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## **DRAFT NOTES**

Friday, 24<sup>th</sup> May, 2019

10:00 a.m.

### **One on One Meeting – Governor & Premier**

#### **➤ In attendance**

- Governor Jaspert
- Premier Fahie
- Arlene Penn (Governor's Secretary)
- Maritza Mercer (Premier's Secretary)

- **The Premier** asks the Governor to present items on his (the Governor's) agenda first.
- **The Governor** started with talks of the loan guarantee (financial services); mentioned the fact that the UK's Prime Minister Theresa May is resigning effective June 7, 2019; thus there will be a new PM
- **The Premier** stated that more consultation is required on the loan guarantee
  - More input with the Public is also needed on Consumer Protection (next week)
  - Cybercrime to be looked at
  - Leaders must listen to the People of the VI (with more consultation comes more ideas)
  - The Premier is requesting more time to follow through
  - He asks the Governor to furnish a full folder on issues or allow the Premier to do what he believes is necessary/needed
  - The Premier also stated that he is not confident that he has all the info on loan guarantee from the former Premier
- **The Governor** asks 'what do we want to achieve?' tourism, jobs, etc.
  - The money has been offered, but how do we use it?
  - The UK offered to help BVI achieve what it needs, but the decision has to be made by Government and Cabinet
  - The UK wants BVI to lead the Caribbean by being a model of 'quick access' to capital
  - As consultation goes forward the choice is BVI's; our success, generational leaps
- **The Premier** does not want to see the BVI stay as is, but he has to review what is needed

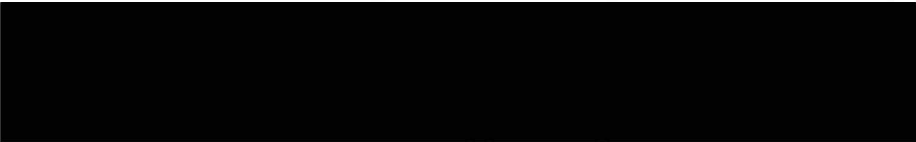


- He spoke to the FS about the amount of money that is being paid out for rental of Government offices (\$6.6m)
  - The cost of building two buildings for Government Offices would not cost that much and it would free up commercial space for economic development
  - BVIslanders and belongers require training to hold their rightful place in our society
  - The negotiated cost of building the West End Port facility (C. Richardson) is clearly \$11.5m and other donors are easy to find (TPP can donate funds by grant or by loan)
  - A total of \$16m overall can fix both the West End and Jost Van Dyke docks
  - With or without the loan guarantee, the Premier does not want to saddle generations to come with loan bills
- In regards to Fixing the Internet the **Premier** believes \$500,000. is peanuts when you're dealing with the God he serves
  - Satellite companies are booking appointments to come to the BVI to help with internet/technology
  - An analysis has been done with Digicel and FLOW and found that Digicel is charging the most money in the BVI when compared to the wider Caribbean.
  - Discussions are on-going, however, the decisions should be made with the Public
  - **The Governor** states that he is interested in the development of the territory
  - **The Premier** stated that a plan should be put in place and reviewed; that there was no proper planning in regards to the wall around the A. O. Shirley recreational grounds
- **The Governor** advised to try not to get 'papers' to Cabinet at the last minute (i.e. 1000 jobs in 1000 days initiative); Ministers must be given ample time to truly work through the paper.
  - **The Premier** stated that the process for Cabinet papers need to be quicker; to get papers done in a fair manner (as long as it is not illegal and within the confines of General Orders)
  - **The Governor** stated that papers should not be fixed in Cabinet; it should be ready before it gets to Cabinet
  - **The Premier** then mentioned that all Cabinet papers are going to DG's Office, but not to the Premier's Office.
    - A note should be made that Cabinet papers come through the Premier's Office as well
  - **The Governor** stated that Cheryl Fahie of his office works on all Cabinet papers

#### **Ben Merrick's visit**

- **The Premier** stated that he prefers to meet with Mr. Merrick on the morning of Wednesday, 5<sup>th</sup> June after Mr. Merrick has met with all other persons/organizations, instead of the meeting that is scheduled for the morning of Tuesday, 3<sup>rd</sup> June. (This change in scheduling was agreed to by both the Governor and the Premier).
- On his last visit, Mr. Merrick visited with persons from BVI Finance and BVI Financial Services; but will not meet with those persons from those entities on this trip.
- \*On the last Thursday of each month, a meeting will/should be held for the \_\_\_\_\_ Committee, for which the FS and DFS is behind in heading up said process
- **The Governor** stated that he has concerns with regards to available resources
- **The Premier** stated the Ms. McCall was seconded from BVI FSC for this specific reason, but the work has not been done, and evaluations are coming due in 2021.

#### **BVI Airport Authority Board**

- **The Governor** said he did not see the paper before it reached Cabinet, and he's concerned with persons being named to the board.
- **The Premier** answered by saying that he knows the background of persons on said board and cases were politically oriented. The young man who was named as Chairman is a businessman who can turn things around. The country should not run on 'melee';  

- **The Premier** also stated his concerns in regards to the DPP; how the budget has inflated and DPP cases are being talked about outside the office, specifically how things are done. The Premier has concerns about things that he's hearing.
- **The Governor** stated that he's concern only with evidence
- **The Premier** however is concerned with being cautious, thus the reason for two (2) Private Secretaries being present at the meeting
- **The Governor** stated that private conversations with the Premier are private; but he shares non-private discussions with his staff
- **The Premier** mentioned that he is concerned about PS's social media and how they operate. Said that comments on Facebook have become the norm, but professional ethics must be considered.
- **The Governor** stated "where there is evidence, we react."

- **The Premier** said that the PS's in the middle of his Government need to be seriously looked at and that discussions with the Governor should not be repeated by Public Servants or persons in the public. Private conversations should remain private and he does not mind discussing his security with the secretaries present.

#### **Premier's Security**

- **The Governor** commented that he is concerned about the Premier's issues about assignation or threat thereof and asked if the local Police force should be involved. Are the Governor and Premier being placed at risk?
- **The Premier** expressed trust issues with the local police in their current capacity, but it is something he would think about it for a week.
- **The Premier** stated that his faith base cannot be measured by others. There were Prophets who came to his church and prophesy about an assignation on his life.
  - o He believes in the Bible which is the true words of God. (Chinese don't like Premier)
  - o He also stated that he does not know any of the Prophets that came and prophesied to him; therefore if he can get info to prepare himself, why won't he and he make a reference to the bank robbery at NBVI.
  - o How can the Premier trust the elements of the local Police force when there are those who think the threats are a joke?
- **The Premier** has asked leaders from other Caribbean nations to bring their best officers for his security team because team should be trusted when brought together
- **The Governor** stated that he would prefer not to bring in outside officers, but he would explore what the Premier wants
- **The Premier** asked the Governor to allow him to go through persons that are selected to be on his security team. He must feel safe; therefore he will do everything in his power in the next four years to select his security team.
- **The Governor** said that he's 100% on board with safety issues and comfort for the Premier
- **The Premier** wants to be able to choose 2 or 3 persons himself that would be on his security team; he states that as the Premier he should not have to ask or demand who gets on his team. He has to be comfortable with persons chosen. He also stated that the Governor shouldn't speak to him as a regular person on the street, but as the Premier of this Territory.
- **The Governor** asks the Premier if he is comfortable with discussing the issue of security with the Commissioner of Police

- **The Premier** answered 'yes' to discussing with the Commissioner of Police, [REDACTED]

#### **4<sup>th</sup> District situation**

- **The Governor** asked, out of interest, about the 4<sup>th</sup> District situation in House of Assembly, and asked the Premier about his take on the matter.
- **The Premier** said that the law is the law – is the House in breach of the Courts?
- **The Governor** then said that there is no vacancy, so the Member should be sworn in
- **The Premier** then stated that there is a stay on the case
- **The Governor** suggested that the AG should advise on the matter
- **The Premier** stated that the Speaker is in charge of the House and until the appeal is finished, the Premier can only make recommendations. He said the Mr. Vanterpool told him that he's finished
- **The Governor** is concerned that the people of the 4<sup>th</sup> District is represented
- **The Premier** again reiterated that there's a stay on the appeal, therefore his hands are tied

#### **BVI Airways**

- **The Premier** told the Governor that he had a meeting with Martin Kenney of Martin Kenney & Co., and he wants an appointment to have Martin and his team meet with the Governor, the Commissioner of Police and the Director of Public Prosecution in said regards
  - o There's no way where someone should not have been charge; because a charge of deception was never brought on the payment of \$7.2 m
  - o The case is gone pass the Auditor General; the behavior with same players should be looked at (???)
  - o The BOSS system is designed for the UK, not the EU
  - o A former FS was arrested for far less than those implicated in BVI Airways
  - o Is this "justice" or 'just us'?
  - o Martin Kenney is not going to compromise his integrity base on where the evidence is leading
- **The Governor** said "let's follow the evidence"
- **The Premier** said "let's move on this, anything negative will not be good for the country"

- [REDACTED]

- [REDACTED]

[REDACTED]

- **The Premier** asked the Governor about the outcome with the Deputy Governor in regards to the PS position in the Premier's Office



10<sup>th</sup> January, 2020

His Excellency the Governor  
Mr. Augustus J. U. Jaspert  
Office of the Governor  
Road Town,  
Tortola VG1110  
British Virgin Islands

Dear Governor Jaspert:

**RE:   Unfounded allegations of corruption**

Good Day and God's Blessings to you and yours'.

This letter is prompted by statements made by you during yesterday's Cabinet Meeting, 9 January, 2020, which statements, I am sure you would agree that cannot be allowed to go un-noted.

During the proceedings of the said Cabinet Meeting, you uttered statements that the BVI is full of corruption.

In the first instance, I wish, on behalf of the Elected Members of the Government of the Virgin Islands, to express our individual and collective disgust at your conduct in this instance. Such behaviour, is unbecoming of a representative of Her Majesty the Queen whose crown represents gracious and noble.

Such broad and sweeping statements, without offering any means of substantiating them, is an insult to the Elected Members of my Government who have only been in office for less than one year and on whose character you have cast serious aspersions.

The continued unwarranted behaviour and continual unnecessary battering of my Government since our early days in office in February 2019, without any clear explanation continues to be a great concern. We believe from your many 'behind the door' actions that the public do not see are intentional steps to destabilise and erode the integrity of my Government—Elected Members who strongly believe in the tenets of good governance.

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Your statements also insult the integrity of all Virgin Islanders, a people who have welcomed you into their homes, into the land of their ancestors since your appointment in 2017. Additionally, Virgin Islanders through the Territory's (BVI Government) budget have ensured that you are able to live comfortably and peaceably at the Government House and host events with their monies (also provided through BVI Government's budget).

Your disrespectful utterances also tarnish the reputation of the Territory of the Virgin Islands and undermine the image and standing of the Virgin Islands in the eyes of the international community – both in the UK and elsewhere.

Such contempt flies in the face of the so-called modern partnership that is the basis of the Constitutional relationship between the Virgin Islands; a relationship of mutual respect that is premised, at the minimum, upon:

1. Acknowledgement that the society of the Virgin Islands is based upon certain moral, spiritual and democratic values including a belief in God and the rule of law;
2. Recognition that the people of the Virgin Islands as a people and a country and their quest for social justice, economic empowerment and political advancement; and
3. The fact that the people of the Virgin Islands have developed themselves and their country based on qualities of honesty, integrity and mutual respect, engendering a strong sense of belonging to and kinship with those Islands.

Your statements yesterday are consistent with a pattern of behaviour that I have observed from you towards my Government since the initial weeks of my Government's tenure when I requested time to analyse and consider the conditions proposed by the UK Government with respect to its offer of Loan Guarantees for Hurricane Recovery, more so since my Government proposed a smaller revised Recovery and Development Plan.

I am again forced to reiterate my sentiments that the resetting of the relationship between the Government of the Virgin Islands and the Government of the UK, as agreed during my meeting with Lord Ahmad of Wimbledon last September, does not appear to be happening. In fact, the relationship continues to descend into deeper discord by your persistent contemptuous conduct towards my Government and the people of the Virgin Islands.

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I wish to state emphatically that since my Government took office following the democratic elections of 25 February, 2019, there has been no corruption in the public business that is under the control and supervision of my Ministers. My Government and I have a zero-tolerance policy for corruption, and we firmly believe that anyone who betrays the public trust in this manner should feel the full weight of the law.

If you have evidence of corruption in Government, especially post-25 February, 2019, then I invite you to bring it forward so that it can be investigated and firmly prosecuted by the appropriate authorities – the Director of Public Prosecutions (DPP) and the Commissioner of Police. To be in possession of evidence of corruption and to refuse to act on that evidence makes one complicit to the corruption.

Prior to 25 February, 2019, there were allegations of misconduct in Government affairs with respect to the activities of the previous administration. These included the \$7.2 million BVI/BV Airways deal; the \$1.6 million Elmore Stoutt High School perimeter wall project, which saw individuals inflating their costs by an average of 65 percent, as much as more than 150 percent of the true value of the work done; and the more than \$50 million in cost overruns at the Tortola Pier Park project.

These were drawn to your attention and to the attention of your predecessors. There was no action by your office to meaningfully deal with these matters. This lack of action by the previous and present Governors indicates either satisfaction by you and your predecessors that there was no corruption, or hypocritical indifference to what was taking place. The people of the Virgin Islands live in hope that there will be some meaningful action on these controversial matters before your scheduled departure from office in a few months' time.

Refusal by yourself and your predecessors to allow the conduct of public officials in these matters to be scrutinized and evaluated by the judicial arm of the State has prevented these matters being ventilated according to the measures provided in the Constitution for protecting the public's interest, maintaining public confidence in the systems of Government, and preside the reputation of the Territory and that of Virgin Islanders.

Suffice it to say it was these actions and inactions prior to 25 February, 2019, that sabotaged the reputation, financial standing, welfare and economy of the Virgin Islands, placing the Territory under extremely rigorous constraints as are being imposed now by the Government of the UK.



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In the least, I believe that in the spirit of good partnership, you owe each Minister of Government and the people of the Virgin Islands an apology for your broad, unsubstantiated, offensive comments at yesterday's Cabinet Meeting.

In the absence of any apology, I then look forward to your promptly delivering your evidence to the DPP and the Commissioner of Police and the commencement of the relevant investigations and prosecutions with respect to the imputations made against my Government or the matters previously mentioned, namely, the \$7.2 million BVI/BV Airways deal, the \$1.6 million Elmore Stoutt High School perimeter wall project, and the more than \$50 million in cost overruns at the Tortola Pier Park project.

Respectfully,



Andrew A. Fahie  
Premier of the Virgin Islands

Cc: Rt Honourable Boris Johnson, Prime Minister of the UK  
First Secretary of State for Foreign and Commonwealth Affairs  
Lord Ahmad of Wimbledon, Minister of State for the Overseas Territories  
Mr Ben Merrick, Director of Overseas Territories, UK Foreign and Commonwealth Office  
All Ministers of Government

BVI International Arbitration Centre  
3rd Floor, Ritter House  
Wickham's Cay II  
Road Town, Tortola  
British Virgin Islands

14 October 2021

Dear Commissioner,

**BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY (COI) - Response to potential criticisms from Augustus Jaspert CMG, former Governor of the British Virgin Islands**

1. Thank you for the opportunity to respond to the potential criticisms as listed in your letter of 4<sup>th</sup> October 2021. I set out below a response to each potential criticism in turn. Documents referenced below that are already included as part of existing bundles are referenced but not attached. Documents not included in existing bundles are attached.

**Potential criticism 1 – Perception of disrespect for elected Government.**

2. As Governor I held the Constitution of the British Virgin Islands (VI Constitution Order 2007 and all of the roles within it with deep respect. Throughout my tenure as Governor, I aimed to fulfil my role in line with the Constitution in the best interests of the people of the Virgin Islands. The preamble to the Constitution affirms that the people of the Virgin Islands have generally expressed their desire to become a self-governing people and to exercise the highest degree of control over the affairs of their country “at this stage of its development.” At the same time the preamble acknowledges that the society of the Virgin Islands is based upon “respect for fundamental rights and freedom and the rule of law.” The preamble also accepts that the Virgin Islands should be

governed based on adherence to well-established democratic values and institutions. The preamble also notes that the United Kingdom, the administering power for the time being, has articulated a desire to enter into a modern partnership with the Virgin Islands based on the principles of mutual respect and self-determination.

3. I made clear in my first statement as Governor, through my swearing-in address, that I intended to work in partnership with the elected Government in fulfilment of my role as set out in the Constitution. Throughout my tenure, I encouraged this partnership and also encouraged a strengthening of the elected Government, including through stressing the need for stronger governance, transparency and accountability to help build an ever-stronger, self-determining British Virgin Islands.
4. My approach to working with the elected Government of the day was always a partnership approach. This involved supporting and challenging, where I believed I needed to, in the interest of good governance and the public interest. It is clear from some of the exchanges that the Hon. Premier Andrew A. Fahie and I sometimes had differing views – this does not mean that we did not or could not have had respect for each other, or work in a professional and constructive way. I encouraged a partnership of mutual respect with Cabinet colleagues - and highlighted in correspondence to Cabinet the need for all Members of Cabinet to be treated with respect (Letter of 5<sup>th</sup> May 2020, Governor to Cabinet). I also frequently requested for meetings with the current Premier to be able to discuss any issues together to explore differences and find a mutually acceptable way forward together to reduce the risk of differences playing out in public.
5. Despite efforts to work in collaboration with the elected Government, there were occasions under the current elected Government when false accusations or misrepresentations about the role of the Governor were made publicly by elected Members. This meant that at times, in the

public interest, to ensure transparency in the situation I was compelled to comment publicly, such as accusations from the Hon. Premier Andrew A. Fahie concerning the appointment of permanent secretaries as public officers (Statement by Premier Hon. Andrew A. Fahie of 3/09/2019). Some may interpret this as a perception of issues in the relationship. However, my approach remained the same throughout – to work in partnership with the elected Government, wherever possible, for the best interests of the British Virgin Islands.

6. In reference to the specific allegation relating to the work on the Integrity in Public Life Bill. It was common practice for the respective Cabinet lead to speak about their policy area in more detail after discussion at Cabinet. This work was being led by the Deputy Governor's Office which falls under the remit of the Governor and hence was no different to normal practice and remains normal practice.

**Potential criticism 2 – information from the Registrar of Interests, which could at least arguably be considered as a breach of her Oath of Office of section 13 (1) of the Register of Interests Act 2006.**

7. As Governor, under the Constitution, I had appointing responsibility for the Registrar of Interests. As I did for all holders of public office, I had an interest in working with her and the elected Government to support her to fulfil her duties as set out by the Constitution and by the law, to ensure that the Constitution was upheld, and that good governance standards were met.
8. In discussing her role, she was clear that the role could not be fulfilled without compliance. The Registrar of Interests highlighted that she was hindered in fulfilling her role and Constitutional duties by Members of the House of Assembly and also by limitations in the Registry of Interest Act. These were not new concerns. Former Governors had also attempted to support the Registrar of Interests in ensuring that good governance standards were upheld and Members complied with their requirements

under the Register of Interests Act 2006. Indeed, the Registrar of Interests flagged concerns in writing as early as 2014 (letter from Registrar of Interests to Chairman Standing Orders Committee 19/02/2014) to the then Chairman of the Standing Orders Committee in 2014, the Hon. Ronnie W Skelton, copying the then Governor that '*The Register remains a blank book. The Virgin Islands Constitution Order, 2007, and the Register of Interests Act, 2006, continue to be contravened*'. The then Governor, Boyd McCleary, highlighted the '*delinquency of some members of the House of Assembly in failing to file their declarations of interests*' to the then Speaker of the House of Assembly (letter of 9/07/2014) and to the then Premier (letter of 9/07/2014).

9. I was informed by the Registrar of Interests that she was repeatedly hindered by Members of the House of Assembly, in her ability to ensure that good governance was upheld, that Constitutional duties were fulfilled and that the Register of Interests Act was complied with. I was informed that she had repeatedly asked Ministers to comply and despite their assurances, some remained delinquent. The Registrar of Interests did not show me the Register book. My concerns on the lack of compliance were compounded by the increasing trend to use tender waivers for contracts which risked raising questions about good governance and transparency of interests and the use of Government money. I raised this with the Hon. Premier Andrew A. Fahie and the Leader of the Opposition Hon. Marlon Penn in good faith to support the Registrar of Interests to fulfil her Constitutional duties.

**Potential Criticism 3 – The Governor is constitutionally responsible for public service reform, but has neglected this responsibility.**

10. As in any public service, there is a need for continuous improvement, modernisation and development - which requires consistent and continual investment. Despite the challenges, the BVI public service includes some exceptionally talented and committed public officers and

the public service played an instrumental role in rebuilding the Territory after the devastation of the 2017 hurricanes, and responded flexibly to new demands and ways of working during Covid-19. I am grateful to public officers for their support to myself, the elected Government and to the people of the British Virgin Islands whilst I was Governor.

11. As is set out in the Constitution (Section 60 -1), the Governor *'shall be responsible for the conduct (subject to this Constitution and any other law) of any business of the Government of the Virgin Islands, including the administration of any department of government, with respect to the following matters.... '(d)the terms and conditions of service of persons holding or acting in public offices, without prejudice to section 92'*. I took this responsibility seriously as Governor and faced challenges in supporting the public service to remain impartial, able to give frank and fair advice and that appointments to the public service were not political appointees. This, at times, caused some tension with the elected Government. Further, I faced challenges in ensuring that funding was released for the public service, training and transformation. Whilst the terms and conditions of the public service are the Governor's remit, the funding for the public service is of course that of the Minister of Finance. (Ref letter of 27<sup>th</sup> July 2020; Re: Vacant Positions within the Governor's Group).

12. Previous Governors and Deputy Governors with colleagues across the Government of the Virgin Islands had taken forward plans to improve the public service. These are set out on p.5 of the Public Service Transformation Framework 2019 that *'the Government of the British Virgin Islands (GBVI) have undertaken several Public Service Initiatives over the past 20 years'*. Notwithstanding the hard work of public officers, there is a need to go further and this was noted by the PAI report.

13. Working with my Deputy Governors and the elected Government, improving the public service was a priority. This also included support from the United Kingdom through grant funding for consultant support.

In 2017, we also introduced the first employee engagement survey with support from the UK Government. The Deputy Governor's Office also helped to ensure that modernisation plans were built in to the response to the hurricanes – for example changes to the Audio Visual Link Act 2017 that, with the support of the then Cabinet and then House of Assembly, introduced the framework to help courts operate more easily through remote technology (a development that later become more crucial as we dealt with the Covid-19 pandemic).

14. The pace of Public Service Transformation was limited partly due to events of the hurricanes in 2017 and Covid-19, but was also due to a change of position from the Hon. Premier Andrew A. Fahie which did not enable plans to progress. With my support and (initially) the elected Government's support, the Deputy Governor, David Archer, led a Public Service Transformation Programme. The public service transformation work was supported by the former elected Government and the current Premier Andrew A. Fahie had indicated his support - *'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!'* (ref: Public Service Transformation Framework, 2019); and this was backed up at Cabinet which received and accepted the Public Service Transformation Framework, including noting the partnership approach and that the *'Transformation Plan is owned by each respective Ministry'* (ref Letter 23/09/2020 from Deputy Governor to Governor). However, as plans were progressed following Cabinet's approval, the Deputy Governor expressed how he was *'shocked and surprised by the position that was being held by the Premier....The Premier is basically requesting to bring over 2 years of assiduous work to a halt because of a desire to see a Public Service responsibility led by his office'* (ref: ibid letter). I would have liked to have progressed public service transformation further during my tenure, however, the pace of progress was hindered.

