bodies | 1.3.1 Develop an Accountability Framework for Statutory Bodies |
| 2. CUSTOMER SERVICE | |
| 2.1 Improved Safety (Cyber Security, Data Protection, Health and Safety) | <p>2.1.1 E-Governance policies developed</p> <p>2.1.2 E-Governance legislations drafted and approved by Cabinet</p> <p>2.1.3 Implement clearly defined e-governance structure which streamlines national coordination, implementation as well as monitoring and continuous evaluation of ICT initiatives;</p> |
| 2.2 Improved Authenticity (professionalism – aligned to code of conduct, knowledgeable about your specialism/service) | 2.2.1 Development and implementation of appropriate codes and/or standards |
| 2.1 Improved Friendliness (using a partnership approach and demonstrating customer first) | 2.3.1 Development and implementation of Customer satisfaction mechanisms/feedback tools |
| 2.4 Improved Efficiency (completing transactions speedily, make it right-right away) | <p>2.4.1 Development of benchmark time/duration for processes and/or transactions</p> <p>2.4.2 Development of LEAN processes (see 7.1.1)</p> |
| 3. SECURITY | |

Public Service Transformation- Logical Framework

| | |
|---|---|
| 3.1 Redefining security in terms of 'security for development' ⁸ . | 3.1.1 Development of security policies and practices in alignment with international security for development concepts (e.g. OECD, DAC) |
|---|---|

STRATEGY 2: HIGHLY SKILLED AND ADAPTABLE LEADERS AND EMPLOYEES

| Long-Term Objective: People equipped to deliver high performance, lead change and develop innovative solutions | |
|--|--|
| Purpose | Outputs |
| 4. IMPROVED PERFORMANCE (MY WORK) | |
| 4.1 Increase employee engagement | 4.1.1 Development and implementation of solutions to address findings of employee engagement survey |
| 4.2 Increase in speed of transactions | 4.2.1 Organisational structures re-designed towards a flatter functional model 4.2.2 Processes for key transactions re-designed so autonomy for decision making given to officers below PS and HoD. |
| 4.3 Improved results that align with Government policy, strategic goals, and budget. | 4.3.1 Review and revise strategic planning and budgeting mechanism and re-implement across Government |
| 4.4 Increase specialist and/or technical competence of employees | 4.4.1 Identify current competencies (specialist knowledge, skills and abilities) across Government 4.4.2 Identification and accreditation of Departments and/or individuals in key international certifications e.g. EMAP, INTOSAI, CIPD, ACCA) |
| 4.5 Enhance Leadership capability ⁹ | 4.5.1 Leaders attend and implement strategic planning tools and techniques 4.5.2 Leaders attend the new Leadership Development programme and apply the learnings related to emotional intelligence, and motivation. 4.5.3 Review and amendment to Performance Management system to ensure alignment with strategic planning and budgeting and as a tool to focus on performance and development. |
| 5.CHANGE & COLLABORATION (LEAD CHANGE) | |
| 5.1 Public Service transformed to a 'learning organisation' (facilitates learning, change and teamwork) | 5.1.1 Design and implement of a 'Growth Mindset' programme ¹⁰ |
| 5.2 Increase in team effectiveness, i.e. focus on solving problems, deliver results, resolve/use conflict constructively | 5.2.1. Design and implementation of an 'Effective Teamworking' programme |
| 5.3 Improved competence in leading and managing change | 5.3.1 Development of tools and competencies to manage change well |

⁸ Ensuring people and communities (i) live in peace, (ii) participate fully in the governance of their countries, (iii) their human rights are protected and (iv) have access to resources and necessities live in a physical environment conducive to health and well-being,

⁹ Through (i) Leaders have up-to-date, valid knowledge of their clients, the organisation, and its context; (ii) leaders know how their behaviour affects others and adjust to create a positive work environment and (iii) Leaders address performance issues appropriately and in a timely manner

¹⁰ Dweck, C, (2016) "What Having a Growth Mindset Actually means, Harvard Business Review Online - <https://hbr.org/2016/01/what-having-a-growth-mindset-actually-means> [Accessed 11/10/2019]

Public Service Transformation- Logical Framework

6. INNOVATIVE THINKING & DOING

6.1 Increased ability to turn ideas into solutions that deliver value to customers

6.1.1 Development and implement of a 'design thinking' programme

6.2 Increased tolerance for taking calculated risks and for failing forward

6.2.1 Development, design and implementation of a Public Service Innovation hub (for developing, testing new ideas in a safe environment)

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STRATEGY 3: BECOMING LEAN, AGILE, DIGITAL AND GREEN

Impact Statement: Delivery of effective, efficient, value-adding services consistent with ‘world-class’ standards

| Purpose | Outputs |
|---|---|
| 7. STREAMLINING PROCESSES | |
| 7.1 Improve efficiency of processes (time, money, resources) | <p>7.1.1 Re-engineer processes to eradicate duplication of functions and focus on core services</p> <p>7.1.1 Design, development and implementation of a Business Process Centre of Excellence</p> |
| 8. DIGITISATION | |
| 8.1 Improved E-Governance Framework | 8.1.1 Establishment of an appropriate robust policy, legal and regulatory framework |
| 8.2 Transition Government to seamless, interoperable e-service delivery | <p>8.2.1 Foundation service infrastructure, interoperability framework and enabling shared platforms are fully deployed to facilitate a seamless government;</p> <p>8.2.2 Develop business case concerning procurement of an integrated government-wide digital platform</p> <p>8.2.3 Implementation of seamless, effective and efficient e-Government services</p> |
| 8.3 Increased use of data to drive decision making and evidence-based policy | 8.3.1 Develop and implement a Records and Information Management classification scheme and system for whole of Government (in accordance with international standards) |
| 8.4 Increased availability of Government information online and via other service channels and is easy to access. | <p>8.3.2 Establishment of Government Records Repository (start with key Ministries, Departments and Agencies (MDAs), e.g. Governor’s Group, Ministry of Finance, etc)</p> <p>8.3.3 Develop Government customer Information documents for online/other channel access</p> |
| 9. ADAPTATION/GREENING | |
| 9.1 Increased use of green practices across Government by public officers | <p>9.1 .1 Development of National Environmental policies and legislation, including Waste</p> <p>9.1.2 Ministries to develop and implement green practices plans</p> |
| 9.2 Improved health and well-being of public officers | 9.2.1 Ministries to intentionally monitor and address sickness in the workplace |
| 9.3 Improve Government’s reputation as a climate change/green leader locally, regionally and globally | 9.3.1 Identify opportunities on regional/global level to champion climate change/green practices |
| 9.4 Use Green leadership to Improve Territory’s competitive advantage as a great place to live and work (tourism and business) | 9.4.1 Implement Green Leadership certification programmes in Government and Private Sector |