Yours sincerely,



Augustus J U Jaspert CMG



## **BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

### **INDEX TO MR AUGUSTUS JASPERT CMG RESPONSE TO COI**

**13/10/2021**

- A. Letter of 5<sup>th</sup> May 2020, Governor to Cabinet. [Referenced in bundle]
- B. Statement by Premier and Minister of Finance of the Virgin Islands Hon. Andrew A Fahie: Setting the Record Straight. RE: The Appointment of the Permanent Secretaries, 3<sup>rd</sup> September 2019. [Premier Fahie: Setting the Record Straight RE: The Appointment of Permanent Secretaries | Government of the Virgin Islands](#) [Referenced in addition to bundle and found below from page 2]
- C. Letter from Registrar of Interests to Chairman Standing Orders Committee, 19<sup>th</sup> February 2014. [Referenced in bundle]
- D. Letter of 9<sup>th</sup> July 2014 to speaker of the House of Assembly. [Referenced in bundle]
- E. Letter of 9<sup>th</sup> July 2014 to Premier. [Referenced in bundle]
- F. Letter of 27<sup>th</sup> July 2020 regarding Vacant Positions within the Governor's Group. [Referenced in bundle]
- G. Public Service Transformation Framework 2019. [Referenced in bundle]
- H. Letter from Deputy Governor to Governor dated 23 September 2020 regarding Public Service Transformation Framework. [Referenced in bundle]

**ANNEX B:** Statement by Premier and Minister of Finance of the Virgin Islands  
Hon. Andrew A Fahie: Setting the Record Straight. RE: The Appointment of the  
Permanent Secretaries, 3<sup>rd</sup> September 2019.

## **Statement**

Premier's Office

Topics:

[The Public Service](#)

Release Date:

Wednesday, 4 September 2019 - 10:42am

### **STATEMENT BY PREMIER AND MINISTER OF FINANCE OF THE VIRGIN ISLANDS**

**HON. ANDREW A FAHIE**

**Setting the Record Straight  
RE: The Appointment of Permanent Secretaries**

**September 3, 2019**



My Dear Virgin Islanders and  
Residents, Good Day and God's Blessings.

Since the announcement on Friday, August 30 by His Excellency, The Governor, of his selection and assignment of Permanent Secretaries to the various government ministries, and subsequently my statement during the Sixth Sitting of the First Session of the fourth House of Assembly of the Virgin Islands on Monday 2<sup>nd</sup> September there has been a lot of discussion among the public on the topic.

There has also been a flood of commentary on the social media channels and online newspaper websites – perhaps higher than normal, much of which contains inaccurate and misleading information. The Internet trolls appear to be well organised and focused on substituting their misinformation in place of the truth, to create a distorted reality of what has taken place and to further their clear agenda to discredit and undermine your democratically elected government for the benefit of some other hidden interest.

Unfortunately, there has also been inaccurate reporting from members of the media, which has only served to compound the confusion.

Much of this tainted discourse purports that it was the Premier and the newly elected government that attempted to appoint individuals to the posts of Permanent Secretaries. Therefore, the Governor has blocked the “government’s picks”.

This is not true.

Section 92 of the Virgin Islands Constitution Order 2007 is clear that it is the Virgin Islands Public Services Commission (PSC) that makes recommendations to the Governor with respect to the appointment of Public Officers; not the Premier or anyone else.

It is now public knowledge that prior to last Friday’s media release by the Governor, that the PSC would have presented the Governor with the Commission’s recommendations for the appointment of Permanent Secretaries.

It is also public information that His Excellency opted to exercise his power under Section 92 to “act otherwise than in accordance with” the advice of the PSC, and to use his own discretion in making these appointments.

I am not privy to whether the consultation that is required according to the Constitution took place between the Governor and the PSC. However, if the proper constitutionally prescribed procedure was followed, the members of the Commission would have been asked to reconsider their recommendations and to submit new recommendations if they wish.

Assuming proper procedures were followed, the PSC would have affirmed, and reaffirmed, its confidence in its recommendations after being asked to reconsider their submission.

Therefore, by trashing the PSC's recommendations, the Governor has signaled his lack of confidence in the members of the Commission to perform in a manner that protects Her Majesty's service. This is a very serious aspersion that the Governor has cast on the members of the Commission who are among the brightest minds of the Virgin Islands with long, unblemished careers and who are stalwarts of our Territory.

Some Internet trolls are also suggesting that the PSC is biased towards the government and the Premier. This too is mischief that is calculated to play upon the minds of persons who may not know better.

Section 91(1) of the Virgin Islands Constitution Order 2007 clearly states that the five members of the PSC are appointed by the Governor, two acting in his own discretion, and one each in accordance with the advice of the Premier and the Leader of the Opposition, and after consultation with the Civil Service Association.

All the sitting members of the PSC were appointed during the term of the last government, not during the tenure of this current six-month-old administration. Four of those commissioners were not appointed based on any input from the current Premier, and two of those persons were selected by the Governor himself, including the Chairman of the PSC.

Further to this, Section 91(9) of the Constitution Order stipulates that "in the exercise of its functions the Public Service Commission shall not be subject to the direction or control of any other person or authority." The PSC is therefore an independent institution.

Where Section 91(2) of the Constitution Order requires the Governor to consult with the Premier in appointing the Chairman of the PSC, I was not the Premier at the time of that appointment, and therefore His Excellency, The Governor, would have consulted with the previous Premier.

How then can the PSC be painted as biased to the new government? It does not compute.

Veteran politicians from opposite sides of the aisle in the House of Assembly are saying that it is unprecedented – at least in the last 20 years - for a Governor to completely rubbish the recommendations of the PSC, as this Governor has done.

As I said in the House of Assembly on Monday, the Governor's usurping of this function from the PSC is an insult to self-reliance, self-determination, modern partnership, mutual respect and the democratic future of the BVI.

It signals that, in the eyes of the some, colonialism is alive and thriving. Thus, to them, we the people of the Virgin Islands are still subjugated, inferior and lesser persons. Chains and whips have been replaced by less obvious, invisible kinds of shackles that can be tugged on whenever we raise our heads too high, so that we will cower back in line.

As I said with respect to the UK Loan Guarantees issue a few weeks ago, the limited self-government that the BVI enjoys today is the fruit of the labour and struggles of our forefathers who, through sheer grit and determination, forged the society that we see today after the slave masters and European capitalists abandoned these islands, condemning us to be nothing more than a bird sanctuary. Our freedom and autonomy were hard-earned, are priceless, and cannot be given up or diluted so easily.

We have to come together as one people; BVI strong.

We are dealing with persons who do not differentiate between NDP, VIP, PVIM and PU. They do not see red, green, blue and orange. They look at us and see one colour. So, they paint us with the same brush.

They do not care whose reputations they destroy or whom they must crush to get their way – even if it means that all BVI Islanders must be made to suffer.

The members of the PSC are early, frontline casualties of this reckless assault. For, through his actions, the Governor has imputed that the commissioners are incompetent or compromised, thus smearing their professional records.

It would be curious to see, going forward, whether having displayed this lack of confidence in the members of the PSC, whether what the Governor's next move would be.

How can he justify keeping a Commission in which he has demonstrated that he has absolutely no faith. But, also, how can he justify firing them when they have done no wrong, other than being born here?

We will continue to be fully respectful of the United Kingdom and their representative. But, respect ought to be a two-way street.

As the Premier my only interest is in the development of the Virgin Islands. I have nowhere else to go. I have no other obligation, no other agenda in any other destination or jurisdiction.

To all citizens, I say, stay woke.

May God continue to watch over the people of these Virgin Islands.

I thank you.



## MEMORANDUM

FROM: Attorney General

Our Ref.: AGC G 1/1/1

TO: Premier & Minister of Finance

cc: His Excellency, the Governor  
Cabinet Secretary  
Cabinet Members

DATE: 13 January, 2021

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*Re: Section 49 of the Virgin Islands Constitution Order 2007*

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1. I refer to your letter dated 12<sup>th</sup> January, 2021 seeking legal guidance on how chairing of the Cabinet meeting scheduled for Wednesday 13 January, 2021 should proceed as His Excellency, the Governor cannot be present in person because he has recently travelled and is in COVID-19 quarantine.<sup>1</sup>

2. My advice is that:

- (a) if the Governor is present in the Virgin Islands and it is *practicable* for him to do so, he must chair Cabinet.
- (b) the fact that cabinet meetings were held virtually during the COVID-19 pandemic is evidence that it is *practicable* for the Governor, the Cabinet Secretary or any member of the Cabinet to be present at a Cabinet meeting in person or virtually;
- (c) we cannot ignore the context of this request for legal guidance, that is, the use of the *Deputy to Governor* position to oust the Premier from chairing Cabinet for nearly 3 years; and
- (d) the Constitution does not permit the *Deputy to Governor* to chair Cabinet in the absence of the Governor. Accordingly, this practice must be discontinued.

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<sup>1</sup> Premier's letter of 12 January. However, in his letter of even date, the Governor maintains that he is in "...14 day self-isolation, working remotely throughout..."

3. In providing my opinion, I have reviewed the *Virgin Islands (Constitution) Order, 2017* (the "Constitution") and a memorandum dated 24 April, 2018 from my predecessor Attorney General to the Deputy Governor (the "Attorney General's 2018 Opinion") on the constitutional status and role of a Deputy to the Governor among other authorities and materials.

4. I have also reviewed the following correspondence which were directed, copied or provided to me by you (the "Premier") or His Excellency the Governor (the "Governor"):

- i. Letter dated 30 September, 2020 from the Premier to the Minister for the Overseas Territories seeking her assistance in settling the difference of opinion between the Governor and members of Cabinet on the interpretation of section 49 of the Constitution;
- ii. Letter from the Premier to the Attorney General dated 15 November, 2020 (Interpretation of section 49(2) of the Virgin Islands Constitution Order 2007);
- iii. Letter from the Premier to the Minister for the Overseas Territories dated 10 January, 2021;
- iv. Letter from the Premier to the Attorney General dated 12 January, 2021 (Section 49 of the of the Virgin Islands Constitution Order 2007);
- v. Letter dated 12 January, 2021 from the Governor to the Premier (Cabinet & Protocols);
- vi. Letter dated 12 January, 2021 from the Premier to the Governor (Chairing of Cabinet Meeting today[sic]);

### Background

5. By correspondence beginning (to my knowledge) with his letter of 30 September, 2020 to the Minister for the Overseas Territories the Premier set out his concern that the Governor authorising the *Deputy to Governor* to preside over Cabinet meetings when the



Governor himself is absent is in breach of s. 49(2) of the Constitution. This practice has been ongoing since at least April, 2018 when the Deputy Governor sought an opinion from the Attorney General on the authority normally given to a *Deputy to Governor* through a written instrument. In response, the Attorney General's 2018 Opinion was provided.

6. On 7 January, 2020, the Governor returned to the Territory from the United Kingdom and in his own words is "... voluntarily undertaking 14 days self-isolation, working remotely throughout to ensure that there is no risk to my office or to the public."<sup>2</sup> His statement follows an earlier letter from the Premier to the Minister for the Overseas Territories imploring the Minister to '...provide him with the assurance that Governor Jaspert will adhere to the 14 day quarantine...' stressing that "... staying in quarantine does not prevent the Governor from performing the functions of his office... During the pandemic, Cabinet and other meetings have been conducted using online platforms..."<sup>3</sup>

7. Since last week (Thursday 7 January), Cabinet has returned to holding meetings in person. However, for the reason outlined above, the Governor cannot physically attend the meeting scheduled for Wednesday 13 January, 2021. The Premier's position is that the Premier should therefore chair Cabinet. The Governor insists that he will attend virtually.

#### **Absence of the Governor**

8. Cabinet consists of the Premier, four other ministers and the Attorney General.<sup>4</sup> However, the Governor (a non-member) presides and in his absence, the Premier is to preside and in the absence of both the Governor and the Premier, the Deputy Premier is to preside. This is stated in section 49(2) of the Constitution.

9. There are several established examples of instances where the Governor would be considered absent, for example<sup>5</sup>:

- (a) being absent from the seat of the Government but still in the Virgin Islands;
- (b) a short absence from the Virgin Islands; and

<sup>2</sup> Governor's letter dated 21 January, 2021

<sup>3</sup> Premier's letter dated 10 January, 2021

<sup>4</sup> Constitution, s. 47(1)

<sup>5</sup> Constitution, s. 39

(c) suffering from a short illness

This list is not exhaustive of the operation of section 49(2) and in fact, the two are not directly linked. However, my opinion is that if the Governor is in the Virgin Islands, working remotely and performing the functions of his office, he is not necessarily *absent*<sup>6</sup> in today's context or for the purposes of section 49 of the Constitution.

10. *Practicable* simply means 'capable of being done'.<sup>7</sup> The COVID-19 pandemic quickly ushered in a number of pragmatic reforms that may have otherwise been long in coming. One of these was the successful and regular conduct of Cabinet meetings by virtual means. This has been a normal mode of meeting during the pandemic and it cannot now be said that it is not *practicable* for the Governor to attend and preside at a Cabinet meeting if he is willing and able to do so virtually.

11. While it is entirely likely that in 2007, the framers of the Constitution contemplated only cabinet meetings *in person*, we must have also regard to section 31 of the *Interpretation Act*:

Every enactment shall be construed as always speaking and anything expressed in the present tense shall be applied to the circumstances as they occur, so that effect may be given to each enactment according to its true spirit, intent and meaning.

If the Governor can himself attend a Cabinet meeting while he is present in the Virgin Islands, he *shall* preside at that meeting of Cabinet. If he is absent for any reason, the Premier *shall* preside. The Constitution could not be clearer on this point.

### **Deputy to Governor in Cabinet**


12. Unfortunately, it has become the practice for the *Deputy to Governor* (despite the protest of members) to preside at Cabinet in the absence of the Governor. This position has been supported by the Attorney General's 2018 Opinion with which I must respectfully disagree. While it may be possible for a Governor to assign *all* his functions to a *Deputy to Governor* via an instrument under the public seal, he cannot override clear and specific constitutional provisions by a stroke of his pen. The Governor's powers and duties are circumscribed by the Constitution and as the responsibility for chairing cabinet in the absence of the Governor is expressly dealt with at section 49(2), it cannot be assigned to anyone else by the Governor. It must follow the protocol mandated by the Constitution.

<sup>6</sup> Constitution, s. 37(4) is also helpful here.

<sup>7</sup> Collins Concise Dictionary, 1988

**Conclusion**

13. Despite being in quarantine or in self-isolation, it is *practicable* for the Governor to preside at the next meeting of Cabinet as he is present in the Virgin Islands and willing and able to do so albeit virtually. In this case, the Constitution is on his side. It is not however on the side of the enforced practice of the *Deputy to Governor* sitting in Cabinet in the Governor's stead. This practice must be discontinued because it is unconstitutional.



Dawn J. Smith  
Attorney General



30<sup>th</sup> September, 2020

Baroness Elizabeth Sugg CBE  
Minister for Sustainable Development  
and the Overseas Territories  
Parliamentary Under-Secretary of State  
Foreign, Commonwealth and Development Office  
King Charles Street  
London, SW1A 2AH.

Dear Baroness Sugg:

**Re: Opinion on Virgin Islands Constitution Order, Section 49**

Good day and God's Blessings to you and your family.

I write to you in my capacity as Premier of the Virgin Islands.

The purpose of this letter is to seek your assistance with respect to a difference of opinion between His Excellency the Governor Augustus J. U. Jaspert (**the "Governor"**) and the Government of the Virgin Islands on the interpretation of Section 49 of the Virgin Islands Constitution Order, 2007 (**the "Constitution"**), specifically whether, notwithstanding the express wording of Section 49, the Governor is authorised to appoint the Deputy Governor to chair Cabinet meetings whenever he is absent from the Territory.

The position of the Governor is that as Sections 38 and 39 of the Constitution allows him whenever he is absent from the Territory to delegate his responsibilities to the Deputy Governor that this includes the authorisation of the Deputy Governor to preside over Cabinet meetings.

The Government does not accept the Governor's position and is of the view that the wording of Section 49 of the Constitution is quite clear in that it expressly provides who should preside over Cabinet meetings in the absence of the Governor. The specific wording of Section 49 is set out below:-

***“49(1) The Governor shall so far as practicable, attend and preside at meetings of the Cabinet.***

***(2) In the absence of the Governor there shall preside at any meeting of the Cabinet the Premier, or in his absence, the Deputy Premier.”***

Further that although Sections 38 (2) and (5) of the Constitution allows the Governor to authorise the Deputy Governor to carry out all or some of the functions of office i.e. *“(2) The Governor, acting in his or her discretion, may, by writing under his or her hand, authorise the Deputy Governor to exercise for and on behalf of the Governor any or all of the functions of the office of Governor, subject to such exceptions and conditions as the Governor may from time to time specify....”* such authority is subject to Section 38 (5) which expressly provides that the Governor is not able to override *“any functions conferred on the Governor by any Act of Parliament of the United Kingdom or by an Order of Her Majesty in Council or other instrument made under any such Act other than this Order.”*

The Constitution being an Act of the UK Parliament it is therefore not possible for the Governor to override the express provisions of Section 49 (2) as it relates to the persons who are authorised to preside over Cabinet meetings in his absence.

We have unsuccessfully tried to convince the Governor that if his interpretation of Section 49 was to be accepted it would effectively mean that the Premier, the person who actually heads the Cabinet under the Constitution, would never have an opportunity to preside over Cabinet meetings since the Governor would usually appoint the Deputy Governor or other person to act whenever he is absent from the Territory. This we contend would not only be an absurd result but could not have been the intention of Parliament.

The Government has obtained legal advice in the matter which supports its interpretation of Section 49. We have also been advised that while the matter can be determined by an application to the Court for an interpretation of Section 49 of the Constitution that the preferred method for settlement of the dispute should be to seek your guidance as the Minister and Under-Secretary of State with responsibility for Overseas Territories. A copy of the legal opinion received is enclosed for your attention. As the Constitution is an Act of the UK Parliament, we are of the view that you are in a unique position to provide guidance as to the intention of the UK Government in Section 49.

In view of the above, we seek your assistance on the proper interpretation of Section 49 of the Constitution. As the matter is one of great concern to the Government and people of the Virgin Islands, we would very much appreciate your urgent attention to the matter. I would be grateful to have your response on this matter within one week, giving its pressing nature.

I have copied the Governor and each Member of Cabinet in on our letter, so that they are all aware of my request for your assistance.

Yours sincerely,



Andrew A. Fahie  
Premier and Minister of Finance

cc: Governor of the Virgin Islands  
All Members of Cabinet  
Cabinet Secretary



**CONFIDENTIAL**

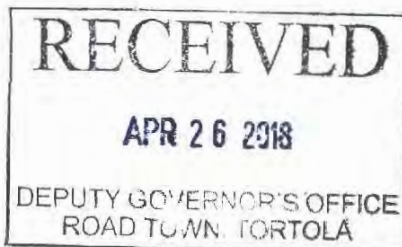
## MEMORANDUM

**FROM:** Attorney General

**TO:** Deputy Governor

**DATE:** 24<sup>th</sup> April, 2018

**SUBJECT:** Constitutional Status and Role of a Deputy to the Governor



**Our Ref.:**  
**Your Ref.:**

Your memorandum of 11<sup>th</sup> April, 2018 refers.

1. You have asked for my legal advice with respect to the authority normally given to a deputy to the Governor through a written instrument. The instrument appears to have been normally crafted in the form of the blank copy you enclosed in your memorandum.

### Advice

2. I would respectfully submit that the functions, role and responsibilities to be undertaken by a deputy to the Governor are determined by the specifications of the functions contained in the instrument of appointment under public seal. This may be complemented by any instructions which the Governor may in his discretion give to a deputy to the Governor and in respect of which he is under a legal obligation to comply with.

### Discussion and Analysis

3. The appointment of a deputy to the Governor is made by the Governor when (a) he is absent from the seat of Government but not from the Virgin Islands; (b) he is absent from the Virgin Islands for a period which he has reason to believe will be of a short duration or (c) when he is suffering from any illness which he has reason to believe will be of a short duration.

The appointment of a deputy to the Governor is a substitute or alternative to the appointment of an Acting Governor which is made by Her Majesty by instructions given through a Secretary of State. When an Acting Governor is appointed, the appointee automatically assumes all the powers and authority that are vested in the substantive holder. Section 37 of the Virgin Islands Constitution Order 2007 (the Constitution) expressly states that the Acting Governor **"shall perform the functions of that office accordingly"**.

4. The expression **"shall perform the functions of that office"** in section 37 of the Constitution would seem to me to be similar or analogous to the expression **"perform the functions of the office of Premier"** which appears in section 55 of the Constitution. By virtue of section 55, the Governor authorizes the Deputy Premier or any other Minister to perform the functions of the office of Premier in a case where the Premier is absent for more than forty-eight (48) hours or is unable to perform his functions by reason of illness. In my view, though not expressly called an acting Premier, such authorization is in pith and substance an acting appointment.

5. As regards the appointment of a deputy to the Governor, a deputy to the Governor does not automatically step into the shoes of the Governor with respect to the functions that he or she may exercise. There is the important requirement that the Governor has **to specify in the instrument of appointment such of the functions of the office of the Governor which are to be performed by the deputy to the Governor on the Governor's behalf.**

6. In other words, the instrument of appointment under public seal controls what functions are to be performed by a Deputy. The expression **"to perform on his or her behalf such of the functions of the office of the Governor as may be specified in that instrument"** which appears in section 39(1) leads inexorably to that conclusion. It is thus the **act of the Governor** which determines the roles and functions to be performed by a deputy to the Governor.

7. It is indisputable that the Governor may confer **some** of his functions to a deputy to the Governor. The question is whether he may confer **all** of his functions on a deputy. It would seem to me that there is nothing on the face of section 39(1) which limits the functions that the Governor may confer on a deputy to the Governor. The Governor therefore, has the widest discretion to confer all of his functions on a deputy to the Governor. This view is supported by Ian Henry and Susan Dickson in their book **British Overseas Territories Law** at page 50.



7.1 It would seem to me also that Section 4 of the Constitution is helpful in illuminating, by way of contrast, that the functions of a deputy are as specified in the instrument of appointment. That section provides that, **“.....unless it is otherwise provided or required by the context, any reference to power to make appointments to any office shall be construed as including a reference .....to power to appoint a person to perform the functions of that office during any period....when the holder of it is unable (whether by reason of absence, or infirmity of body or mind or any other cause) to perform those functions”**. When one reads section 4 in conjunction with section 39 of the Constitution, it would become clear that a contrary intention has been expressed in section 39 by giving authority to the Governor to decide which of the functions he may wish to confide to a deputy to the Governor in contrast to the automatic assumption of the functions of that Office if section 39 had not provided otherwise.

8. It is noted in passing, however, that there is an arguable case against the conferral of **all** of the Governor's functions on a deputy on the basis that the relationship between the Governor and a deputy is one of agency and therefore does not normally firstly, involve the grant of total power and authority by a principal to an agent; secondly, the grant of authority by a principal to an agent is not a surrender or abdication of that authority and finally, the ultimate responsibility for the proper discharge of the authority and functions of the agent remains in the principal.

9. I have no doubt that section 39(1) and (2) of the Constitution neatly capture the essential ingredients of an agency. The expressions **“in that capacity (ie a deputy to the Governor status)”** **“to perform on his on her behalf such of the functions of the office of the Governor”** which appears in section 39(1) and **“the power and authority of the Governor shall not be affected by the appointment of a deputy and a deputy shall comply with such instructions as the Governor, acting in his discretion, from time to time address to the deputy...”** in section 39(2) supports this conclusion.

10. I would nevertheless conclude that by force of the reservation in section 39 of the Constitution, there is a stronger case for the position that the Governor may confer all of his functions, on a deputy to the Governor. Indeed, under section 38 which deals with the appointment of a Deputy Governor, the Governor has discretionary power to authorize the Deputy Governor to exercise for and on his behalf **any and all of the functions of the office of Governor subject to exceptions and conditions as the Governor may specify**, but the authority of the Governor is not thereby affected

11. As already noted, while an Acting Governor automatically steps into the shoes of the Governor and is therefore for all intents and purposes the Governor under the Constitution, a deputy to the Governor is not. He lacks the independence and unqualified authority which the Governor or the Acting Governor has, given that the power and authority of the Governor remains unaffected by such appointment, and a deputy to the Governor must comply with any instructions issued by the Governor (see section 39(2)).

In other words, a deputy to the Governor is the *alter ego* of the Governor in respect of the functions he is to perform on behalf of the Governor. The expression “*alter ego*” was explained by Lord Denning in the case of **Wallersteiner v Moir (1974) 1 WLR 991** as an agent who is controlled and commanded to do the bidding of his Principal.

#### **Role of a deputy to Governor in Cabinet**

12. Section 49 of the Constitution provides as follows:

**“(1) The Governor shall, so far as practicable, attend and preside at meetings of the Cabinet**

**(2) In the absence of the Governor there shall preside at any meeting of the Cabinet the Premier or his or her absence, the Deputy Premier.”**

12. The word “absence” was interpreted in the Canadian Supreme Court case of **Brunet v R (1918) 57 SCR** as connoting “physical or actual non-presence for whatever cause”. The Court emphasised, in the context of a police magistrate who was empowered to hold the Court of Sessions of the Peace only **“in case of the absence or.... of the regular judge of the Sessions of the Peace”**, that it meant absence from the bench, or at the utmost absence from the court-room in which the trial takes place. But the Supreme Court also noted that it may imply constructive as well as actual absence.

13. It is obvious and needs no restating that, the Governor is not “absent” from Cabinet when the substantive holder

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of the office attends a meeting of the Cabinet. By operation of law, the Governor is also not absent when an Acting Governor who automatically steps into the shoes of the Governor and assumes all the functions of that office attends a Cabinet. It would seem to follow that where the Governor, by instrument under the public seal, appoints a deputy and specifies that he should perform his role of presiding in Cabinet and a deputy attends Cabinet, the Governor is not absent from Cabinet because the Governor's *alter ego* or agent (vicegerent or proxy) is in Cabinet. The legal maxim of agency "*Qui facit per alium, facit per se*" simply means that "he who acts through another does the act himself". It would seem to me therefore that section 49(2) which speaks to the absence of the Governor occurs when any of the above scenarios is non-existent, in which case the Premier or the Deputy Premier as the case may be would preside at a meeting of Cabinet.

### Conclusion

14. Where the Governor authorizes a deputy to the Governor, by instrument in writing under seal, to perform his constitutional duty of presiding in Cabinet, a deputy to the Governor shall do so. Similarly, where the Governor, by instrument, authorizes a deputy to the Governor to perform all of his functions under the Constitution a deputy shall do so (including attending and presiding at meetings of Cabinet pursuant to section 49(1) of the Constitution), except where the Governor gives any instruction to the contrary. Further, in the performance of the functions authorized, a deputy to the Governor shall comply with the instructions of the Governor. This conclusion is reinforced by the fact there is no limitation on the choice or discretion by the Governor as to the type of his functions which he may authorize a deputy to the Governor to perform. (See the last section of section 39 (1) which reads "to perform on his behalf such of the functions of the office as may be specified in that instrument")

Please be guided accordingly.



Baba Aziz  
Attorney General



## MEMORANDUM

**FROM:** Attorney General

**Our Ref.:** AGC SS/5/1/1/1K

**TO:** Premier & Minister of Finance

**cc:** His Excellency, the Governor

**DATE:** 21 December 2020

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***Re: Interpretation from the Courts (Department for Disaster Management)***

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1. I refer to your memorandum dated 17 November 2020 on whether the governance and/or control of the Department for Disaster Management (DDM) should be vested in the Governor or instead, in a Minister of the Government of the Virgin Islands ("the Government"). You also asked me, as Attorney General, to refer this question to the Court of Appeal for a ruling under the provisions of the Attorney General's Reference Act, 2011 (the "AG's Reference Act").

2. My advice is that:

- (a) the *Disaster Management Act, 2003* (the "Act") vests authority for DDM in the Governor. There is no ambiguity or absurdity in the legislation and this is not an issue that is directly addressed by the *Virgin Islands (Constitution) Order, 2007* (the "Constitution");
- (b) Which entity should be responsible for DDM is a question of policy and as such, not suitable for reference under the AG's Reference Act which is only concerned with the resolution of questions of law or fact, such as the correct interpretation of the Constitution or legislation;
- (c) The Act can be amended to re-assign responsibility for the Department for Disaster Management to a Minister of Government; and

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- (d) The parties should consider a mediated solution to ensure that there is effective handling of all facets of disaster management irrespective of where the lead responsibility lies.

3. In providing my opinion, I have reviewed the Constitution, the Act and the AG's Reference Act among other authorities and materials. I have also reviewed the following correspondence which were directed, copied or provided to me by you (the "Premier") or His Excellency the Governor (the "Governor"):

- i. Memorandum from the Premier to the Attorney General dated 13 November, 2020 (Re-Assignment of Disaster Management under the Premier's Office);
- ii. Memorandum from the Premier to the Attorney General dated 17 November, 2020 (Interpretation from the Courts, etc.);
- iii. Opinion from Freedom Law Chambers (Ramlogan, SC) dated 17 November, 2020 (the "Ramlogan Opinion");
- iv. Letter dated 4 December, 2020 from the Governor to the Premier dated 4 December, 2020 (Governance of the Department of Disaster Management);
- v. Letter dated 9 December, 2020 from the Premier to the Governor in response to the Governor's letter of 4 December, 2020;
- vi. Letter dated 14 December from the Premier to the Governor;
- vii. Letter dated 18 December, 2020 from the Governor to the Premier;
- viii. Letter dated 18 December, 2020 from the Premier to the Governor; and
- ix. Letter dated 27 April, 2010 (provided by the Premier) from the then Governor to the Permanent Secretary in the Premier's Office citing the

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Comprehensive Disaster Management Policy approved by Cabinet in 2009 which placed responsibilities for disaster mitigation and recovery under the Premier and provided for mitigation and risk reduction to be handled by the Town and Country Department and the then Development Planning Unit. It also called on the Permanent Secretary to appoint a chair of the Mitigation Sub-Committee as it was no longer being chaired by the Deputy Governor (the "2010 Letter")

#### **Background**

4. By correspondence beginning with his letter of 13 November, 2020 to the Attorney General, the Premier set out his position that disaster management is not one of the Governor's special responsibilities under section 60 of the Constitution and that therefore the responsibility for disaster management should be assigned to a minister in accordance with section 56(1). He stated that there were many weaknesses in the aftermath of Hurricanes Irma and Maria which "...exposed the inefficiencies in the level of preparedness across the Territory...".

4. The Premier also asserts that:

"... one of the root causes of this problem is the inadvertent placement of the Department for Disaster Management (DDM) under the Governor's Group, which placement is inconsistent with the provisions of the ...[Constitution] and leads to the inefficient coordination with the rest of Government in terms of policy, planning and preparedness."

5. The Premier's position has been reinforced or reiterated in the Premier's subsequent correspondence and in the Ramlogan Opinion.

6. By letter dated 4 December, 2020 the Governor responded to the Premier's assertions stating:

The Constitution sets out the process by which executive authority may be delegated to Ministers, and it is clear that such delegations are subject both to the Governor's special responsibilities, as well as other provisions of BVI law, including, in this case, the Disaster Management Act. Any change to the

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allocation of responsibility for disaster management would therefore require new legislation.... Given that such legislation would be likely to involve my special responsibilities, I would need to give particularly careful attention to the question whether I could properly assent to it.

7. The Governor also expressed his firm belief that any legislative change "...would be best considered as part of [the]... Constitutional Review proposals."

8. There has been a series of correspondence by the Premier and between him and the Governor as well as a direct request from the Premier to the Attorney General to commence proceedings under the AG's Reference Act.

9. On 5 November, 2020 the *Disaster Management Bill, 2020* had a first reading in the House of Assembly. Among other things, it provides for specific roles for the Governor and the Premier and notably, for the legislated duties of the Governor to be performed *in consultation with* the Premier.

10. On 15 December, 2020 the House of Assembly passed the *Appropriation (2021) Act, 2020* including budget estimates placing the funding for the Department of Disaster Management under the Ministry of Transportation, Works & Utilities and effectively defunding the Governor's group in respect of disaster management.

#### **Responsibility for Disaster Management**

11. *Disaster management* is not listed in section 60 of the Constitution as one of the Governor's special responsibilities. However, the Governor contends that "... it is ultimately the responsibility of the Governor to ensure the safety and security of the Territory... " and that... "[d]isaster preparedness must be considered a vital part of ensuring this."<sup>1</sup> Even if the latter statement is accepted, it is not the same as saying that responsibility for disaster management cannot, as a constitutional matter, reside elsewhere.

<sup>1</sup> Governor's Letter (4 December, 2020) p. 1

12. The word 'disaster' is mentioned only once in the Constitution – in section 27 which empowers the Governor to declare a public emergency in respect of several eventualities, one of which is in respect of a natural disaster. In fact, since the terminology 'disaster management' (unlike subjects such as 'external affairs', 'defence' or 'internal security') is not mentioned in the Constitution at all, it must be a question of substance whether *disaster management* can only be the responsibility of the Governor or can be assigned to a Minister. In any event, the stated concern of the United Kingdom to retain 'sufficient authority to guard against the Overseas Territories becoming a liability... in circumstances of natural disaster' must be noted.<sup>2</sup>

13. The closest the existing law comes to a definition of disaster management is in the Disaster Management Act, 2003 which, in section 4, gives the Governor clearly enumerated responsibilities in respect of what is termed (without definition) *disaster management*. Here, the Governor's role includes ensuring the preparation of a comprehensive plan and programme; procuring supplies, materials and equipment; mobilizing emergency services and conducting studies and surveys from funds appropriated for that purpose. Further, s. 6 of the Disaster Management Act provides for the DDM Director to assist the Governor in coordinating the general policy of the Government in relation to mitigating, preparing for, responding to and recovering from emergencies and disasters.

14. When construing legislation, the first rule of statutory interpretation is to consider the natural or ordinary meaning of the particular words or phrases in the relevant legislation. It is only when the meaning leads to some result which cannot reasonably be supposed to have been the intention of the lawmakers that it is proper to look for some other possible meaning. These principles were set out in the seminal case of *Pinner v Everett* [1969] 1 WLR 1266, 1273 and re-affirmed just last month by the Privy Council in *Attorney General of the Turks and Caicos Islands v. Misick and Ors.* [2020] UKPC 30: see paragraph 38.

<sup>2</sup> This is recorded, for example, in the 2005 Report of the Constitutional Commissioners at para 9.15  
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15. There is nothing in the plain, natural or ordinary meaning of the language used in the Disaster Management Act which leads to any ambiguity or absurdity. The result is that the Governor unquestionably has responsibility for, and control over, DDM. This is not a constitutional question as the Governor's authority in this respect properly derives from statute.<sup>3</sup> Simply put, it is a matter of policy whether the governance and control of the DDM remains vested in the Governor or is assigned to a Minister of Government.

#### **Attorney General's Reference Act, 2011**

16. Under s. 3(1) of the *Attorney General's Reference Act, 2011* an Attorney General has the discretion, with the approval of Cabinet, to refer important questions of law and fact to the Court of Appeal for hearing and consideration. An example of where similar legislation was employed in the Eastern Caribbean Supreme Court occurred in *In the Matter of the Attorney General's Reference (Constitutional Questions) Act Cap. 17:18 of the Revised Laws of St. Lucia* SLUHCVP 2012/0018 where there was need for clarity in respect of a typographical error in St. Lucia's constitution relative to their final appellate court.

17. Having considered the matter fully, there does not seem to be anything in the instant case to merit reference under the Act given the clear and plain meaning of the provisions of the Act. The solution is to decide on the policy position and back it up with supporting legislation.

#### **Mediated Outcome?**

18. In their correspondence, both the Premier and the Governor refer to the 2017 disasters and their aftermath, for example, to underscore the assistance from the United Kingdom in restoring order or the exclusion of elected representatives from access to resources and information that could have been used to assist their communities. In fact, this period seems to have provided at least a renewed impetus for the current

<sup>3</sup> This is also supported by the Objects and Reasons to the Disaster Management Bill, 2003 which speaks about *conferring* certain powers and duties on the Governor and also *imposing* on him a 'wide range of duties that relate to ensuring that certain plans and preparations are made before the Territory is threatened by a hazard.'

debate. It can also be the case study for what disaster management is as a matter of practice and create a starting point for an improved partnership approach to disaster management in the Virgin Islands.

19. The breadth and content of the correspondence between the Premier and the Governor evidence a number of concerns that are ripe for resolution and that even an amendment to the Act will not, in and of itself, properly address. It also underscores the need to properly define the ambit of disaster management and the roles, responsibilities and accountability measures for various actors. From all indications and by its very nature, disaster management is a high stakes responsibility requiring multi-sector participation. Fortunately, the *Disaster Management Bill* takes some steps forward by prescribing responsibilities for both the Governor and the Premier and defining *disaster management* among other improvements.

20. I also say this in the context of the House of Assembly's responsibility for the passage of legislation and the Governor's power of assent under ss. 71 and 79 of the Constitution, respectively. Recent history<sup>4</sup> has demonstrated that Governors will use their power of assent to prevent legislation passed by the House of Assembly from coming into force. Indeed, the Governor has clearly stated in his correspondence that where legislation involves his special responsibilities that he would have to pay 'particularly careful attention' to whether he could properly assent to it.

21. Ultimately, it may therefore be most prudent for the Governor and the Government to engage in mediated discussions in a bid to amicably resolve the current impasse since the Governor's co-operation through assent would be ultimately required to achieve the desired outcome.

### Conclusion

22. The Act unequivocally vests responsibility for *disaster management* in the Governor. As there is no ambiguity or absurdity created by the provisions of the Act or

<sup>4</sup> For example, with the *Computer Misuse and Cybercrime Act* in 2014 and again in 2019 and most recently the *Cannabis Licencing Act* and the *Drugs (Prevention of Misuse)(Amendment) Act*

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the Constitution, it is not appropriate to make an application to the Court under the AG's Reference Act for an interpretation. The obvious recourse is for the House of Assembly to amend the Act to transfer responsibility for disaster management to a Minister of Government. As it turns out, the Disaster Management Bill, 2020 had its first reading in the House of Assembly on 5 November, 2020.

  
Dawn J. Smith  
Attorney General

4811-9546-6709, v. 1

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Ref. No: GOV/DIS/01

4<sup>th</sup> December, 2020

Honourable Andrew A. Fahie  
Premier and Minister of Finance  
Road Town, Tortola  
British Virgin Islands VI 1110

Dear Premier:

**Governance of the Department of Disaster Management**

I am disappointed that I was not consulted on your proposed Machinery of Government changes, namely the movement of the Department of Disaster Management (DDM) from the Governor's Group to the Premier's Office, before they appeared in the budget. This is not a partnership approach to governance.

While I welcome a collaborative, whole of Government approach to disaster management, it is ultimately the responsibility of the Governor to ensure the safety and security of the Territory. Disaster preparedness must be considered a vital part of ensuring and maintaining this.

As the law stands, the Governor's responsibility for Disaster Management is made abundantly clear by the Disaster Management Act 2003, under which coordination of the Government's general policy for disaster management is ultimately for the Governor.

Specifically, it is the Governor's duty both to prepare a comprehensive disaster management plan, as well as to make preparations for disasters, including through the use of funds appropriated for that purpose. To achieve this, the Act provides for the Governor to appoint and supervise a Director of the Department of Disaster Management, who in turn is responsible for the running of the DDM.

This is consistent with the clear connection between disaster management and the Governor's special responsibility for internal security under the Constitution. As you are aware, where a matter falls within the Governor's special responsibilities, then, subject to any other law, executive authority rests with the Governor. Section 60 of the Virgin Islands Constitution states that the '*Governor shall be responsible for the conduct of any business of the Government of the Virgin Islands, including the administration of any department of government, with respect to [...] internal security*'. Moreover, where a matter, including assent to new legislation, involves these special responsibilities, the Constitution ensures that decision-making ultimately rests with the Governor.

In terms of the Deputy Governor, he may assist me under section 38(1)(a) of the Constitution, or indeed under my more general discretion under section 38(2), which allows me to assign *"any or all of the functions of the office of Governor"* to the Deputy Governor.

The Constitution sets out the process by which executive authority may be delegated to Ministers, and it is clear that such delegations are subject both to the Governor's special responsibilities, as well as other provisions of BVI law, including, in this case, the Disaster Management Act. Any change to the allocation of responsibility for disaster management would therefore require new legislation, as your own legal advice made clear. Given that such legislation would be likely to involve my special responsibilities, I would need to give particularly careful attention to the question whether I could properly assent to it.

I firmly believe that the current allocation of responsibilities for disaster management achieves the right balance in allowing the Governor to discharge my constitutional responsibilities, while fully involving you and Ministers. Although the Department of Disaster Management rightly sits in the Governor's group, I agree that disaster management is an issue for which all parts of BVI's government should share delivery. The current approach enables this. In particular, as Premier, you have an important role in the disaster management process. You co-chair with me the National Disaster Management Council (NDMC). Moreover, Ministers have direct oversight of their respective parts of disaster management.

The 2014 review of the National Disaster Management Council (NDMC) was carried out in order to integrate disaster management at sector level and to build leadership at Ministerial level. The NDMC is led by Permanent Secretaries from each Ministry. Ministers have direct responsibility for areas of disaster management embedded within their Ministries. The DDM has established roles concentrating on disaster management directly in Ministries; from the Health Disaster Management Programme, which is led by the Health Disaster Coordinator in the Ministry of Health and Social Development, to the Climate Change programme in the Ministry of Natural Resource and Labour.

In 2001, the Caribbean Disaster Emergency Management Agency (CDEMA) promoted a comprehensive approach linking all the elements of the Disaster Management cycle, namely preparedness, response, mitigation and recovery. The 'recovery' element, as longer-term development, rightly sits under you as Premier, as set out in the Recovery and Development Act 2018. These NDMC arrangements provide for the required partnership approach recommended by CDEMA.

In his written legal opinion, Mr Ramlogan makes unfounded assertions about the performance of the DDM and BVI's disaster preparedness and management. External evaluations of the Disaster Management programme over the years have lauded the approach of the BVI. In 2015, the Emergency Management Accreditation Programme (EMAP) validated the programme; BVI became the first territory outside of the United States and Canada to be granted international accreditation. BVI remains the only territory within the 19 CDEMA Participating States to have achieved this outstanding accomplishment. The programme met

all 64 standards, which made it in full compliance with worldwide industry standards. Furthermore, the Comprehensive Disaster Management Audit (CDM Audit) carried out by CDEMA in 2018 scored BVI highly across all phases of the disaster management cycle.

Undoubtedly, Hurricanes Irma and Maria had a devastating impact on BVI and there are always lessons to be learnt. However, the impact, potential casualties and recovery may have been much worse if not for the hard work of those with responsibility for disaster management across the Ministries and the vital support provided by the UK, including the Royal Marines and the Royal Engineers helping to re-establish power and water. Such UK support is able to be leveraged primarily due to the responsibility for disaster management being held by the Governor.

To sum up, the law is clear that the Governor is ultimately responsible for disaster management, and that it is within my authority to allocate the function of disaster management to the DG. Ministers are already involved in the work of the DDM through the NDMC, and have direct oversight of aspects of disaster management within their own portfolios. This approach has been validated by the exceptional results of the CDM Audit and EMAP validation.

Given the position under the law, DDM and the subject of Disaster Management should of course be presented correctly in the Budget Estimates as being under the remit of the Governor's Group.

To deviate from this would, as your own advice made clear, require legislative change, which I firmly believe would be best considered as part of your Constitutional Review proposals.

As I have made clear, where legislation presented to me involves the Governor's special responsibilities, I would have to pay particularly careful attention to whether I could properly assent to it.

Sincerely yours,



Augustus J. U. Jaspert  
**HM Governor**

CC: Cabinet Members



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**REF: GOV/LEG/08**

23 April, 2021

Honourable Andrew A. Fahie  
Premier and Minister of Finance  
Premier's Office  
Government of the Virgin Islands  
Cutlass Towers, 2<sup>nd</sup> Floor  
Road Town, Tortola VG1110

Dear Honourable Premier

**Disaster Management Act, 2021**

I refer to our conversations of 10 and 17 February and my letter of 18 February concerning the Disaster Management Act, 2021 (DMA2021).

Ensuring effective disaster management is of the highest priority in BVI and an area of work in which all parts of BVI's Government and the emergency services should be involved, working in a collaborative fashion. In some instances, as happened following Hurricane Irma in 2017, external support to help ensure the safety and security of the Territory will also be required, with a further need for effective coordination and joined-up working. I am committed to maintaining that approach to best meet the Territory's needs.

It is the responsibility of the Governor under the Constitution to ensure the security of the Virgin Islands. Disaster management clearly involves internal security and external affairs, both of which fall to the Governor under Section 60 of the Constitution. I continue to believe that key disaster management policy responsibilities should remain within the Governor's Group in order that I am able to fulfil those constitutional responsibilities. The DMA2021 represents a major transfer of policy and power of direction away from the Governor's Group

Accordingly, I would not be able to assent to DDM2021 as currently drafted.

The Constitutional Review which you have proposed will, however, present an opportunity to consider further the balance of responsibilities for particular issues under the Constitution. It would be prudent for decisions on such matters to be made on completion of the Review rather than in advance. I would therefore respectfully ask

Honourable Premier  
23 April, 2021  
Page 2

you to agree that DMA2021 be redrafted as appropriate following the Constitutional Review.

Should you not be willing to agree to that approach, I will reserve the question of assent to the Foreign Secretary for his consideration.

*Yours sincerely*



John J. Rankin CMG  
Governor of the Virgin Islands

Official



**Foreign &  
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The Hon Dr D Orlando Smith OBE  
Premier  
Office of the Premier  
Government of the British Virgin Islands  
33 Admin Drive  
Road Town  
Tortola VG1110  
British Virgin Islands

21 August 2018

*Dear Premier,*

1. I am pleased that Lord Ahmad had a productive recent visit to the British Virgin Islands. It is encouraging to hear that progress has been made on the establishment of the Recovery and Development Agency (RDA), in particular that a Chief Executive Officer has been appointed. The UK funded loan advisor has also been embedded in the Ministry of Finance. Now is the time to continue to increase the pace of the recovery, as Lord Ahmad said during his visit, there is much work still to be done before the islands are fully recovered.
2. My team are already working with the loan advisor and colleagues in the BVI Ministry of Finance on a joint strategy document that will set out the detail of the loan guarantee, and the process to establish this. I wanted to set out the five main steps for setting up the loan guarantees. It is worth noting that much of the work outlined below has already commenced. As you will appreciate, the process is necessarily technical and thorough, but I want to reassure you that we are keen to help drive momentum, and support your Government through the whole process.

#### **Recovery Plan**

3. As you know, the cornerstone of the recovery is the BVI Government's Recovery Plan, which details the work needed across the Territory to effect a strong and sustainable recovery. It is important that the Plan is finalised and agreed quickly. Once approved, the RDA, as the primary delivery agency, will need to assess the

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value of projects and the timescales for completion. This will need to be coupled with a realistic assessment of BVI's operational capacity to carry out those works.

### **Fiscal Analysis**

4. Once the RDA is confident in the above assessment, it can make an accurate calculation of the level of financing required and how that might be sequenced. The Ministry of Finance will need to assess how much of this can be funded out of the proposed borrowing under the UKG guarantees, up to the value of £300 million. The Ministry of Finance have already started a preliminary debt sustainability analysis, which I understand will shortly be available. This will allow your Cabinet to decide on the affordability of sustaining this level of borrowing. This analysis will also underpin internal UKG analysis to set up the guarantee. It is at this point that your Government may need to take decisions around mobilising revenues and expenditure consolidation to support fiscal sustainability.
5. In addition, the BVI Government and UKG will need to agree amendments to the Protocols for Effective Financial Management given the new borrowing will likely cause the BVI Government to remain out of compliance with the existing borrowing ratios. A date to return to compliance will need to be mutually agreed alongside interim targets and measures on public financial management in line with the High Level Framework for UK Support to BVI Hurricane Recovery.

### **Loan Structuring and Procurement**

6. The Ministry of Finance and loan advisor will need to set out the structure of the loan and guarantee package to the FCO and HM Treasury that both suits the needs of the BVI Government and ensures value for money for the UKG. This process has already started. The loan advisor and Ministry of Finance have also begun engaging with financing institutions to gauge the market. Once complete, the process of legal drafting for the loan agreement (between the BVI Government and lender(s), guarantee (between the UKG and each lender) and counter indemnity terms (between the UKG and BVI Government) can begin. As you know, while the guarantee structure and associated loans are being arranged the BVI Government has available existing undrawn loans, ensuring that there should be no delay to project implementation for lack of funding.

### **HMT Contingent Liability**

7. Across all of the above steps, the FCO and HM Treasury will be conducting an assessment of the guarantee using the data available from the Recovery Plan and Debt Sustainability Analysis (amongst others). Officials at the Ministry of Finance have been appraised of this process, known as the Contingent Liability Approval Framework. This is a key step before any guarantee from the UKG can



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be finalised not least because it is a requirement for statutory accounting in the UK. This process will also verify that the BVI Government can afford to repay any loans and ensures that BVI Government accounts are robust. A key element of this is ensuring that strong oversight of project delivery and financial accountability is in place. This will be provided for through the RDA in respect of project implementation and by the Ministry of Finance in respect of debt sustainability and management.

8. As part of setting up a new contingent liability, HM Treasury requires appropriate risk monitoring mechanisms to be put in place. In this instance, a financial technical advisor will be appointed who will report directly to the Governor and to me as Senior Responsible Officer for the FCO. The advisor's primary responsibility will be to work with the Ministry of Finance to monitor the guaranteed loans, work on refinancing, communications and fiscal sustainability strategies and advise the FCO and HM Treasury on any relevant issues that affect the status of the guarantee.

#### **Parliamentary notification**

9. Once the contingent liability process is completed there is a legal obligation for the UKG to notify Parliament. Members of Parliament can request further information on the liability for 14 sitting days after the notification is made and it will be up to the FCO as the responsible Department to provide the further information before the guarantee structure is fully approved. Thereafter, provided all terms have been agreed between the BVI Government and lenders, the BVI Government will be able to execute the new guaranteed loan facilities and access the associated funding.
10. I am sure you will appreciate the necessity of such a comprehensive process. The UK remains committed to supporting BVI throughout, and I am pleased that our officials continue to work together for the benefit of the long term recovery of the British Virgin Islands.

*Yours sincerely,*



**Director Overseas Directorate  
Foreign and Commonwealth Office**

## **Advancing the Recovery: Recommendations for a Timely, Efficient and Effective BVI-led Recovery**

*Prepared by: Disaster Recovery Coordinating Committee, Premier's Office.*

*01 May 2019*

### **1. INTRODUCTION**

In the aftermath of the 2017 disasters, the Government of the Virgin Islands (GOVI) developed the Virgin Islands Recovery to Development Plan to guide the recovery and put in place a strong legal and institutional framework to ensure its successful delivery.

To date, through the collective efforts of the Government, the private sector and other partners, significant progress has been made in rebuilding the various sectors that were impacted. Basic services such as power, water supply, healthcare, educational facilities (primary schools), motorable roads, etc. have been restored to a basic level of functionality.

However, other aspects including recovery of housing, tourism, businesses, transportation infrastructure, energy, sewerage, etc. need greater investment as well as an enabling policy environment. Building a stronger, smarter, greener and better BVI requires sustained efforts over several years and a significant amount of resources.

Nineteen months after the disasters, an assessment of the recovery efforts to date, including the implementation of projects as well as the performance of the institutional and legal arrangements, reveals areas that require further improvement.

This document provides suggestions for further development of the key elements of the recovery framework to advance a timely, efficient and effective BVI-led recovery. These include areas such as legal and institutional arrangements, recovery to development plan implementation, financing arrangements as well as the revised recovery priorities and projects.

The final section on the national development strategy outlines the linkage between the Recovery to Development Plan and the Territory's longer term development strategy.

## 2. LEGAL ARRANGEMENTS

### 2.1 Recovery & Development Agency Act

The Virgin Islands Recovery and Development Agency Act (VIRDAA) 2018 provides the legal basis for the establishment of the Recovery and Development Agency (RDA) as well as its functions, governance arrangements and reporting obligations.

The VIRDAA was passed in the House of Assembly on 23<sup>rd</sup> April, 2018, after substantial debate and subsequent amendments to the draft bill to adequately reflect some of the key principles of the recovery, including recovery to be a BVI Government led recovery, with RDA as a key implementer of the Plan.

The legislators strongly emphasised the need to ensure that the Act did not undermine the autonomy of the democratically elected government, and that it facilitated a BVI-led recovery that benefited the Territory and its people. This principle is also underscored in the Recovery to Development Plan which states that “The Plan will then be implemented by the Government in partnership with the relevant stakeholders, NGOs, development partners and the private sector.”<sup>1</sup>

In order to ensure that the legal framework is consistent with the principles on which it was drawn up, there are three areas of the Legislation that requires review and reconsideration:

- 1) The scope of RDA’s authority to implement the Recovery to Development Plan,
- 2) The scope and sources of contributions required to be placed in the recovery trust fund, and
- 3) The terms of the Trust Deed which appears to allow only the RDA (and charities) to access the trust fund’s property.

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<sup>1</sup> Recovery to Development Plan of the Virgin Islands

### 2.1.1 The Scope of RDA's authority to implement the Recovery to Development Plan

Section 5(1) of the Act sets out that among other things, the functions of the Agency shall be to (a) ensure the timely and proper implementation and execution of the Plan. This clause is very broad, thereby leaving it open to interpretation, including one that assumes that the RDA has absolute right and authority to implement and execute the Virgin Islands Recovery to Development Plan, in its entirety.

It is therefore necessary to clarify the Government's authority in implementing the recovery. In that regard, the following amendments to the VIRDAA are suggested:<sup>2</sup>

#### RECOMMENDATIONS:

**Clause 3 (7)** should be amended to read: "For the removal of doubt, ~~this section~~ nothing in this Act shall ~~not~~ be construed so as to affect in any manner the undertaking of any development projects or policy initiatives by the Government."

**Clause 5 (1) (a)** should be amended to read: "... (a) ensure the timely and proper implementation and execution of the Plan; subject to the direction of the Government of the Virgin Islands which shall be set out in its priorities for implementation by the RDA in writing on an annual basis."

**Clause 13 (5) (a)** should be amended to read: "... the functions of the Chief Executive Officer shall be to (a) coordinate and monitor activities ~~relating to the implementation and execution of the Plan of,~~ of the Agency including capacity building.

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<sup>2</sup> Strike through are suggested deletions and underlines are suggested additions to the current text.

### ***Supporting Rationale***

A very broad interpretation of Act as it relates to the RDA's role in implementing the Plan goes against the fundamental premise that the Recovery to Development Plan is that of the Government and People of the Virgin Islands, and as such it is GOVI's responsibility to lead the implementation and execution the plan, in conjunction with other entities.

While the Government established the RDA as a key implementing body, it never contemplated the RDA as the sole implementer. The current clause, read broadly, gives credence to an interpretation that RDA is the sole implementer of the plan and in accordance with its own discretion.

Moreover, the scope of the Plan goes beyond recovery into development, and contains, in addition to projects and programmes, a number of policy initiatives. Both of the latter responsibilities fall outside the purview envisioned for the RDA. Additionally, both development projects as well as policy initiatives are the constitutional responsibility of Ministers and Ministries. Clause 3 (7) of the Act, underscores this point where it states that... "For the removal of doubt, this section shall not be construed so as to affect in any manner the undertaking of any development projects by the Government."

Therefore, various clauses in section 5 of the Act which makes broad reference to RDA's execution or implementation of the plan may be incongruent with clause 3 (7) of the Act, because the Plan (as a result of its comprehensiveness) includes development projects and policy initiatives.

In addition, the diversity and varying levels of complexity of projects, programmes and policy initiatives related to recovery and development of the Territory as well as the varied skills and expertise available within the Government, RDA and other implementing partners, it is counterproductive to draw a hard line between either recovery and development projects, or between projects and policy initiatives. Instead, the decision related to the implementing entity should made by the Government based on an objective assessment of capacities of the implementing entities.

### **2.1.2 The scope and sources of contributions to be placed in the Recovery Trust Fund**

The concept of a resilience fund was originally conceived by GOVI wherein funds raised for the recovery, either through borrowings underwritten by the UK Guarantee or from donors and investors, were to be segregated from normal fiscal arrangements of Government. The objective of setting up such a ring-fenced fund, among other things, was to allow for expediency, independence, transparency, credibility for donors and effective risk management.

The Act creates the framework for the resilience fund by setting out in section 15 that “The Government shall establish a trust, to be known as the Virgin Islands Recovery Trust for the purpose of receiving all contributions from diverse sources for the recovery and development efforts pursuant to the Plan including (a) gifts and bequests; (b) donations; (c) proceeds from loans and other arrangements negotiated by the Government; (d) such monies as may be appropriated by the House of Assembly for the purposes of the Plan.”

While the foregoing is not objectionable in principle, section 15 can be and is increasingly being interpreted to suggest that Government’s recurrent surplus, once being used for recovery and development efforts pursuant to the plan should be placed in the trust.

In order to remove any doubt of Government’s discretion in relation to funds borrowed outside the UK guarantee or how it utilises its recurrent funds for recovery or development, the following amendments to the Act are suggested:

**RECOMMENDATIONS:**

**Clause 15 (d)** should be amended to read: “such monies as may be appropriated by the House of Assembly for ~~the purposes of the Plan~~ projects to be implemented by the RDA pursuant to section 5 (1).”

**Clause 15 (c)** of the Act should be amended to read: “proceeds from loans and other arrangements negotiated by the Government, and underwritten by UK loan guarantee”.

### ***Supporting Rationale***

GOVI expects that it will utilise its recurrent surpluses to execute any project, whether recovery or development or other initiative, and in doing so utilise its own systems and processes to deliver the project or policy initiative. To do otherwise would stifle Government's ability to carry out its inherent and constitutionally mandated functions; using its established resources and processes which also deliver transparency and accountability, and are consistent with best practices on procurement and fiscal management.

In addition, these very systems are sufficiently robust to ensure that funds borrowed are utilised for their intended purpose with strong levels of accountability and transparency following international best practices, including in procurement. GOVI therefore considers it unnecessary for funds borrowed outside the UK guarantee to be placed in the resilience fund except for the purpose of it being utilised by RDA to implement a project.

Moreover, GOVI considers it unnecessary to transfer funds from its recurrent budget to a separate fund, only to in turn for it to access those same funds to implement projects or initiatives. This would not only be inefficient but may increase implementation costs.

#### **2.1.3 The terms of the Trust which allows only the RDA (and charities) to access the trust fund's property**

Clause D of the Trust Deed allows for the Trustee in its discretion to pay, transfer or apply capital or income of the trust for the benefit of charities or to the **Recovery Agency** [emphasis added] to apply to the charitable purposes of the trust. This limits the payment, transfer or application of the capital or income of the trust. As a result, GOVI who was envisioned to be an implementer of recovery projects would not be able to do so using the trust's capital or income.

Given the aforementioned, the following actions are recommended: <sup>3</sup>

#### **RECOMMENDATIONS:**

**Amend clause 4.3 of the Trust Deed** to give GOVI access to trust monies for purposes of implementing projects that fall within the trust's charitable purposes.

**Amend clause 17 of the Trust Deed**, to read "The Agency, charities and GOVI shall only be able to access the property of the Trust required for the implementation of the Plan".

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<sup>3</sup> Failing GOVI's ability to be an implementer of recovery and development projects funded through the trust fund, owing to restrictions on accessing the trust's monies, the Government should **determine what contributions it makes to the fund** and for what purposes.

**Put in place regulations on accessing trust monies.**

***Supporting Rationale***

Clause 4.3 of the trust deed should be amended to allow the Trustee to pay, transfer or apply the Capital or Income of the trust to GOVI to apply to charitable purposes, using the same criteria as RDA, subject to the Trustee's discretion.

The trust fund was set up to ensure that there is an independent mechanism in place supported by strong administrative and governance systems for holding and disbursing funds raised for the recovery. Therefore, as long as GOVI meets the requirements of that system, there should be no impediment to GOVI being an implementer of recovery and development projects.

In addition, restricting GOVI from accessing funding for development projects by operation of the trust deed would be incompatible with Government's constitutional mandate and authority for development, and incongruent with the VIRDA section 3(7).

The trust deed contains very little detail on how the charities or the RDA could access funding. It gives the Trustee broad discretionary powers to apply the income or the capital of the trust to the purposes and objects of the trust (i.e., the priorities in the Plan and Act). The Act under section 26 (2) (a) contemplates regulations that provide for "the guidelines and criteria for applications for funding". However, these do not exist yet.

Moreover, taking into consideration, the generality of the trustee's powers, the regulations stipulated in the Act on setting out guidelines for accessing funding, as well as the spirit and intent of the entire arrangement to promote transparency and accountability, it is necessary to put in place regulations on accessing the trust's monies.

This would establish clear criteria, guidance and processes that the RDA, Government, public and charities would need to be aware of. In turn, the Trustee could take this into consideration when exercising its discretion on applying the capital or income of the trust.



## 2.2 Regulations

Section 26 (2) of the Act provides for the development of various regulations, pertaining to:

- a. Framework for interaction, responsibilities and exchange of information between the Ministries and the RDA;
- b. Guidelines for Capacity Building; and
- c. Guidelines and Procedures for Procurement of Goods and Services.

These regulations have been developed by GOVI in collaboration with the RDA and are in a final draft form with the Premier's Office. They are critically important for the functioning of the RDA as well as to ensure delivery of key recovery objectives of the Government and should therefore be finalised as soon as practicable. However, the following amendments to the current draft regulations should be considered.

### 2.2.1 Framework for interaction, responsibilities and exchange of information between the Ministries and the RDA

#### **RECOMMENDATION:**

**Regulation 9 (5)** relating to business case options, consideration should be given to whether the lead ministry should agree with the option.

#### ***Supporting Rationale***

Allowing the Ministries to agree with the option that will be pursued will ensure that the RDA is accountable to the Government in making sure that its chosen option delivers on the Government's objective.

### 2.2.2 Guidelines for Capacity Building

#### **RECOMMENDATION:**

Section 15 (1) of the draft regulations pertaining to the capacity building strategy that states "The Agency shall develop a capacity building strategy as part of the implementation of the plan as agreed to with the Minister" should be amended to a more precise language as follows **"... which shall be agreed by the Minister."**

### ***Supporting Rationale***

The current language is imprecise and somewhat unclear and it is important for the regulations to have a more precise language that reflects the intentions of the Government. This is because a capacity building strategy was one of the key demands put forward by the members of the HOA in order to reach an agreement on passing the Act. If there is no requirement for capacity building strategy developed by the RDA to be agreed upon by the appropriate entity in the Government, Government's ability to ensure that the RDA's strategy adequately addresses the capacity gaps and through clearly articulated and specific measures which it agrees; will be undermined.

### **2.2.3 Guidelines and Procedures for Procurement of Goods and Services**

#### **RECOMMENDATIONS:**

The procurement regulations should be amended to:

- Place specific requirements on the RDA to ensure that firms are registered in its **contractors' registration and classification system (CRCS)**.
- Create a **linkage between Government's CRCS and that of RDA's** to ensure that registrants in GOVI CRCS are registered with the RDA.
- Set out regulations that would specifically ensure **participation of local suppliers, contractors and consultants** in the procurement process; and as well **local employment**.

### ***Supporting Rationale***

One of the foremost objectives of the Recovery is to ensure that BVI Islanders are a central part of and benefits from participation in the recovery. It is therefore critical that this objective is enshrined in the regulations.

Section 22 requires that the Agency “shall maintain a list of pre-qualified providers for the procurement of services including works ...” and also requires the RDA’s procurement team to utilise the persons/firms registered in the **Contractor Registration and Classification System (CRCS)**, except under specific circumstances identified in the regulation.

This creates the possibility of persons who are not registered in the CRCS not being pre-qualified, thereby limiting their opportunity to participate in the procurement process related to works, goods or services.

The Government's objective to maximise participation of BVI Islanders - contractors, suppliers, etc. - in the recovery cannot be achieved if they are not registered in the RDA’s CRCS. Therefore, regulations **MUST** include specific requirements on the RDA to get the contractors/suppliers registered.

Additionally, the regulations should also require the linking of RDA’s CRCS with that of the Government, so that those who are registered with the Government CRCS can be considered for RDA’s procurement processes without having to be registered again.

The draft regulation does not reflect sufficiently the principles related to **participation of local suppliers and local employment**. The only references are in sections on Local Content and Domestic Preference. It is suggested that principles 7-14 (related to participation of local suppliers/contractors/consultants) and principles 16 and 18 (related to local employment) be explicitly stated in the regulations as a set of guiding principles in Part IV.

### 3. INSTITUTIONAL ARRANGEMENTS

Beyond the fundamental objective of ensuring a timely, effective and efficient recovery, the Government sees recovery as an opportunity to build capacities of the public service, both its systems and personnel, for optimal delivery of services, while drawing upon the collective expertise and resources of partners. The institutional arrangements should therefore, supplement and strengthen the existing capacities and not supplant it.

The institutional arrangements for recovery also emphasise the significance of a BVI-led recovery with the central Government playing the key role in articulating the recovery priorities, coordinating and monitoring the implementation of recovery and facilitating a collaborative process for implementing the Recovery to Development Plan.

The key institutions involved in the recovery are the Ministries (led by Premier's Office), the Disaster Recovery Coordinating Committee (Premier's Office), the RDA, Private Sector, NGOs and Development Partners.

In order to strengthen the institutional arrangements, the following recommendations are suggested:

#### 3.1 Central Coordination of Recovery

##### RECOMMENDATIONS:

Ensure that **central coordination of the recovery** continues to be led by Premier's Office.

Institutionalise the coordination function within Premier's Office to ensure that the Premier's Office continues to have a **dedicated team** responsible for the central coordination of recovery, both currently and in the future. Institutionalisation may also require **changes to the Comprehensive Disaster Management Strategy**, or embedding these resources within a **policy/planning unit** within Premier's Office.

Engage **Disaster Recovery Coordination Committee** for a further 6 months to support the coordination function, and cloak it with sufficient authority to deliver on the coordination function.

### ***Supporting Rationale***

The Government's leadership of recovery is well established historically and is underpinned by the Disaster Management system and policies that unambiguously attribute the responsibility of recovery to the Premier. As the Ministry responsible for Recovery, Premier's Office will have the continued function of monitoring recovery programmes, projects and policy initiatives, whether implemented by the RDA, Government Ministries/Departments or other stakeholders including private sector, NGOs and development partners.

To fulfill the recovery mandate of the Premier's Office, Government has a dedicated team responsible for central coordination of recovery within the Government as well as with all relevant stakeholders, including the RDA. It is important that institutions, processes, implementation structures and modalities firmly respect this principle, and adhere to it in both practice and spirit.

The Disaster Recovery Coordinating Committee (DRCC), established by the Cabinet in October 2017, has been performing this function, on behalf of the Premier's Office. The DRCC should be allowed to continue to provide the recovery coordination support for the next six months, working closely with the Premier's Office, with the objective of transferring the lion share of this responsibility to a designated person or persons within the Premier's Office. This will ensure that there continues to be central coordination, reporting and liaison amongst the various stakeholders and general oversight of all recovery related matters.

Beyond DRCC's engagement the recovery coordination must be institutionalised within the Premier's Office. This could be achieved by creating a dedicated team similar to the DRCC or have this function embedded in a new Policy and Planning Unit within the Premier's Office (under the auspices of the public service transformation initiative).

Irrespective of the structure, the team should be empowered with sufficient authority to effectively support the recovery across all sectors, with dedicated personnel and resources.

### 3.2 Recovery and Development Agency

#### RECOMMENDATIONS:

Government should clarify and further **articulate the role of RDA** as a supporting institution and key implementer for delivering the recovery.

The Premier's Office as part of its recovery mandate should take the lead in **periodically assessing the performance of the institutional arrangements** established for recovery, including the RDA.

#### *Supporting Rationale*

The Government established the RDA as a key implementer of the Recovery to Development Plan, along with the Government Ministries/Departments, Statutory Bodies, NGOs, the private sector and development partners. Section 2.1.1 above recommends that for avoidance of doubt and it should be clarified in law that the RDA's primary responsibility to ensure that the Recovery to Development Plan should be subject to the Government's direction via it setting out its priorities. Equally, this should be clarified and articulated clearly to the RDA and the Public.

The Agency is tasked with driving the recovery process by fast-tracking the execution of projects and ensuring proper coordination, both with government Ministries and with external partners.

However, as an agency in its nascent state, with no track record of implementing recovery projects, limited historical, cultural and contextual knowledge, and untested operational mechanisms, the Government sees it as a necessary risk mitigation measure to not overburden the RDA with projects that it may have limited capacity to implement. Hence, instead of assigning all projects to the RDA, the Government will determine based on a set of objective criteria, the most appropriate implementing agency for each project, whether recovery or development.

It is the Government's expectation that the institutional arrangements for recovery, including the RDA, will evolve and grow organically in a manner that is not only cost effective and efficient, but also leverages and supports the technical competencies and resources that exist in the public service without supplanting them.

### 3.3 Ministries/Departments/Statutory Bodies

#### RECOMMENDATION:

Clearly articulate and ensure that Ministries are fully aware of their roles and responsibilities in delivering the recovery.

#### *Supporting Rationale*

As one of the key implementers of the Recovery to Development Plan, the Ministries, along with their Departments as well as Statutory Bodies will be responsible for leading recovery in their portfolios and implementing specific recovery and development projects, where capacities exist.

Ministries will be responsible for establishing necessary systems and processes for **planning, project management and reporting** as it relates to these projects. The Premier's Office will compile the monthly status updates received from the various Ministries as well as the RDA to **periodically assess the progress of recovery**.

For those projects and initiatives implemented by the RDA, the Ministries, as the clients of the RDA, will be responsible for articulating in the form of clearly stated requirements, the desired outcomes that are in accordance with the Plan, including defining the functional and project requirements for each activity listed therein.

While the specifics of the relationship between the Ministries will be guided by the regulations, the Ministry through their Liaison Officers will be responsible for **coordinating with the RDA and monitoring the project** to ensure it meets the requirements. Given the critical role of the Liaison Officers, Ministries are required to appoint suitable officers with requisite skills. The Premier's Office will also coordinate with the Liaison Officers and facilitate their capacity building, in partnership with the RDA.

Some of the projects, programmes and policy initiatives included in the Recovery to Development Plan will require further engagement with the public at large and relevant stakeholders to ensure that they meet the recovery needs and contribute to the strategic outcomes of the sectors and sub-sectors as defined in the Plan. These engagements will be spearheaded by the Ministries. The Ministries will solely be responsible for leading policy development, in conjunction with all relevant stakeholders.

### 3.4 Private Sector, NGOs and Development Partners

#### RECOMMENDATIONS:

Develop a **strategy for greater engagement of the private sector** in the recovery, including consultations on all aspects of the recovery, as well as funding and implementing various recovery projects.

Strengthen or create new **partnerships with development partners** to support the recovery.

#### *Supporting Rationale*

The successful implementation of both the recovery and development projects, programmes and policy initiatives will require sustained engagement with private sector, civil society (NGOs) and development agencies, who can provide technical and/or financial resources in specific areas.

The private sector has been playing a significant role in the recovery of the Territory, including the provision of humanitarian assistance as well as the repair of schools and other facilities. Recognising the private sector as one of the implementing partners for delivery of the RDP, Government should adopt a **proactive and structured approach towards private sector engagement**.

The Premier's Office in conjunction with the RDA should develop a strategy for engaging the private sector in the recovery and organise regular consultations with relevant actors to build strong partnerships to accelerate recovery. The strategy will be also an integral part of the Government's resource mobilisation efforts.

In addition to the RDA, Government Ministries, Departments and Statutory Bodies, the Government should strengthen existing partnerships as well as build new ones with various development partners, including the United Nations Organisations, Regional Organisations and International NGOs, to access technical and financial assistance in support of its recovery efforts.

Towards this, the Government should enter into **partnership agreements with the development partners** to seek support in specific areas, in line with its priorities and where such organisations have the requisite experience and expertise. The International Affairs Secretariat in the Premier's Office should lead these efforts, in collaboration with the Ministries and the RDA, starting with identification of areas where such support is necessary.



#### 4. RECOVERY TO DEVELOPMENT PLAN IMPLEMENTATION

The Virgin Islands Recovery to Development Plan approved by the House of Assembly in October 2018 was developed through a consultative planning process, including eight stakeholder and fifteen community consultations.

Projects, programmes and policy initiatives in the Plan, across five priority sectors and associated subsectors, strive to realise the vision of the BVI as ***“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.”***

The Plan is being implemented by the Government with the support of the Recovery and Development Agency, private sector, NGOs, and development partners, including UN agencies.

The experience of implementing the Plan highlights the need to strengthen project planning and implementation capacities, improve procurement processes and institutionalise policy development to support recovery projects. Review of institutional arrangements and the performance of implementing agencies underscore the importance of using objective criteria to determine the entity best suited to implement a project. Towards achievement of these objectives, the following recommendations are made.

##### 4.1 Project Allocation by Implementing Agency

###### **RECOMMENDATION:**

Develop and institute clear and measurable criteria to determine which projects in the Recovery to Development Plan will be implemented by the RDA.

### ***Supporting Rationale***

In the implementation of the Plan, decisions related to implementing agency for a particular project should be made by Government based on the capacity and comparative advantage of the entity, using objective criteria and not solely based on the funding source.

To do otherwise will invariably result in fatal loss of opportunity for the BVI Government to engage and utilise its competent resources, as well as to build capacity, and moreover to be excluded from development projects and initiatives that fall squarely within the Government's constitutionally devolved ministerial portfolios.

The following criteria developed by the Ministry of Finance to determine which projects should be allocated to the RDA, may be used:

<b>Criteria for recovery implementing agency – RDA</b>	
I	high investment cost >\$3million
II	require a high degree of technical support not directly in the public service
III	require an extensive business case
IV	have a high expected return on investment
V	evidence that RDA assistance to Ministries will yield added value to the execution of projects
VI	evidence that RDA assistance to Ministries will allow for needed capacity building within the services
VII	not have been started by GOVI utilising its own funds or in partnership with an NGO or private sector

Certain projects allocated to the RDA in the 2019 Capital Investment Plan (CIP) meet two or more of the criteria. In practice uniform application of the criteria is encouraged.

Moving forward, these could be further refined to determine the minimum number of criteria that should be met, introduce weights to specific parameters based on their relative significance and minimum scoring for projects to be allocated to the RDA.

## 4.2 Transparent and efficient delivery of Projects

### RECOMMENDATIONS:

Strengthen government capacity to undertake **Project Planning and Implementation** effectively through the following:

- Augment the human resources of Project Services Support Unit (Ministry of Finance) and Public Works Department to assist Ministries with project planning, design and cost estimation.
- Build capacity of public officers across Ministries and Departments in project planning, including development of Statement of Requirements/Terms of Reference, Options Analysis and Business Case Development for projects and policy initiatives.
- Mandate all Ministries/Departments to use standard project management tools to maintain up-to-date information on the status, including expenditure, related to all recovery projects and policy initiatives under their respective portfolios.

### *Supporting Rationale*

Government has already embarked upon a series of measures to strengthen its economic and fiscal management practices, including those related to delivery of projects. In order to improve the transparent and efficient delivery of recovery projects and initiatives, it is important to undertake systematic planning and implementation of all recovery projects in line with Protocols for Effective Management and Public Financial Management legislation. The measures stated above are recommended to improve the delivery of recovery projects.

These measures would also help to achieve the objectives of improved and efficient delivery of public services, thereby contributing to good governance. Efforts should be made to ensure that capacity building of the public service for efficient, effective and BVI-led recovery is fully integrated in the wider Public Service Transformation initiative.

### 4.3 Monitoring and Reporting

#### **RECOMMENDATIONS for Monitoring:**

Establish a **Monitoring and Evaluation system** to track the progress of recovery across all sectors as well as stakeholder groups.

Reinstate a government-wide **Project Management system** (ECLIPSE) to track the progress of individual projects and train public officers in its effective utilisation.

#### **RECOMMENDATIONS for Reporting:**

Require Ministries to provide **Monthly Updates** on the status of recovery projects and policy initiatives, using the Recovery Monitoring Template.

Conduct **Periodic Review of the status of recovery** through monthly meetings with Permanent Secretaries of all Ministries.

Prepare **Quarterly Reports** on the status of recovery to be shared with all stakeholders and disseminated to the public.

#### **RECOMMENDATIONS for Communication:**

Expedite the appointment of **Communications Director** in the Premier's Office to provide leadership and strategic advice to overall communication on all aspects of recovery.

Develop and implement a **Communication and Public Engagement Strategy and Plan** for regular reporting on the progress of recovery.

Enhance visibility of progress made in recovery by developing a **Dedicated Webpage** in the Government website and linking it with existing webpage on the CDB RRL as well as other relevant websites including RDA's.

### ***Supporting Rationale***

For an inclusive, transparent and BVI-led recovery it is critical to ensure that recovery and development projects and policy initiatives are monitored and evaluated periodically and the information shared with all stakeholders in a transparent manner.

The establishment of a clear process for tracking implementation of the Recovery to Development Plan is necessary to obtain a comprehensive view of the status of recovery in the Territory and to take course correction measures, where required.

The recommended measures will not only help achieve these objectives, but also contribute to the Government's vision of an inclusive and transparent governance system.

## **5. FINANCING ARRANGEMENTS**

### **5.1 Funding Needs and Sources**

The damage and losses sustained by the Territory in 2017 were substantial – in the region of \$2.6 billion<sup>4</sup>. Damage to critical infrastructure linked to tourism, telecommunications, electricity and water and sewerage along with roads, ports, public and commercial buildings and houses was significant.

The Recovery to Development Plan outlines a preliminary projected financial need of approximately **US\$580.8 million** spread over a series of recovery and development projects, programmes and policy initiatives with an anticipated seven to ten-year delivery timespan.

Although this level of expenditure will be refined as projects, programmes and policies are prioritised, costed and full business cases developed, this amount still signifies the magnitude of the resourcing required to restore the Virgin Islands' economic viability and put it on a path of sustainable growth.

As the Government could be constrained to borrow at this level, a mix of funding sources will be required. These could include a combination of government budget spending, loans underwritten by the UK guarantee, insurance funds, grants, public-private partnerships and private sector investment. In order to ensure adequate financing of projects and alignment of projects and programmes to the 'best' funding source or the combination thereof requires careful consideration and analysis.

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<sup>4</sup> Assessment of the Effects and Impacts Caused by Hurricanes Irma and Maria – British Virgin Islands (2017) – UNECLAC, IDB and Government of the Virgin Islands.

#### **RECOMMENDATION:**

A **funding strategy/policy** should be developed considering the following:

- Loan conditionalities under the UK Loan Guarantee including borrowing terms- including interest rates and repayment periods, type of financial instrument, type of projects eligible for financing;
- Whether the project provides a return on investment; If there are any forecasted project cash flows;
- Project value thresholds for type of financing method – loan, recurrent surplus, PPPs, etc.;
- Impact (economic and social) of project on priority sectors;
- The importance or relevance of the project for future development of the Territory; and
- Project type - infrastructure rebuilding, social infrastructure, including educational and health facilities.

#### ***Supporting Rationale***

Decisions on project financing can be complex and require for the most part weighing the costs and benefits of each financing approach or combination against the size of the project, intended impacts, timeframe for delivery, intended benefits of the project, etc.

Objectively taking into consideration these parameters in a funding strategy/policy setting out clear criteria for choosing a particular funding source or combination thereof will result in a better alignment of project to financing mechanism.

## **5.2 Funding 2019 CIP, Phase One Recovery Programme and other RDA projects**

In 2019, the recovery will be driven by the Government's CIP which is recovery focused and the Phase One Recovery Programme (6-month Accelerator Programme), which was approved by Cabinet in July 2018 to build momentum of the recovery. It focuses resources on projects that could be delivered quickly and achieve key outcomes in the areas of tourism, education and recreational facilities, housing, emergency land and marine shelters, law enforcement institutions and key government infrastructure.

Ensuring that financial resources are available in 2019 to execute projects is critical. Otherwise this could hinder implementation and negatively impact the progression of the recovery.

#### **RECOMMENDATION:**

Consider utilising currently available funding sources (existing CDB RRL, other outstanding CDB loan, 2018 recurrent surplus, insurance proceeds and grants) for additional funding for the Phase One Recovery Programme and RDA projects allocated under the 2019 CIP instead of “**new loans**” as per 2019 Budget.

#### ***Supporting Rationale***

Currently the 2019 CIP will be implemented by Government and the RDA and is funded by a combination of:

- Existing CDB RRL - focuses on larger infrastructure projects including public buildings, schools, road and retaining wall structures, ports, water and sewerage and the new NEOC building.
- **New Loans (RDA projects and Phase One Programme only)** – derelict vessel removal, rehabilitation of Government buildings, etc.
- 2018 recurrent surplus (local funds) – L-shaped building (ESHS), multi-sports complexes, small tourism related rebuilds – bathrooms, national parks, etc.
- Insurance proceeds – public buildings including the CAC and Fishing Complex
- Grants

Negotiating new loans to fund only RDA executed projects at this juncture might be premature and better left as part of the UK Loan Guarantee discussion. Additionally, developing the funding strategy/policy may reveal that new loans may not be deemed the “best” funding source for these projects.

The reallocation of funding sources may require a review of the 2019 CIP and a further prioritisation of projects to ensure that the budget is still within the fiscal space set by the MTFP and available financial resources.

To ensure consistency with public financial management best practices it is important that all projects within the CIP have a credible and realisable source of funding.

### **5.3 Funding Recovery and Development Beyond 2019**

As the Government contemplates the future development of the Territory, financing options and the pace of recovery will be at the forefront of any decision making. The UK Government has provided the Government with a guarantee of up to 300 million pounds. This will allow access to additional funding, as required, as the rebuild and redevelopment of the Territory progresses.

It is a certainty that development of the Territory will involve implementing large infrastructure projects and these will require substantial resources. Therefore, determining the “best” finance options is critical.

Possible options with respect to financing recovery and development projects are as follows:

- **No borrowing through the UK Guarantee.** This option assumes that recovery will be financed entirely using Government’s own resources, grants and existing loans, without accessing the UK loan guarantee.
- **Borrowing through the UK Guarantee as required.** This option assumes that the recovery will be financed through a combination of Government’s own resources, grants, existing loans and loans leveraged using the UK guarantee.

**RECOMMENDATION:**

Consider borrowing through the UK Guarantee as required to fund rebuilding and redevelopment of the Territory.



### ***Supporting Rationale***

**No borrowing through the UK Guarantee** will require the Government maintaining recurrent surpluses into the foreseeable future. Given that financial services revenue makes up over 60% of Government collections, a downturn in incorporations and re-registrations could severely impact the Government's ability to finance the recovery.

As a result of the external pressures on the industry associated with requirements for public registers and economic substance along with negative impacts from EU blacklisting and other global developments, the unpredictability of future revenue from financial services is a reality.

Of additional consideration is the cost of the recovery. Large infrastructure projects such as road reconstruction (indicative costing in the region of \$90 million), renewable energy sector (preliminary estimates in the region of \$100 million) and redesign of the water and sewerage network (estimated cost over \$10 million) may outstrip current and future surpluses, thus hampering the pace of the recovery.

A slow recovery has direct implications for the future development of the Territory and the ability of the Government to fulfil its 4-year mandate as articulated in its manifesto.

**Borrowing through the UK Guarantee** could be utilised for financing larger infrastructure projects related to transportation (roads, ports), water, sewerage, energy sectors that will yield return on investment and could be implemented in collaboration with the RDA.

Whilst the Government's resources can be used to finance projects that are critical for the human and social recovery as well as the key policy initiatives and institutional arrangements to create an enabling environment for recovery of all sectors.

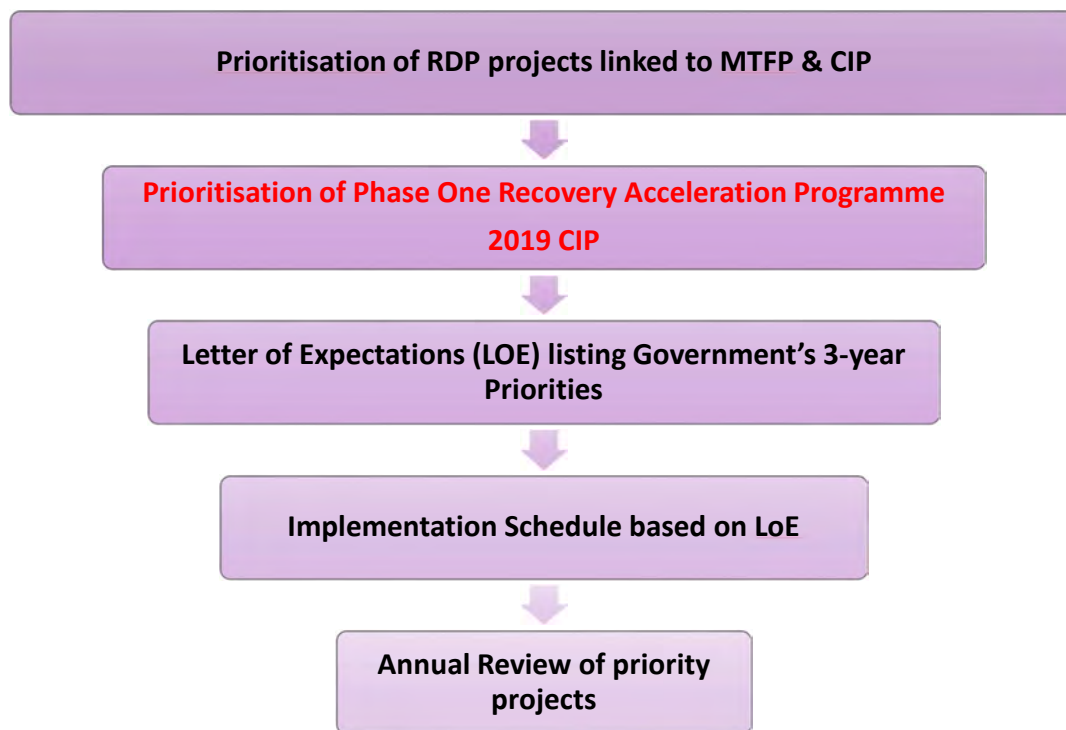
## 6. REVISED RECOVERY PRIORITIES

2019 is a critical year for the BVI and will set the tone for how the recovery continues to progress. Consequently, the Government's 2019 CIP should outline projects that will ensure that crucial infrastructure, both of social and economic significance, will be restored balancing the need to recover quickly and Territory's future development needs, while keeping at the forefront the necessity to build back to a resilient state.

Project prioritisation and planning, identification of appropriate financing methods along with allocation of projects to best-suited entities for project delivery are some of the important pre-requisites for an efficient, continuous and results-driven recovery.

### 6.1 Prioritisation Framework

Prioritisation in the current institutional framework for recovery follows this sequence.



#### RECOMMENDATION:

The Government should prioritise based on clear institutional framework as presented above.

## 6.2 Priority Outcomes and Areas for 2019 CIP

Prioritisation is a critical part of project implementation and will allow the Government to assign scarce resources to the most important projects leading to a higher probability of achieving the maximum value for money. Priority projects identified in the 2019 CIP and Phase One Programme<sup>5</sup> will help the Territory to achieve the following outcomes in specific areas that are critical to advancing the recovery.

PRIORITY OUTCOMES	PRIORITY AREAS
Restored <b>Government functionality</b> for providing basic services	<ul style="list-style-type: none"><li>• Public and administrative buildings, courts, emergency network</li></ul>
Rehabilitated <b>tourism</b> product	<ul style="list-style-type: none"><li>• Restoration of tourism hot spots and infrastructure</li></ul>
Restored functionality of basic <b>human and social services</b>	<ul style="list-style-type: none"><li>• Education – major repairs to public schools</li><li>• Health – repairs to clinics and waste management facilities</li><li>• Social – housing and social assistance, repairs: emergency shelters, recreational facilities</li></ul>
Rehabilitated primary <b>physical infrastructure</b> linked to priority sectors	<ul style="list-style-type: none"><li>• Roads and Coastal defences repairs and re-construction</li><li>• Sewerage/water network – restoration and re-development territory wide</li><li>• Security – infrastructure and equipment</li><li>• Transportation–seaport repairs</li></ul>

### RECOMMENDATION:

Prioritisation should be based on clear and agreed criteria, considering priority outcomes presented above.

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<sup>5</sup> Although it did not achieve its envisioned 6-month implementation timeframe projects still deemed priority are currently being implemented by the RDA and some form part of the 2019 CIP.

### 6.3 Priority Projects by Outcome and Area

See attachment for the project listing.

#### **RECOMMENDATION:**

Review and agree on the list of priority projects for the 2019 Capital Investment Plan.

#### ***Supporting Rationale***

The projects listed in the attachment are based on an initial prioritisation exercise conducted by the DRCC (Premier's Office) and PSSU (Ministry of Finance) guided by the criteria in section 6.2. The majority of these projects are contained in the current version of the 2019 Draft Budget B.

If any changes are made to the project listing it is important that funding sources are identified. The 2019 CIP budget should therefore reflect all the priority projects.

## 7. NATIONAL DEVELOPMENT STRATEGY

The Recovery to Development Plan includes several development projects and policy initiatives. This was inevitable given the extent of devastation caused by the 2017 disasters and the public demand to expand the scope of the RDP beyond just recovery projects.

In the absence of a comprehensive National Development Plan, the RDP included those priorities that are currently included in the strategic frameworks of various Ministries and other identified future needs of the Territory. However, they do not represent the wide array of actions that a development plan with a longer planning period should include.

In addition, the short duration of the recovery planning process did not permit extensive consultations with all sections of society that are critical for articulating long-term national development priorities and actions.

The following recommendations are made with respect to the national development planning process.

## RECOMMENDATION:

Develop a National Development Strategy to articulate the long-term development needs of the Territory, starting with the following measures:

- Seek **technical assistance** from development partners such as the UN ECLAC and UNDP that have the relevant expertise and experience in assisting countries in the region with national development planning.
- Set up a **National Development Planning Committee** to coordinate the process, under the leadership of the Premier's Office, with representation from relevant Ministries and other stakeholders.
- Establish a dedicated and well-resourced **institution for development planning**, without replicating existing institutions, with the mandate to lead and coordinate the process as well as monitor progress.

## *Supporting Rationale*

Using the Recovery to Development Plan as a foundation, the National Development Strategy development process should build upon various ongoing initiatives such as the SEED Development Framework by the Macro Fiscal Unit, Ministry of Finance, the National Physical Development Plan and other strategic planning frameworks and initiatives across the sectors. developed through a participatory process, involving all stakeholders.

While aspiring to achieve the universally accepted Sustainable Development Goals, the National Development Strategy for the Virgin Islands should attempt to localise these, making them relevant to its specific development context and needs of its population. It should draw upon the expertise and resources of private sector, civil society and development partners including the UN system to find sustainable and innovative solutions to the development challenges the Virgin Islands faces.

Along with the development of the National Development Strategy, the establishment of a dedicated institution is critical to the sustainability of these efforts and in ensuring that development planning is embedded in the DNA of public service.



Foreign &  
Commonwealth  
Office

King Charles Street  
London SW1A 2AH

Minister of State

The Hon. Andrew Fahie  
Premier, Office of the Premier  
Government of the Virgin Islands  
33 Admin Drive, Road Town  
Tortola VG1110  
British Virgin Islands

22 September 2019

*Dear Andrew,*

I was pleased to welcome you to London from 11-13 September for constructive discussions on the many issues of shared interest between the UK and the British Virgin Islands (BVI).

This was a timely visit, just over two years on from the devastation wrought by Hurricane Irma and with the impact of Hurricane Dorian in the Bahamas fresh in the mind. I was especially pleased that you were able to tour the FCO Crisis Centre with the Governor, viewing an important part of the UK crisis response capability. In addition, you had meetings with Minister Duddridge at the Department for Exiting the European Union, Ben Merrick Director of Overseas Territories Directorate and colleagues from the Treasury. It was good to hear from you that your delegation also held productive talks with Treasury and FCO officials on the matter of the UK loan guarantee.

It was useful to receive on the morning of your visit, your letter dated 10 September, which set out the key points you wished to discuss during your time in London. These were mainly in relation to the Protocols for Effective Financial Management (PEFM) and the conditions outlined in the High Level Framework for UK support to BVI Hurricane Recovery, dated 24 November 2017. I agreed to set out in writing the UK Government's position. I was also pleased to receive your letter dated 17 September setting out your record of the visit, and I am using this letter in part to respond to the points it raises.

Protocols for Effective Financial Management (PEFM)

As is the case for other Territories, the PEFM demonstrate a commitment to responsible Government and contribute to the BVI's reputation as a jurisdiction of high repute. The policy principles it sets out - effective medium term planning, value for money, risk management and accountability - are consistent with global standards and best practice.

During your visit, discussions took place concerning the borrowing ratios as set out in the PEFM. You specifically asked whether money borrowed to address catastrophic weather events could be exempt from the borrowing ratios and sought a suspension of the ratios for a set period of time to support the BVI's recovery. You also suggested that

consideration should be given to the impact of external economic shocks which may have a negative impact on the BVI economy, and asked for a review of the PEFM.

I know that my colleagues, the Exchequer Secretary to the Treasury, and the Director of the Overseas Territories Directorate wrote to you recently on these issues to set out the UK's position. I, and others, wrote to your predecessor on the same subject. I support all the arguments made in those letters and wanted to re-iterate a few points.

On the matter of external shocks, I would note that as with all Governments, an effective medium term fiscal plan (MTFP) should assess the impact of all proposals and decisions on expenditure, revenue and borrowing. It should set out key risks and used as the primary guide for addressing issues in practical and fiscal terms. To the extent possible, I would therefore expect your Government's MTFP to take account of the impact of potential economic shocks and set out your proposed mitigations.

The borrowing ratios in the PEFM ensure that any debt incurred by the BVIG is affordable and consistent with the delivery of macroeconomic and fiscal sustainability, as well as financial stability in the short to medium term. As has been communicated previously, in the context of delivering the BVI Government's hurricane recovery, we recognise that any new borrowing – guaranteed by the UK Government or not - could well cause the BVI to breach the ratios for a certain period of time.

Removing or suspending the ratios would mean that there was no full picture of the BVI Government's debt position. This is not a sound approach to take. The ratios must relate to all borrowing, whether recovery-related or not, since that overall total is of course what the BVI Government will have to repay. Having an accurate picture of the level of debt is crucial for the assessment of whether servicing the debt is affordable. So, while we can be flexible in allowing the BVI Government to go out of compliance with the ratios for a certain period, provided that there is a plan to get back into compliance, we cannot countenance your proposals.

Should your government's analysis indicate that BVI would breach the ratios, we will work with you to agree a date to return to compliance. This would include agreeing interim targets and appropriate mechanisms on public financial management that set out a realistic pathway to return to compliance. In practice, this would mean working with your government in a collaborative manner to deliver a realistic plan to ensure the breach of the ratios would reduce over time, given the amount you wish to borrow and the timeframe. It would likely mean BVI submitting public financial management data to the UK on a regular basis to demonstrate how it is returning towards compliance with the ratios. The detail of this would be set out in a transitional provisions annex to the PEFM. My officials stand ready to discuss this with your team.

The UK Government judges that the PEFM are correct and has no plans to amend or review them. The PEFM already includes a reference to borrowing in 'exceptional circumstances' which covers catastrophic events and also gives flexibility for consideration of other events such as economic shocks. Whilst we would be willing to consider a specific suggestion from the BVI Government as to wording to describe what qualifies as an 'exceptional circumstance' under which the BVI Government may borrow to fund capital expenditure, this would not have any effect on what is already possible. My preference would be to make any such reference clear as part of the transitional provisions annex.



### High Level Framework for UK Support to BVI Hurricane Recovery

As was set out in our discussion, and as has been the case since its inception in November 2017, the High Level Framework sets out the principles and conditions upon which the UK Government's support to the BVI Government on Hurricane Recovery is based. They ensure that all recovery measures deliver for the people of the Territory, represent value for money and are in line with international best practices. The Framework sets out that the detail on principles and conditions will be confirmed in detail in a 'Partnership Agreement'.

The measures that have been put in place to deliver the BVI's recovery, including the establishment of the Recovery and Development Agency (RDA) set up through the Recovery and Development Agency Act, have been designed with the principles of the High Level Framework in mind. As was set out in our discussion, the principles and conditions in the Framework represent the UK's offer, and are not for negotiation.

The BVI's Recovery and Development Agency Act sets out that the RDA's function is to ensure the timely and proper implementation of the BVI Government's Recovery to Development Plan. I understand that it is your government's intention to amend the Recovery to Development Plan. You agreed to submit this revised plan to us by 27 September 2019.

The Plan is of course vital, and should be the cornerstone of your government's recovery and development work and detail what is needed across the Territory to effect strong and sustainable reconstruction. It is this vision that will ensure an effective, coordinated and resilient recovery. The Plan, and specifically the implementation schedule to complement it, will need to assess the value of projects, the timescales for completion and include an assessment of the calculation of the level of financing required, and how it might be sequenced. This should inform the decision that you will need to take as to whether the BVI Government wants to fund any of its recovery through borrowing under the UK loan guarantee.

I wanted to note that one of the conditions of the UK's support for BVI's hurricane recovery as set out in the Framework was the *immediate establishment of the independent recovery agency delivery structure to be the sole structure for investments in recovery, irrespective of whether the investment is guaranteed by the UK Government*. I know the Governor recently set out that proceeds from insurance settlements or funds from Government revenue or surplus should, of course, be allocated to the Consolidated Fund, and it is a decision for the BVI Government as to whether they are allocated to the RDA, via the Trust, to support recovery projects as set out in the Plan. I support that statement.

Notwithstanding that, I would have serious concerns if your Government were to introduce measures that would undermine the condition set out above and to limit the financial contributions to be paid into the Virgin Islands Recovery Trust. For example, I would not want to see projects moved out of the Plan only to appear elsewhere, even if under a different name, as a means of diverting funds away from the Trust. The RDA should be the body with the technical capacity to work with lead Ministries to ensure the timely and proper implementation and execution of your Plan. This is a core condition of the offer of the loan guarantee, as noted above.



It is of course a choice for the BVI Government as to whether or not you want to make use of the guarantee. As Ben Merrick's letter set out, the offer was made in November 2017 with the sole intention of supporting the BVI to lead its own recovery, and to save the Territory a great deal of vital money. Discussions will need to take place should the BVI Government wish to borrow without taking up the offer of the loan guarantee and the borrowing ratios are breached; and conditions will be required. This is particularly important given that borrowing outside of the guarantee is likely to be a more expensive solution and therefore represent worse value for money for the BVI. Obviously, any funds used to deliver the Recovery and Development Plan – whether guaranteed or not – should be allocated to the RDA, via the Trust.

I note you suggested that the Financial Secretary should be able to access monies in this Trust provided by the Caribbean Development Bank or other lending institution in the event that the administrators of the Trust do not administer the funds appropriately. I do not instinctively see the need for this but I would be willing to consider further detail on your specific concerns and clarification on whether the addition of the Trustee to relevant lending agreements would rectify this issue.

You also asked for removal of two further points set out in the High Level Framework. Firstly, the reference to the divestment of public assets that sit better in the private sector and secondly, the reference to recovery programmes including green, resilient projects.

As set out above, the Framework is not open for renegotiation. I note that the agreement to divest public assets was one of a raft of measures proposed to bolster the short, medium and long-term sustainability of the BVI Governments public finances, given the devastating impact of the hurricanes. This is an important principle. I would be happy to work with you on the detail of this as part of the Partnership Agreement. In relation to your second request, I am pleased that in discussions you recognised the importance of recovery to development ensuring a more resilient and greener BVI, and your desire for BVI to be a centre of good practice on resilience. There are obvious benefits to the people of BVI and potential investors of having a resilient and sustainable recovery. I am therefore surprised at the request to remove the reference. I know the Governor would be happy to discuss approaches and UK support to improve disaster and climate resilience further.

#### Modern Partnership and Good Governance matters

I was struck during our conversation by your aspiration for a strong partnership between yourself, the Governor and the UK, driven, as you set out, by the “four Cs - collaboration, cooperation, communication and consideration”. As I emphasised, I welcome that approach, and I would like to reiterate my offer of a quarterly videoconference with you and the Governor to enhance that communication. I would also like to underline once more that rhetoric does matter, and as we strengthen our relationship it is important to strive to ensure that we focus on our desire for a strong partnership. The Governor is a central pillar in that partnership and he has my full support.

On good governance, you outlined your efforts to bring procurement legislation before the House of Assembly as soon as possible, as well as a willingness to implement more effectively a Register of Interests. There is of course much more to do, as you outlined in your election manifesto, including the implementation of a Ministerial Code. As my

team have made clear on many occasions since you came to power, these are important steps in demonstrating your government's commitment to good governance, and will be essential for attracting more investment to BVI, among other things. I was pleased to hear your commitment to following through on these pledges. I note that the three-month consultation you have undertaken with regional partners on the Ministerial Code must be nearing the finish point, and I would welcome an update on its outcomes. I also encourage you to support the Governor's Group, which has been set up to deliver good governance in other key areas.

At our meeting, we discussed scholarships for those in the BVI. I am sure you will be aware that the prestigious Chevening Scholarship programme operates in the BVI and other Overseas Territories, ensuring talented young people can come to the UK to undertake full-time Master's degrees in any subject of their choice. We were delighted to welcome two BVI scholars to the UK last year, studying Law at the University of Manchester and Queen Mary, University of London. I hope you will encourage further applications from students in BVI. The Governor's Office can provide you with a briefing on that programme if you would find it helpful. I will also look into whether there are other opportunities to expand scholarship and training opportunities in the UK for young people in areas such as aviation, the marine sector and entrepreneurship and update you in due course.

You made reference in our meeting to the increasing number of young people in the BVI who have expressed an interest in joining the armed forces, in particular the Royal Navy. As we discussed, British Overseas Territory Citizens can join the armed forces, although there are sometimes issues with the residency requirements. I committed during our meeting to discuss what more can be done on this with the Minister for Armed Forces and again I will update you in due course.

Finally, as I mentioned, I do not support the intent by some UK Parliamentarians to impose publicly accessible registers of beneficial ownership on the Overseas Territories on a 2020 timeframe. I will continue to argue in favour of a 2023 timeframe, as the Government's response to the Foreign Affairs Committee Report sets out. I hope that you will join your colleagues in the Crown Dependencies and other Overseas Territories in publicly committing to deliver the register by 2023. This will show that BVI is taking a lead on this issue and is committed to the principle of transparency. I hope that you will also reconsider your decision not to join other Overseas Territories in the Technical Working Group discussions.

I am copying this letter to the Exchequer Secretary to the Treasury, the Parliamentary Under Secretary of State for Exiting the European Union, and the Governor of the British Virgin Islands.

*Yours sincerely,*



**LORD (TARIQ) AHMAD OF WIMBLEDON**

Minister of State for the Overseas Territories

Prime Minister's Special Representative on Preventing Sexual Violence in Conflict



## Foreign, Commonwealth & Development Office

Ben Merrick  
Director Overseas  
Territories  
King Charles Street  
London, SW1A 2AH

The Hon. Andrew Fahie  
Premier  
Government of the Virgin Islands  
33 Admin Drive, Road Town  
Tortola VG1110  
British Virgin Islands

24 June 2021

Dear Premier Fahie,

Thank you for your letter of 30 April to the Foreign Secretary regarding the Drugs (Prevention and Misuse) Amendment Act, 2020 (DPMA) and the Cannabis Licensing Act 2020. The Foreign Secretary has asked me to reply on his behalf as the Director of Overseas Territories in the Foreign, Commonwealth and Development Office.

The Foreign Secretary set out his position on the DPMA in his letter of 9 April, and was clear on the reasoning behind his decision. I am glad to hear that you share the Foreign Secretary's concern about the recent seizures in the Virgin Islands and are mindful of the broader international context. Different measures can be used to measure impact in jurisdictions of different size, but it is clear that illegal drugs are a global threat. Drugs devastate lives, ruin families and damage communities all across the world. The UK Government's policy in this area is clear and anchored in education to reduce demand; tough and intelligent enforcement to restrict supply; evidence-based treatment to aid recovery; and coordinated global action. In January the Home Secretary and Health Secretary announced a £148 million package aimed at dismantling the organised criminal gangs who encourage this terrible trade, helping those in drug treatment and recovery to stop drug-related crime, and dealing with the significant health-related harms drugs pose in the UK. Whilst recognising the undoubted successes of law enforcement as you do in your letter, both in the BVI and the UK, there will always be more to do.

In the UK, the Home Secretary commissioned a major independent review in 2019, led by Dame Carol Black, to inform the Government's thinking on what more can be done to tackle the harm that drugs cause. The first part of that review was published last year and provides a detailed analysis of the challenges posed by drug supply and demand, including the ways in which drugs fuel serious violence. Part two of the review is focusing on prevention, treatment services and recovery. The Review findings will feed into wider cross-Government work to tackle the serious harms caused by substance misuse.

Regarding the Cannabis Licensing Act 2020, as the Governor highlighted in his statement of 10 December 2020, the necessary next step before consideration of assent, is for technical discussions to take place between the UK Home Office and the BVI government. This is important given it is the UK Government that is a Party to the 1961 Single Convention on Narcotic Drugs.

I understand that you wrote to the Home Office (Marcus Starling, Head of Drugs Misuse and Firearms Unit) on 9 March 2021 and Mr Starling responded the next day via email offering an initial discussion on a path forward. The Home Office have not yet received a response to that email. They remain keen to assist your government in making progress, particularly in respect to international regulations (including relevant obligations under Articles 23 and 28 of the 1961 Single Convention). Part of these discussions will address the need to provide the necessary assurances to the International Narcotics Control Board (INCB) about safeguards against potential diversion of cannabis to the illicit market. You mention that your proposed controls will conform to international best practice; that is hugely positive and will put BVI in a good position to make progress.

Finally, I would like to address some of the misconceptions regarding UK industry that you raise in your letter, where you quote information from an online news article. Such reporting highlights the intricacies of international regulations in this area and is a useful example of why I am keen to encourage constructive dialogue between our respective officials. The UK has a long and proud history of pharmaceutical innovation and enabling that through licensing with robust, yet proportionate control. The UK does not cultivate or export "medical marijuana/cannabis". Cannabis cultivation in the UK is solely for the purpose of extracting controlled cannabinoids to produce licensed medicines (those which hold a 'Marketing Authorisation'). It is these medicines that are exported. INCB reporting systems necessitate that the active content (the 'base drug') of these medicines are expressed in terms of their starting cannabis content. The INCB's 'Yellow List' contains the full list of internationally controlled narcotics drugs under the 1961 Convention, including conversion factors for calculating the base-drug content. To take one example, Sativex, a medicine licenced for use to alleviate symptoms of multiple sclerosis, is a liquid in the form of an oromucosal spray. For reporting purposes, every 1kg of cannabis extract is considered equivalent to 12.5kg of cannabis; therefore reported exports of cannabis are not exports of botanical material (cannabis flower or leaf).

This is a multifaceted area of international law, and it is incorrect to equate our desire to help build a similarly robust industry in BVI as a form of oppression, or as hypocritical. It is precisely because the UK Government wishes to ensure BVI meets the same international standards that we are keen to offer assistance in navigating this complex area. The UK's obligations as a Party to the 1961 Single Convention are also relevant. I sincerely hope that you will consider permitting your officials to open a dialogue with the Home Office on these issues, in order that we can make progress on this issue.

Yours Sincerely,



**Ben Merrick**  
Director, Overseas Territories



**Our Ref: OP/C4/001**

19<sup>th</sup> May, 2020

**His Excellency the Governor**  
**Mr. Augustus J. U. Jaspert**  
**Governor of the Virgin Islands**  
Office of the Governor  
Road Town  
Tortola VG1110  
British Virgin Islands

Dear Governor Jaspert:

Good day and God's Blessings to you and your family.

I am writing in response to your uncaptioned letter dated 18<sup>th</sup> May, 2020, which references the matter of engaging the UK Military in conducting certain activities in the British Virgin Islands.

Please note that I have carefully reviewed your draft letter dated 30<sup>th</sup> April, 2020, other correspondences and Police Commissioner Michael Matthews' radio interview of 8<sup>th</sup> May, 2020, which was aired on ZBVI radio. Based on the outcome of this exercise, I remain resolute in my statements on this matter, which statements are not unfounded as you allege.

It is clear from this large volume of evidence that you are the one who is misrepresenting the facts in order to justify the placing of UK military personnel in the BVI.

Some of the inconsistencies in your statements, as well as statements from Commissioner Matthews, are itemised below :-

1. In the first instance, in your letter of 18<sup>th</sup> May, 2020, you state that the matter is an offer by the UK Government. In his 8<sup>th</sup> May, 2020 radio interview, and other correspondences, Commissioner Matthews also speaks of an offer from the UK Government. However, the objective of your draft letter of 30<sup>th</sup> April, 2020, is to formally request the detailing of the military team to the BVI.

2. You have said that the military contingent would be a “small” one. However, your draft letter of request asks the UK for a similar response to that which was done in the other Overseas Territories (OTs). The fact is that based on media reports, 12 military officers were assigned to the Cayman Islands and approximately 20 military officers were assigned to the Turks and Caicos Islands.
3. Following on (2) above, the Commissioner of Police has stated in writing, as well as in his radio interview, that the number of UK Military officers deployed to the other OTs were just 2 to 3. The inconsistency of his statements as opposed to the facts is clear, you would agree.
4. In your draft letter, you are representing to the UK Government that the National Security Council (NSC) supports your request for the military assignment. However, of the five officials that comprise the NSC, two officials, the Attorney General and the Commissioner of Police, are ex-officio. Of the remaining three members of the Council, yourself, the Deputy Premier and I, both myself and the Deputy Premier have indicated clearly that we are not in agreement with your request to the UK Government. It is therefore deceptive to claim, as you have, that you have the backing of the NSC.

May I take this opportunity to indicate that the employment of misleading statements to desperately elicit and justify the placement of military personnel in the BVI comes across as highly suspicious.

It is also important to note that the status of one of the ex-officio members of the NSC is in question as a Constitutional breach by you, that of the Attorney General, whose term of office expired on 10<sup>th</sup> February, 2020. I have already highlighted elsewhere with you my concerns over your procrastination in having this post filled in accordance with the Constitution, that you extended the tenure of Mr. Baba Aziz in the post of Attorney General unilaterally and without consulting me as Premier, and that you are seeking to keep Mr. Aziz in the post for another seven months under the pretext of a transition even though an eminently qualified successor has been selected for the post by the Judicial and Legal Services Commission in accordance with the requirements of the Constitution.

5. In your draft letter to the UK Government, you state that the key area for which support is being requested is that of border protection, however, you go on to list roles for the military in other areas.

It is important to note that in his radio interview, Commissioner Matthews praised the “phenomenal job” being done by the officers of HM Customs, HM Immigration and the Royal Virgin Islands Police Force (RVIPF) in protecting the BVI’s borders.

6. Commissioner Matthews has also added that the local agencies have been very effective, especially during the COVID-19 lockdown period, in detecting attempts by persons to enter the Territory illegally.

This reveals your representation to the UK that the local agencies are ineffective in border protection to be untrue.

7. Further, in your draft letter, you state: *"I would welcome support on ensuring that our law enforcement authorities are not overwhelmed and can manage any situations effectively should there be any civil disorder as a public response to the Covid-19 related situation."*

This statement is clear that your intention does not rule out the military personnel becoming directly active in street-level law enforcement.

This is an opportune time to remind you that the Commissioner of Police is on record in numerous places having stated that the "vast, vast majority" of the BVI public have conducted themselves in a very orderly and law-abiding manner during the recent curfews, which are currently being relaxed on a phased basis.

Commissioner Matthews is also on record stating that there is no need for military support for matters of the nature as civil disorder. He has been clear that serious crimes are down and civil disorder is not foreseen.

For you to imply that civil disorder is even remotely a current threat in the BVI for which external help is required is to misrepresent the facts and to impugn the reputation of the Virgin Islands people. It is you who is overstating the threat in the BVI to fit your purposes.

8. The monthly reports submitted to the NSC by Commissioner Matthews since March 2019 have consistently been devoid of any contents related to concerns about drug and human trafficking being out of hand, as well as anything being amiss with the reporting of suspected instances of money laundering.

There have also been no focused discussions in the NSC on this either.

It therefore begs the question as to how these claims can suddenly appear in a document just in time to justify inviting the UK Military into the BVI.

What is also interesting is that Commissioner Matthews has admitted in correspondences that his 3<sup>rd</sup> May, 2020 report was prepared to support the request for the UK Military to come to the BVI that you proposed.

Based on the above, and in light of other ongoing instances where you have been caught in Constitutional overreaching, you can understand why the trust in the Office of Governor, by the BVI public, is diminishing. You can also see how this is disrupting the harmonious working relationship that is supposed to exist between Her Majesty's Representative and the BVI Government.



As such, you would see it is clear that it is you who owes the Government and People of the Virgin Islands an apology and a retraction of inaccurate statements to the UK Government regarding the conduct of the Virgin Islands citizenry.

Further, I note that, having failed to bully me and the Deputy Premier into supporting your actions, you have stated your intention to exercise powers under the Constitution to unilaterally decide on whether you would proceed to request this UK Military intervention.

I do hope, as you contemplate on your exercise of these powers, that you consider the following:-

1. The exercise of powers under the Constitution must be in accordance with the preamble of the Constitution which encapsulates, in letter, the spirit of the document.

The Constitution is underpinned by democratic values that pervade the BVI society; the expressed desire of the BVI people towards their quest for social justice, economic empowerment and political advancement; the generally expressed desire of the Virgin Islands people to become a self-governing people and to exercise the highest degree of control over the affairs of their country at this stage of its development; and recognizing the free and independent spirit of the Virgin Islands people.

And,


2. Your penchant for unilateral exercise of Constitutional powers, in some cases even perceived to be in violation of the Constitution, is indeed characteristic of the Home Rule that was practiced by your predecessors on the ancestors of Virgin Islanders decades ago.

I once again advise that you desist from engaging in Constitutional overreaching, that you stay within the remit of your office, and that you cease your mis-statements about the behaviour of the peace-loving, friendly BVI people.

I reiterate that the Deputy Premier and I, as Members of the NSC, do not support your intended request at the moment on the basis that the evidence does not support the situation that is being portrayed to the UK Government, and that increased military presence on-island may send the wrong message to the law-abiding BVI public. Other areas of need may be identified and considered at a later, less sensitive time.

Do have a blessed day.

Respectfully Submitted,

  
Andrew A. Fahie  
Premier of the Virgin Islands

cc: Baroness (Elizabeth) Sugg, Minister of State for The Overseas Territories





**Our Ref: OP/C4/001**

17<sup>th</sup> December, 2020

His Excellency the Governor  
Mr. Augustus J. U. Jaspert  
Governor of the Virgin Islands  
Office of the Governor  
Road Town  
Tortola, VG1110

Dear Governor Jaspert:

Good day and God's Blessings to you.

I write in reference to the Government of the Virgin Islands Communications and public relations in regards to the Governor's Office and that of the Foreign and Commonwealth Development Office (FCDO) (United Kingdom Government), and third party communications between Governor's Office and other agencies.

Since the hurricanes of 2017, the Governor's Office has had an unusually privileged access to the Territorial Government's Communications avenues and the Department of Information and Public Relations team (Government Information Services, GIS), which reside in the Premier's Office.

While this may have been a convenient arrangement during the extenuating circumstances created by the hurricanes, the method and function of the Territorial Government's official communications apparatus must return to its regular mandate. We have been pleased to extend the courtesy to the Governor's Office.

As we continue to move forward with the realignment of Government functions in accordance with the structure and spirit of the Virgin Islands Constitution 2007 against the backdrop of improving the Territory's preparedness for self-determination, please be advised that I have instructed the Permanent Secretary, Premier's Office that the Director of Communications and GIS will no longer be responsible for issuing communiqués or providing public relations coverage on behalf of the Governor, Governor's Office and the Foreign and Commonwealth and

Development Office. It is the Permanent Secretary via the Director of Communications who directs GIS on behalf of the Premier who is the Minister for Information.

It is more appropriate for the Governor's Office to be responsible for communicating its and FCDO's Country Business Plan and activities through its own press office and communications team, rather than through the Government Information Service channels.

I would, however, request in the spirit of cooperation and as a courtesy, that the Premier's Office and the Premier as leader of Government and Territory of the Virgin Islands receive such communications from the Governor's Office and the FCDO prior to such being issued to the public. The Premier, as the leader of this Overseas Territory must be aware beforehand and not learn of information in the public domain.

GIS will however be approved to issue communications where there is partnership between the Territorial Government and the Governor's Office. This will be done on a case-by-case basis.

I look forward to your cooperation and that of your office as we continue to realign Government functions in accordance with the dual roles of quality service to the public and advancing the Territory and its people in the post-colonial journey to self-determination.

Yours in BVILOVE,



Andrew A. Fahie  
Premier and Minister of Finance

cc: Ministers of Government  
Financial Secretary  
Permanent Secretaries  
Director of Communications



**Our Ref: OP/C4/001**

24<sup>th</sup> December, 2020

His Excellency the Governor  
Mr. Augustus J. U. Jaspert  
Governor of the Virgin Islands  
Office of the Governor  
Road Town  
Tortola, VG1110

Dear Governor Jaspert:

Good day and God's Blessings to you and your family.

Thank you for your letter of 18<sup>th</sup> December, 2020.

With all due respect, constitutionally, the Governor is the representative appointed by Her Majesty the Queen as the Head of State in the Virgin Islands. There is a clear distinction, of which you are aware, between the Head of State and Head of Government, the latter being elected by the people of the Virgin Islands and being the Leader of Government Business in the House of Assembly, embodied in the Office of Premier.

The Governor as a representative appointed by the Queen is responsible for "the delivery of the Foreign and Commonwealth Country Business Plan and activities raising the profile of both the Governor's Office and the United Kingdom among target groups," according to the agreement between the Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom of Great Britain and Northern Ireland and the Government of the Virgin Islands. The FCO through the Governor's Office is responsible for this task.

In that agreement of 2018, you as the Governor signed on behalf of the United Kingdom, while the Premier, as the Head of the elected Territorial Government, signed for and on behalf of the Government of the Virgin Islands.

Your intentional misleading, retrograde thinking and colonial action, are a clear indication of the United Kingdom's refusal to understand and accept that the Virgin Islands is internally self-governing.

I wish to reiterate that the Governor does not report to the legislature nor does the Governor report to the Virgin Islands people, nor is the Governor elected by the people of the Virgin Islands. Instead, the Governor reports to FCO as an appointee of the Government of the United Kingdom. Therefore, the Governor is not the head of the Government of the Virgin Islands.

You are aware that the Virgin Islands people go to the polls and exercise their hard-fought democratic right, as made clear in the Constitution, to elect their Government. They vote their conscience for a Government of the Virgin Islands of their choice, freedom that our foreparents fought the United Kingdom for over decades.

You are also well aware that the party that wins the majority of seats, its Elected Members all signs a letter indicating to the Governor who they wish to be the Head of the Government of the Virgin Islands - the Premier.

Secondly, consistent with established policies dating back to 1967, the Government Information Service (GIS) was established for communicating Government policy, not the Governor's Policy or FCO's Business Plans and activities. The BVI cannot promote its policies on the Governor's Office or FCO's site. In fact, there is no evidence of such privileges being extended as that would be inappropriate action. I am also mindful that the Premier cannot instruct any officer at the Governor's Office whether from the BVI Government team or the FCO team, to disrespect established policy.

Based on the long-standing policies, the practice has been that promotion of the Governor and the UK's agenda is outside of the scope of the GIS. Such promotion is handled by the UK or its representative using UK human, financial and other resources.

The reason for this is because, as I have reminded you on diverse occasions prior, while in theory the policy agendas of the UK Government and the BVI Government are supposed to work in synergy, the reality is that the two agendas are not the same and may even be described as competing or even conflicting. For instance, the UK's policy focus is on Global Britain – positioning the UK dominance in the global space for the UK people. The BVI's policy focus is on improving its position for self-determination for the people of the BVI.

Therefore, I wish to reiterate that since the hurricanes of 2017, the Governor's Office has had unusually privileged access to the Territorial Government's Communications avenues and Information and Public Relations team, which reside in the Premier's Office. We have been pleased to extend the courtesy to the Governor's Office, but while this may have been a convenient arrangement during the extenuating circumstances created by the hurricane events, the method and function of the Territorial Government's official communications apparatus is now reverted to its regular mandate and mode of operation in accordance with the established policy.

The Permanent Secretary and the Director of Communications have already been instructed in my previous letter to you. My directive therefore stands.

The principal task of GIS officers, according to the policy, is to present, describe and explain the policies and activities of the Government department of which the Minister is head, and of advising the respective Department on the public's reaction to same.

The GIS is an internal organ of the Premier's Office. It is not separate, nor is it apart from. The Governor is not authorised to instruct a staff member within the Premier's Office or any other Ministry or Office, than the Governor's Office or the Deputy Governor's Office. Public officers should not be exposed to this form of intimidation, nor will I as the leader or my Government who were democratically elected by the people.

It is disappointing the continual practice of the Governor's Office to use the GIS team and local Government funding to do extensive public relations using Government channels and resources to promote the Global Britain campaign on the backs of the Public Service and Government of the Virgin Islands without agreement.

This is not an ethical, transparent action on the part of your office or the UK Government. The public officers in the GIS should not be forced to send out information promoting the UK Government and its global agenda and using the platform and resources of the Government of the Virgin Islands to do so. That is an injustice to the public officers and an abuse of the system, processes, and structures of the Government of the Virgin Islands. This is certainly not good governance. Our officers are not working for the UK; they are employed and paid by the Government of the Virgin Islands. It is time to end the abuse of the skills and limited resources of the GIS.

The approach of the courtesy extended to the Governor's office in the immediate post-Hurricane period is revisited and is now realigned because the tools of GIS are continuously being used and some officers have expressed feeling intimidated to carry out the Governor's Office-FCO public relations strategy, which is very often slanted towards the UK Government work in the Virgin Islands, an entity for which they do not work for; which they feel pressured and compelled to carry out in fear of being reprimanded. GIS cannot be used as a tool to promote the Global Britain public relations campaign, this is not appropriate. I believe that this specifically is a discussion for the Premier and Governor to have regarding how UK communications should be handled in this internal governing Territory.

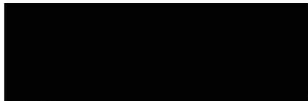
I hereby, as Head of the Government of the Virgin Islands, uphold the Virgin Islands Constitution Order, 2007 and will ensure that GIS continues to operate in the vein that it was initially established to do in 1979 - to serve and supplement the news media in explaining legislation, policy and initiative on behalf of the Government of the day and to co-ordinate, collect and publish information on special initiatives of the Government of the day regardless of its political complexion.

As such, my position remains as instructed to the Permanent Secretary in the Premier's Office and Director of Communications:

1. The Director of Communications, on the PS' and the Premier's directive, will now instruct GIS that it is not responsible and will not issue communiqués or provide public relations coverage on behalf of the Governor, Governor's Office, and the Foreign and Commonwealth and Development Office.
2. The Governor's Office will be responsible for communicating its and FCDO's Country Business Plan and activities through its own press office and communications apparatus, rather than through the Government Information Service channels. The Governor's Office will issue its own communications directly from its office.
3. In the spirit of cooperation and as a courtesy, the Premier's Office and the Premier as Leader of Government and the Territory of the Virgin Islands must receive communications from the Governor's Office and the FCDO prior to such being issued to the public. The Premier, as the Leader of this Overseas Territory must be aware beforehand and not learn of information from the public domain.
4. GIS will however, be approved to issue communications where there is a partnership between the Territorial Government and the Governor's Office on specific projects or initiatives. This will be done on a case-by-case basis in consultation with the Premier.

Once again, I look forward to your cooperation and that of your office as we continue to realign Government functions in accordance with the dual roles of quality service to the public and advancing the Territory and its people in the post-colonial journey to self-determination.

Yours in BVILOVE,



Andrew A. Fahie  
Premier and Minister of Finance

Cc: All Ministers of Cabinet  
Attorney General  
Deputy Governor  
Financial Secretary

# Government Information Services in Relation to Governor's Office

Signed

• 07 January 2021 • PO • File: PO/D3/011 • Ms. Tamesha M Smith

• Memo No. 18/2021 • Extract No. REx/18/2021

## Purpose

1) To update on the use of Government Information Services in relation to the Governor's Office.

## Background

2) Since the hurricanes of 2017, the Governor's Office has had unusually privileged access to the Territorial Government's Communications avenues and Information and Public Relations team, which reside in the Premier's Office.

3) The Premier's Office is pleased to have extended the courtesy to the Governor's Office with the use of Government Information Services. GIS is not separate, nor is it apart but rather an internal organ of the Premier's Office.

4) While this may have been a convenient arrangement during the extenuating circumstances created by the hurricane events, the method and function of the Territorial Government's official communications apparatus is now reverted to its regular mandate and mode of operation in accordance with the established policy.

5) Consistent with established policies dating back to 1967, the Government Information Service (GIS) was established for communicating Government policy.

6) Based on the long-standing policies, the practice has been that promotion of the Governor and the United Kingdom's Foreign and Commonwealth's Office's Business Plans and activities agenda, is outside of the scope of the Government Information Service. This is handled by the United Kingdom or its representative using United Kingdom human, financial and other resources.

7) GIS is not a tool to promote the Global Britain public relations campaign.

8) The Permanent Secretary, through the Director of Communications will ensure that GIS continues to operate in the vein that it was initially established to do in 1979—to serve and supplement the news media in explaining legislation, policy and initiative on behalf of the Government of the day and to co-ordinate, collect and publish information on special initiatives of the Government of the day regardless of its political complexion.

9) The Permanent Secretary in Premier's Office has instructed the Director of Communications, and in turn the Director of Communications has instructed the Government Information Service of the following decision by the Premier:

- i. GIS is not responsible and will not issue communiqués or provide public relations coverage on behalf of the Governor, Governor's Office, and the Foreign and Commonwealth and Development Office;
- ii. The Governor's Office will be responsible for communicating its and FCDO's Country Business Plan and activities through its own press office and communications apparatus, rather than through the Government Information Services channels. The Governor's Office will issue its own communications directly from its office; and
- iii. GIS will be approved to issue communications where there is a partnership between the Territorial Government and the Governor's Office on specific projects or initiatives. This will be done on a case-by-case basis in consultation with the Premier.



10) Premier wrote to His Excellency the Governor also informing that in the spirit of cooperation and as a courtesy, the Premier's Office and the Premier as Leader of Government and the Territory of the Virgin Islands, has requested of the Governor to receive communications from the Governor's Office and the FCDO prior to such being issued to the public. The Premier, as the Leader of this Overseas Territory must be aware beforehand and not learn of information from the public domain.

## Conclusion

11) GIS will not issue communiqués or provide public relations coverage on behalf of the Governor, Governor's Office, and the Foreign and Commonwealth and Development Office.

12) The Governor's Office will be responsible for communicating its and FCDO's Country Business Plan and activities through its own press office and communications apparatus, rather than through the Government Information Services channels.

13) The Governor's Office will issue its own communications directly from its office.

14) In the spirit of cooperation and as a courtesy, the Premier's Office and the Premier as Leader of Government and the Territory of the Virgin Islands has requested of the Governor to receive communications from the Governor's Office and the FCDO prior to such being issued to the public. The Premier, as the Leader of this Overseas Territory must be aware beforehand and not learn of information from the public domain.

15) GIS will be approved to issue communications where there is a partnership between the Territorial Government and the Governor's Office on specific projects or initiatives. This will be done on a case-by-case basis in consultation

with the Premier.

## Information to note

16) Cabinet is invited to note:

- a. The Government Information Services will no longer provide public relations coverage on behalf of the Governor, Governor's Office, and the Foreign and Commonwealth and Development Office; and
- b. GIS will be approved to issue communications where there is a partnership between the Territorial Government and the Governor's Office on specific projects or initiatives. This will be done on a case-by-case basis in consultation with the Premier.

Hon. Andrew A. Fahie  
Premier

07 January 2021

# Governor's Office interaction with Ministries through Premier's Office

Signed

· 07 January 2021 · PO · File: PO/D3/011 · Ms. Tamesha M Smith  
· Memo No. 19/2021 · Extract No. REx/19/2021

## Purpose

1) To update the Cabinet on how the Governor's Office should interact with Ministries and Department of the Government of the Virgin Islands.

## Background

2) The Government of the Virgin Islands continues to move forward in this modern partnership between the Government of the Virgin Islands (GoVI) and the Governor's Office.

3) The Premier's Office has sought the cooperation of the Governor's Office with ensuring the realignment of the functions of the Government of the Virgin Islands (GoVI), in accordance with the common objectives for the delivery of quality service to the public, and advancing the Territory and its people in the progressive evolution of this relationship in our journey toward self-determination.

4) In recent times, the Governor's Office has had unusually privileged access to the Territorial Government's Ministries and Departments, (particularly after the hurricanes of 2017), regarding work programmes (partnerships, international obligations, projects, and initiatives) from the Governor's Office in executing its Foreign and Commonwealth Development Office (FCDO) Country Business Plan. FCDO team members working in the Virgin Islands are inappropriately engaging

and interfacing directly with Public Officers of GoVI, and utilising GoVI resources as they work to execute the FCDO Country Business Plan. The FCDO Country Business Plan is a UK Government project, and not a project of the GoVI.

5) In accordance with the friendly relationship between both countries, certain courtesies and privileges were extended to the Governor's Office. While this arrangement may have been a convenient arrangement in those moments, Ministries and Departments are now required to be more prudent in their spending and the use of government resources, and have been required to revert to their regular mode of operation for communication and operations.

6) The *modus operandi* was that the Governor's Office liaised only through the Chief Minister's Office, (now Premier's Office), but never directly with Ministries, and certainly not without the prior knowledge of the Ministers, who have been assigned responsibilities for the conduct of Government business including responsibility for the administration of various Departments of Government, in accordance with Section 56 of the Virgin Islands Constitution Order, 2007. This has also been the experience of other public officers who worked with former Chief Ministers.

7) The GoVI effective 1st January, 2021 reverted to the well-established proper mode of communication between the Office of the Premier and the Office of the Governor, where the Governor's Office is required to liaise directly through the Premier's Office.

8) All Ministers agree with reverting to this good governance approach, and respective Permanent Secretaries will be so directed, in accordance with section 56 of the Virgin Islands Constitution Order, 2007.

9) The Premier's Office, through the Permanent Secretary, Premier's Office, working in collaboration with the Director of International Affairs, will be responsible for liaising on matters between Governor's Office and Government of the Virgin Islands, intended for collaboration with government agencies,

ministries and department where 'a Minister' has been assigned responsibility. This is important to ensure good governance practices, alignment, transparency and accountability.

## **Conclusion**

10) Cabinet is asked to note the information therein.

## **Information to note**

11) Cabinet is invited to note that the Government of the Virgin Islands effective 1st January, 2021, reverted to the well-established proper mode of communication between the Office of the Premier and the Office of the Governor, where the Governor's Office is required to liaise directly through the Premier's Office.

Hon. Andrew A. Fahie  
Premier  
07 January 2021

Virgin Islands

Tortola

IN THE MATTER OF THE COMMISSION OF INQUIRY ACT, CAP. 237

AND

IN THE MATTER OF THE COMMISSION OF INQUIRY ESTABLISHED ON 19 JANUARY, 2021

**Attorney General's Submissions  
on Governance**

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**[A]. INTRODUCTION**

1. I make these submissions pursuant to paragraph 4(b) of Order 23 dated 22 October 2021, and in anticipation of the Commissioner's consideration of whether to make recommendations to improve the standards of governance in the Virgin Islands under Paragraph 3 of the Terms of Reference. Specifically:

*"if appropriate, to make independent recommendations with a view to  
improving the standards of governance, to give the people of the Virgin Islands*

*confidence that government is working in a fair, transparent and proper manner...*" (emphasis mine)

2. As I indicated at the hearing on Day 1, at all times during the proceedings of the Inquiry, it has been my intention to participate fully in the Inquiry and to help the Commissioner. I have given every cooperation and assistance that I can give. It is my sincere hope that the Inquiry will result in sustainable improvement to the standards of governance in the Virgin Islands and that the Government in all its manifestations can both internally and with the general public establish resilient and respectful relationships of mutual trust rooted in fair, transparent and proper government. In that same spirit, I now make these submissions not only by virtue of my role as a participant, but in line with my duty to promote good governance and guard the public interest.
3. It appears to me that there are two main challenges facing good governance in the Virgin Islands. The first of these is a deficit in trust, communication and cohesiveness within Government. The second, is deficiency in the policy-making function in Government, which in my view has been neglected for a long time.

#### **[B]. THE CONSTITUTION AND COMMUNICATION**

4. The people of the Virgin Islands want for themselves a capable, fair, transparent and responsive Government that they can trust. I say this as a Virgin Islander and without any fear of credible contradiction. I also say it having observed and examined the Virgin Islands from different perspectives in diverse roles at different stages of life including as a lawyer in private practice, member of statutory boards such as the Education Advisory Committee, Immigration Board and Public Service Commission, as General Counsel at the Financial Services Commission, Permanent Secretary in the Premier's Office, and finally, as Attorney General.

5. The aspiration for capable, fair, transparent and responsive Government was well captured by the Constitutional Commissioners in 2005 when they concluded:

It is the Commission's view, and seemingly that of our elected representatives, that the time has come for there to be some significant constitutional advancement for the Territory short of independence. We must seek through this Review, to craft the kind of democratic framework which permits of the highest exercise of authority by the Territory and our representatives over its affairs, necessary for the effective conduct of the business of government in an open, accountable and transparent manner, and subject to appropriate and proportionate checks and balances on the exercise of that power and autonomy in order to ensure good governance and respect for human rights and the rule of law. In other words, there must exist in the Territory a 'culture of accountability' and of 'self-policing', including the fearless and dispassionate enforcement of the laws, regulations and conventions which form an integral part of the constitutional and legal fabric of our government and its institutions, and which are so essential to guard and protect citizens from gross mismanagement and abuse of power in public office at all levels.<sup>1</sup>

6. It is worth unpacking this conclusion - not least because the constitutional review lasted nearly a year from 2004-2005 and was led by a multi-disciplinary team of 9 persons from different sectors of society. In addition to the extensive research reflected in the report itself, the Committee conducted interviews, held community meetings, received oral and written submissions and members deliberated among themselves. It is significant that having done all that, the following concepts came together in one paragraph:

- significant constitutional advancement;
- democratic framework;
- effective conduct of the business of government in an open, accountable and transparent manner;

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<sup>1</sup> Farara, Q.C, Gerard and Ors, *Report of the Constitutional Commissioners 2005*, para 10.73



- appropriate and proportionate checks and balances on the exercise of that power and autonomy;
  - good governance;
  - respect for human rights and the rule of law;
  - 'culture of accountability' and of 'self-policing';
  - fearless and dispassionate enforcement of the laws, regulations and conventions; and
  - guarding and protecting citizens from gross mismanagement and abuse of power in public office at all levels.
7. It is also significant because the evidence in the Inquiry to date suggests that there have been instances of governance practices that could be improved in both elected and unelected parts of Government and in successive administrations.<sup>1</sup> These include:
- a. Governors (insufficient development of the policy-making functions of the public service and inadequate training and support for public officers in the Virgin Islands);<sup>2</sup>
  - b. Members of the House of Assembly (not making declarations in the required manner under the Register of Interests Act);<sup>3</sup>
  - c. Elected Government (in their haste and determination to 'get things done', not always taking proper or sufficient advice or having due regard to the requirements of public office whether for themselves or the public officers engaged with them);<sup>4</sup>

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<sup>2</sup> Sir Geoffrey Cox QC's submissions, Day 50, p. 30, 3-25 to p. 31, 1-9.

<sup>3</sup> See transcripts from Days 10-16.

<sup>4</sup> Hon Dawn J Smith's evidence, Day 16, p. 54, 16-17.

- d. Public service (right-sizing (numbers, skill-sets, operations), policy-making, record-keeping, adaptability).<sup>5</sup>
- 8. On the other hand, the achievements of the Virgin Islands are significant. We have over the last decades established the jurisdiction as a major international financial and investment centre with a robust and highly respected legal framework, the rule of law, and a respectable standard of living. These are not small matters, particularly for a population of some 30,000 persons in around 60 islands which in the not too distant past was a smallholding economy centred around fishing, farming and seasonal work overseas.
- 9. We have a lively democracy and institutions that foster a culture of accountability, not impunity. The response of the Government to the Commission of Inquiry is a case in point of responsibility. In my view, the establishment by the Government of an Inquiry Response Unit to assist in responding to the document, information and legal requests of the COI and more generally the Government's adoption of a policy of full transparency and assistance to the COI speaks for itself.
- 10. I believe that these achievements and many more are, have been and could only be possible, because somewhere in all the noise, there is a common interest in doing what's necessary and what's best to keep the Virgin Islands moving forward.
- 11. While stakeholders espouse common overall objectives such as good governance and social and economic development, and they have a willingness to try and improve governance:
  - a. stakeholders do not always appear fully to have sufficient regard to respective roles; and

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<sup>5</sup> Hon Dawn J Smith's evidence, Day 16, p. 20, 14-29; Hon Dawn J Smith's evidence, Day 16, p. 47, 24 to p. 48, 2; Sir Geoffrey Cox QC's submissions, Day 7, p. 43, 1-2 and 19-20; Sir Geoffrey Cox QC's submissions, Day 50, p. 31, 17-22; Hon Dawn J Smith's evidence, Day 16, p. 48, 12-24; Hon Andrew Fahie's evidence, Day 25, p. 79, 1-5.

- b. stakeholders do not always appear to trust and respect each other.
12. The result of this can be seen in communication breakdowns and a lack of effective cooperation. I stress that this is not just an issue between the United Kingdom and the Virgin Islands, although it manifests in that way at times, but also between different functions *within* the Virgin Islands Government such as:
- a. between the Governor and the elected Government; and
  - b. between the public service and the elected Government.
13. The evidence itself suggests that the issues are not new. Similarly, disagreements about the extent to which Ministers should be informed or consulted about the Governor's dealing with public officers demonstrate failings in methods of communication within Government.<sup>6</sup> Today, there is still sometimes confusion over to whom, and on what matters, public officers should answer not least because of outdated codes that are not responsive to current issues. Admittedly, there have been 'drafts' in some cases for many years and concerted efforts in recent months to bring these drafts to fruition.
14. A further issue, that is perhaps outside the scope of this submission, is whether the 2007 Constitution is fully-fledged. The debate over chairing Cabinet is symptomatic of this.
15. However, given our delicate constitutional backdrop, it is not surprising that it can be difficult to navigate communication within the public service. I believe that public officers and others at times hesitate to ask for help or guidance. This is because in the context of a lack of trust, individuals are concerned about showing that there are gaps, deficiencies or areas for improvement that could bring unfavourable attention to them. It is therefore crucial that all stakeholders who are responsible for making government work can develop a culture of cooperation and overcome their fears and differences for the greater good.

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<sup>6</sup> See the Governor's Position Statement on Governance (¶ 65) and the Response of the Elected Government to the Position Statement of Governance (¶¶ 58-59).

16. This is not therefore a matter of simply laying the blame on the United Kingdom or the FCDO, although they do share responsibility for governance in the Virgin Islands. All stakeholders have a role to play. A real partnership is needed between stakeholders, including mediated/guided 'genuine conversations', in tandem with the implementation of appropriate measures.

### **[C]. POLICY MAKING FUNCTION**

17. As I set out in my oral evidence to the Commissioner on Day 16, there is a deficit in the policy-making function within the public service. As a general matter, I do not consider that policy-setting is done very well.<sup>7</sup> The limitations and in some cases absence of the policy-making function within the public service has serious and wide-reaching implications, as explained below.

#### *Effect on the work of Attorney General's Chambers*

18. This weakness of policy-making manifests itself in the drafting instructions that my Chambers receives with respect to legislation. The correct method for legislation to be drafted is for the policy to be developed, and for detailed drafting instructions to be prepared *on the basis of the policy*. The absence of properly-formulated policy underpinning the proposed legislation means that the drafting instructions I receive are not usually comprehensive or sometimes even sufficient, and this creates challenges for my Chambers in drafting legislation. In addition, without the regular and credible translation of the Government's mandate into policy, it can be difficult for an Attorney General and her team to do their job in ensuring that the operations of the Government are conducted lawfully and constitutionally; and that the Government is not prevented from lawfully implementing its chosen policies.

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<sup>7</sup> Hon Dawn J Smith's evidence, Day 16, p. 19, 22-23; Sir Geoffrey Cox QC's submissions, Day 50, p. 30, 3-25 to p. 31, 1-9.

19. Furthermore, I believe the absence or insufficient deployment of public officers who have been suitably trained to translate ideas into policy and to advise Ministers exposes the Government to legal risk, such as actions for judicial review in the absence of developed policies underpinning administrative decision-making.

*Effect more generally*

20. In my view, a number of areas upon which the Commission has focussed – such as Statutory Boards, Belongership, Crown Lands and Contracts – are all areas in which there has been a failure in policy-making. However, I have not yet seen evidence of dishonesty, venality or ill-intent in these areas and I believe that such problems as have been identified in the evidence could have been avoided through carefully thought-out and implemented policies.
21. The deficit in the policy-making function also leads to a position where the Ministers often seem to be left to make decisions on their own without the benefit of expert advice and suitable policy-making input. While the direction on policy comes from Ministers (or in some cases the Governor), a robust and well-developed policy-making function is needed within the public service to assist them in that respect.
22. A further consequence of this deficiency is that parties get frustrated with the perceived lack of policy solutions to problems and instead of fixing or improving structures, there is a temptation to get rid of or go around them. This impetus comes not just from the Elected Government, also from the public service, and the Governor.

*Way forward*

23. Priority and investment into policy making is required. In this regard, I am encouraged to see the collaboration between the Governor's Group and the Premier's Office to develop a comprehensive and costed transformation plan.

**[D]. ROLE OF THE PUBLIC SERVICE**

24. The public service is a critical long-term actor in the Government of the Virgin Islands. It has existed in some manner, shape or form for many years and public officers can have terms spanning 3-4 decades. By contrast, the Governor and Ministers have terms of two to four years. This means that, more than any other actor, the public service has the greatest continuity and, as such, it has the greatest opportunity for ensuring consistent standards of good governance.

25. The good news is that the Virgin Islands public service is staffed with intelligent individuals who have a wealth of experience and distinguished records of serving the Virgin Islands. Successive governments in the Virgin Islands have invested heavily in training and education, and we have a highly-educated public service. There is nothing about the people of the Virgin Islands that means that they cannot be entrusted to heal some of the communication difficulties<sup>8</sup> that face the Government at present and to grow the policy-making function. It is a matter, in part, of organisation, how, when and where these public officers are deployed and how they are held to account. It is a matter of commitment. The number of successfully run statutory bodies in the Virgin Islands are a testament to this as typically, their inaugural staff consists heavily of former public officers.

26. This is not a new problem. Listening to the evidence in the Inquiry, I picked up the following themes:

a. inefficiencies in the public service;<sup>9</sup>

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<sup>8</sup> Ms Dorea Corea's evidence, Day 22, p. 108, 5-21; Ms Dorea Corea's evidence, Day 22, p. 112, 4-8; Ms Sonia Webster's evidence, Day 23, p. 81, 21 to p. 82, 1; Mr Jeremiah Frett's evidence, Day 25, p. 91, 17-19; Ms Dabreo-Lettsome's evidence, Day 42, p. 90, 9-14; Dr Carolyn O'Neal Morton's evidence, Day 45, p. 173, 11-13.

<sup>9</sup> Ms Sandra Ward's evidence, Day 1, p.84, 6-20; p.98, 14-25; Hon Vincent Wheatley's evidence, Day 3, p.114, 1-8; Sir Geoffrey Cox's submissions, Day 7, p.28, 2-5; p.42, 10-12; p.47, 1-3; Hon Andrew Fahie, Day 6, p.194, 1-4; p.224, 22-25; Hon Vincent Wheatley's evidence, Day 11, p.229, 17-19; Hon Dawn J. Smith's evidence, Day 16, p.20, 15-20; p.51, 16-23; p.54, 23-25; Mr Ian Penn's evidence, Day 17, 145, 19-22; p.179, 14-19; Mr David D Archer's evidence, Day 17, p. 214, 3-6; Mrs Sheila Brathwaite's evidence, Day 21, p. 49, 9-17; p.71, 8-12; Ms Dorea T Corea's evidence, Day 22, p. 96, 16-19; Mr Carvin Malone's evidence, Day 30, p.206, 14-20; Premier Andrew Fahie's evidence, Day 33, p. 186, 16; Premier Andrew Fahie's evidence, Day 34, p.156, 1-2; p. 170, 18-22; p.183, 1; p. 273, 16-25; Ms

- b. poor record-keeping and difficulties, including but not limited to issues after Irma and leaving the Central Administration Building;<sup>10</sup>
  - c. staffing: having the 'right' people in the 'right' places doing the 'right' things;<sup>11</sup> and
  - d. confidently and effectively navigating tensions between the Governor and the elected Government.<sup>12</sup>
27. These are not new themes in connection with the public service. The challenges reflected in the evidence in the Inquiry have been identified before. The questions are: what are they, and how will we fix them.
28. Unfortunately, the optimal functioning of the public service is not something that has been successfully prioritised by successive Governors, despite their responsibility for the public service. Rather, they seem to side-step it to the point that even public officers themselves attribute responsibility for the public service exclusively to the Deputy Governor while the Governor sits separate, apart and arguably, unaccountable for the ongoing issues.<sup>13</sup>
29. No matter how talented people are, they need structure and organisation. Despite the individual excellence within the public service, there are tensions that make it difficult for individuals effectively to conduct the business of government in as open, accountable and

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Forbes-Vanterpool's evidence, Day 45, p.162, 8-17; Premier Andrew Fahie's evidence, Day 46, p. 169, 8-18; p.170, 11-15; p.172, 14-19; Mr Augustus Jaspert's evidence, Day 51, p. 117, 19-25; p.118, 9-18.

<sup>10</sup> Dr Hon Natalio Wheatley's evidence, Day 12, p.209, 7-25; Ms Dorea Corea's evidence, Day 22, p. 94, 3-6; p.158, 21-25; Mr Wade Smith's evidence, Day 23, p. 173, 6-12; p.174, 3-13; Mr Hussein Haeri's submissions, Day 29, p.51, 11-20; Dr O'Neal-Morton's evidence, Day 32, p.46, 11-18; Hon Andrew Fahie's evidence, Day 33, p. 186, 16; Governor John Rankin's evidence, Day 50, p.183, 10; Mr Augustus Jaspert's evidence, Day 51, p.8, 21-25; p.9, 1-12; p.117, 4-10; Sir Geoffrey Cox's submissions, Day 52, p.40, 2.

<sup>11</sup> Hon Dawn J. Smith's evidence, Day 16, p. 49, 16-25; Ms Tiffany Scatliffe's evidence, Day 17, p. 71, 7-11; Mr Ian Penn, Day 17, p. 134, 18-25; p. 135, 6-12; p. 137, 9-15; p. 151, 21-24; Ms Sonia Webster's evidence, Day 18, p. 42, 10; p. 48, 11-24; p. 49, 11; p. 84, 10; p. 85, 2; p. 86, 3; Mr Myron Walwyn, Day 21, p. 139, 21-25; p. 215, 8-11; Hon Andrew Fahie's evidence, Day 52, p. 262, 4-11;

<sup>12</sup> Hon Dawn J. Smith's evidence's evidence, Day 1, p. 45, 1-4; Mr Augustus Jaspert's evidence, Day 51, p. 76, 19 to p. 92, 6; Hon Andrew Fahie's evidence, Day 52, p. 240, 2 to p. 243, 8.

<sup>13</sup> Ms Sandra Ward, Day 1, p. 81, 22; Sir Geoffrey Cox QC's submissions, Day 50, p. 30, 3-25 to p. 31, 1-9.

transparent a manner as we aspire to. This is made even more acute with the acceleration of the pace of change due to the development of digital technology.

30. Organising the public service properly is therefore critical. This will require difficult conversations which, in my experience, people are not always prepared, for whatever reason, to have.

#### **[E]. BUDGETARY FRAMEWORK**

31. It follows from the above that the budgetary framework must support: (a) recruiting the right people into the right roles (including policy making roles); and (b) training on policy-making.
32. However, as elsewhere in these submissions, I do not find it useful to lay the blame for any lack in funding at the door of any particular department. For a start, I understand that budgets are constrained by the huge economic shocks of Irma and Covid-19. Furthermore, difficulties in staffing are not only down to funding, but also rates of pay.<sup>14</sup> I raised concerns in my Position Statement and in my oral evidence about the chronic understaffing in my department, which I consider largely to be attributable to the rates of pay. I am pleased that the Governor's Group and the Premier/Minister of Finance are now taking remedial steps in this regard.<sup>15</sup>

#### **[G]. CONCLUSION**

33. The problems outlined above cannot be solved at a stroke. I believe that constructive steps need to be taken to ensure that all parts of Government pull together.

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<sup>14</sup> Hon Dawn J. Smith's evidence, Day 16, p. 43, 15-21; Ms Tiffany Scatliffe's evidence, Day 17, p. 76, 2-17; Ms Sonia Webster's evidence, Day 18, p. 49, 13-16.

<sup>15</sup> Governor John Rankin's evidence, Day 50, p.232,15-233,5



34. Specific examples such as those listed above are *symptoms* of the deeper issues that I have outlined in these submissions. Addressing the symptoms without dealing with the problems in policy-making and communication will not be enough to achieve the desired outcome, only provide a short-term fix, and symptoms may manifest in another way. I therefore believe that it is important to address the underlying issues.
35. If good governance is to be materially advanced in the Virgin Islands, the policy-making functions of the public service will need to be developed and advanced. Furthermore, it will not be enough to talk about a partnership in governance – this must become a reality with the elected and unelected heads of government leading by example, relating to each other and supporting the functionality and strengthening of the public service.
36. The idea of good governance is not alien to the people of the Virgin Islands: we aspire to it. But we need to improve how we connect to each other, and we do not just need a partnership between the UK and BVI, but also partnership within the Virgin Islands between the stakeholders here.



Hon. Dawn J Smith

Attorney General

11 November 2021



Ref. No.: OP/C4/001

13th January, 2020

**His Excellency the Governor**  
**Mr. Augustus J. U. Jaspert**  
**Governor of the Virgin Islands**  
Office of the Governor  
Road Town  
Tortola VG1110  
British Virgin Islands

Dear Governor Jaspert:

**RE: Unfounded allegations of corruption**

This letter supersedes my previous letter dated 10<sup>th</sup> January, 2020.

Good Day and God's Blessings to you and yours.

This letter is prompted by statements made by you during the historical Cabinet Meeting of 8<sup>th</sup> January, 2020, which was held on Jost Van Dyke commencing 10:00 am, which statements, I am sure you would agree, cannot be allowed to go un-noted.

During the proceedings of the said Cabinet Meeting, you uttered statements that "the BVI is full of corruption", among others.

In the first instance, I wish, on behalf of the Elected Members of the Government of the Virgin Islands, to express our individual and collective disgust at your conduct in this instance. Such behaviour is unbecoming of a representative of Her Majesty the Queen, Elizabeth II, whose crown represents graciousness, honesty and nobility.

Such broad and sweeping statements, without offering any means of substantiating them, is an insult to the Elected Members of my Government who have only been in office for less than one year and on whose character you have cast serious aspersions.

**Unfounded allegations of corruption**

**13<sup>th</sup> January, 2020**

**Page 2**

The continued unwarranted behaviour and continual unnecessary battering of my Government since our early days in office in February 2019, without any clear explanation, continues to be of great concern. We believe from your many 'behind the door' actions, which the public does not see, are intentional steps to destabilise and erode the integrity of my Government - Elected Members who strongly and firmly believe in the tenets of good governance.

Your statements are also an insult to the integrity of all Virgin Islanders, a people who have welcomed you into their homes, into the land of their ancestors since your appointment in 2017. Additionally, Virgin Islanders through the Territory's BVI Government budget have ensured that you can live comfortably and peaceably at the Government House and host events with their tax dollars, also provided through BVI Government's budget.

Your disrespectful utterances also tarnish the reputation of the Territory of the Virgin Islands and undermine the image and standing of the Virgin Islands in the eyes of the international community – both in the UK and elsewhere.

Such contempt flies in the face of the so-called modern partnership that is supposed to be the basis of the Constitutional relationship between the Virgin Islands and the Government of the UK, and that of the relationship between the Government of the Virgin Islands and the Office of Governor; a relationship of mutual respect that is premised, at the minimum, upon:

1. Acknowledgement that the society of the Virgin Islands is based upon certain moral, spiritual and democratic values including a belief in God and the rule of law;
2. Recognition of the people of the Virgin Islands as a people and a country, and their quest for social justice, economic empowerment and political advancement; and
3. The fact that the people of the Virgin Islands have developed themselves and their country based on qualities of honesty, integrity and mutual respect, engendering a strong sense of belonging to and kinship with those Islands.

I wish to reiterate that your statements during that historical Cabinet Meeting on Jost Van Dyke are consistent with a pattern of behaviour that I have observed from you towards my Government since the initial weeks of my Government's tenure when I requested time to analyse and consider the conditions proposed by the UK Government with respect to its offer of Loan Guarantees for Hurricane Recovery, more so since my Government proposed a smaller revised Recovery and Development Plan based on practical considerations.

I am again forced to reiterate my sentiments that the resetting of the relationship between the Government of the Virgin Islands and the Government of the UK, as agreed during my meeting with Lord Ahmad of Wimbledon last September, does not appear to be happening. In fact, the

**Unfounded allegations of corruption**  
**13<sup>th</sup> January, 2020**  
**Page 3**

relationship continues to descend into deeper discord by your persistent contemptuous conduct towards my Government and towards the people of the Virgin Islands.

I wish to state emphatically that since my Government took office following the democratic elections of 25<sup>th</sup> February, 2019, there has been no corruption in the public business that is under the control and supervision of my Ministers. My Government and I have a zero-tolerance policy for corruption, and we firmly believe that anyone who betrays the public trust in this manner should feel the full weight of the law.

If you have evidence of corruption in Government, especially post-25<sup>th</sup> February, 2019, then I invite you to bring it forward so that it can be investigated and firmly prosecuted by the appropriate authorities – the Director of Public Prosecutions (DPP) and the Commissioner of Police. To be in possession of evidence of corruption and to refuse to act on that evidence makes one complicit to the corruption.

Prior to 25<sup>th</sup> February, 2019, there were allegations of misconduct in Government affairs with respect to the activities of the previous administration. These included the \$7.2 million BVI/BV Airways deal; the \$1.6 million Elmore Stoutt High School perimeter wall project, which saw individuals inflating their costs by an average of 65 percent, and as much as more than 150 percent of the true value of the work done; and the more than \$50 million in cost overruns at the Tortola Pier Park project.

These were drawn to your attention and to the attention of your predecessors. There was no action by your office to meaningfully deal with these matters. This lack of action by the previous and present Governors indicates either satisfaction by you and your predecessors that there was no corruption or hypocritical indifference to what were taking place. The people of the Virgin Islands live in hope that there will be some meaningful action on these controversial matters by your office before your scheduled departure from office in a few months' time.

Refusal by yourself and your predecessors to allow the conduct of public officials in these matters to be scrutinised and evaluated by the judicial arm of the State has prevented these matters being ventilated according to the measures provided in the Constitution for protecting the public's interest, maintaining public confidence in the systems of Government, and compromised the reputation of the Territory and that of Virgin Islanders.

Suffice it to say it was these actions and inactions prior to 25<sup>th</sup> February, 2019, that sabotaged the reputation, financial standing, welfare and economy of the Virgin Islands, placing the Territory under extremely rigorous constraints as are being imposed now by the Government of the UK.

In the least, I believe that in the spirit of good partnership, you owe each Minister of Government and the people of the Virgin Islands an apology for your broad, unsubstantiated, offensive comments at the historical Cabinet Meeting of 8<sup>th</sup> January, 2020 held on Jost Van Dyke.

**Unfounded allegations of corruption**  
**13<sup>th</sup> January, 2020**  
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In the absence of an apology, I then look forward to you promptly delivering your evidence to the DPP and the Commissioner of Police and the commencement of the relevant investigations and prosecutions with respect to the imputations made against my Government or the matters previously mentioned, namely, the \$7.2 million BVI/BV Airways deal, the \$1.6 million Elmore Stoutt High School perimeter wall project, and the more than \$50 million in cost overruns at the Tortola Pier Park project.

Respectfully,



Andrew A. Fahie  
Premier of the Virgin Islands  
Minister of Finance

Cc: Rt Honourable Boris Johnson, Prime Minister of the UK  
First Secretary of State for Foreign and Commonwealth Affairs  
Lord Ahmad of Wimbledon, Minister of State for the Overseas Territories  
Mr Ben Merrick, Director of Overseas Territories, UK Foreign and Commonwealth Office  
All Ministers of Government



**Our Ref: OP/C4/001**

14<sup>th</sup> January, 2020

**His Excellency the Governor**  
**Mr. Augustus J. U. Jaspert**  
**Governor of the Virgin Islands**  
Office of the Governor  
Road Town  
Tortola VG1110  
British Virgin Islands

Dear Governor Jaspert:

**RE: Your Offensive Statements in Cabinet**

Good Day and God's Blessings to you and yours

I write in response to your letter dated 13<sup>th</sup> January, 2020.

I stand by the contents of my letter dated 13<sup>th</sup> January, 2020 (superseded by letter dated 10<sup>th</sup> January, 2020) that during the proceedings of the historical Cabinet Meeting of 8<sup>th</sup> January, 2020, which was held on Jost Van Dyke, you made broad and sweeping statements that imputed that the Members of my 10-month-old Government were involved in corruption.

Your words were not misunderstood nor are they being misrepresented. They were clear to all present including the Ministers of Cabinet who have signed below to indicate their full support and agreement that the contents of my letter of 10<sup>th</sup> January, 2020 (superseded my letter dated 13<sup>th</sup> January, 2020), is a true and accurate reflection of what took place at the said Cabinet Meeting, and also to lend full support to the contents of this letter of 14<sup>th</sup> January, 2020.

Your statements were unmistakably clear by your reference to the suspension of the Constitution in the Turks and Caicos Islands (TCI) as a result of public corruption there. Such commentary and comparison cannot presently be made with the BVI based on the simple fact that unlike in the TCI where the tainted Government was re-elected by the electorate, while in the BVI the people voted out the eight-year-old former regime against whom allegations of misconduct were levelled and voted in a new Government in the democratic elections of 25<sup>th</sup> February, 2019,

**Your Offensive Statements in Cabinet**

**14<sup>th</sup> January, 2020**

**Page 2**

which elections were affirmed as being free, fair and clean. In this regard, the people of the BVI have demonstrated a strong affinity for ethical conduct in Government and rejection of contrary conduct. Thus, it is unfair and inaccurate to compare the citizens of the BVI to those of the TCI and to insinuate that the conduct of the BVI is remotely close to warranting the suspension of their Constitution.

I, therefore, maintain that you owe the Members of my Government, and by extension the people of the Virgin Islands, an apology since they were unjustly smeared by your broad-brush utterances.

My Government's commitment to good governance, transparency, and accountability, and to strengthening the mechanisms for achieving this, is beyond reproach. This is clear, as you have noted, based on the pledges made in my Government's Manifesto and other statements, including the 2020 Budget and the 2020 Legislative Agenda as outlined in the Speech from the Throne, which, as you are aware, although read by Her Majesty or her representative, is written by the Government and expresses the agenda of the Government.

This is further supported by the fact that Members of my Government subjected themselves to full disclosure and scrutiny in the House of Assembly with respect to State contracts even in instances where under the law they were not required to, and even where Members of Her Majesty's Loyal Opposition protested that this was not necessary.

My Government's commitment to fighting corruption is therefore not an issue. The issue at hand is the offending remarks that you made during the historic Cabinet Meeting of 8<sup>th</sup> January, 2020, which insult the character and heritage of the people of the Virgin Islands, in particular the Ministers of the current 10-month-old Government; your continued apathy and indifference; and your lack of remorse - all of which contribute to the continuing erosion of the modern partnership based on mutual respect that ought to exist between the United Kingdom and the Virgin Islands.

Maintaining a healthy relationship between my Government and the Government of the UK is of utmost importance to me and the Members of my Administration, as it is to all Virgin Islanders. But this can only be achieved in an atmosphere of mutual respect.

Respectfully,



Andrew A. Fahie  
Premier of the Virgin Islands  
Minister of Finance

**Your Offensive Statements in Cabinet**  
**14<sup>th</sup> January, 2020**  
**Page 3**

**Also signed:**

Honourable Carvin Malone .....  
Deputy Premier,  
Minister for Health and Social Development  
and Territorial At-Large Representative

Dr. the Honourable Natalio D. Wheatley ...  
Minister for Education, Culture, Youth Affairs,  
Fisheries and Agriculture  
and Seventh District Representative

Honourable Kye M. Rymer .....  
Minister for Transportation, Works and Utilities  
and Fifth District Representative

Honourable Vincent O. Wheatley  
Minister for Natural Resources, Labour and Immigration  
and Ninth District Representative

Cc: Rt. Honourable Boris Johnson, Prime Minister of the UK  
First Secretary of State for Foreign and Commonwealth Affairs  
Lord Ahmad of Wimbledon, Minister of State for the Overseas Territories  
Mr Ben Merrick, Director of Overseas Territories, UK Foreign and Commonwealth  
Office  
All Ministers of Government





4th February, 2020

**Lord (Tariq) Ahmad**  
**Minister of State for The Overseas Territories**  
Foreign and Commonwealth Office  
King Charles Street  
London, SW1A 2AH  
United Kingdom.

Dear Lord Ahmad:

I write to acknowledge receipt of your letter dated 21st January, 2020.

While the concluding sentence of your letter suggests that I should follow the advice of Aesop and not waste my breath, I believe I would be doing an injustice to my people if, on their behalf, I did not ensure that certain facts are committed to the written records.

It is not a comforting sign to me or my Government that, as per your letter, you repose blind trust in the words of one individual while discarding the testimony of five other Honourable Ministers. When, on no logical basis or evidence, the word of one Briton is deemed more truthful than that of five Virgin Islanders, I am sure you would agree, it is clear that when Virgin Islanders say they feel that they are regarded by Her Majesty and Her Government as second-class subjects, this feeling is well founded.

When the duly elected Government of the Virgin Islands can be attacked, insulted, berated and offended, with not even the courtesy of an apology, the signal is clear – under the empire, all men are not equal, for those who are less than equal there is no justice nor fairness, and the core Rules of Engagement of British Colonialism remain intact in a time when we boast modern partnership.

1. My Ministers and I stand by our account of what transpired in the room during the Cabinet Meeting of 8 January, 2020, at Jost Van Dyke.
2. We reject the account given by His Excellency, Governor Jaspert, of those events both in terms of the actual statements made and the context. Governor Jaspert made clear references to the situation in the Turks and Caicos Islands (TCI) with respect to the suspension of the Constitution in that Territory due to public corruption.
3. Governor Jaspert's utterances are an insult to the Members of my Government, who are in office only 11 months now, who entered political office with unblemished reputations, who work tirelessly and selflessly every day for the betterment of the Territory, and who have conducted themselves with the highest level of integrity and professionalism.

An apology is owed to these honest, patriotic Virgin Islanders by Governor Jaspert or the administration that he represents.

4. Governor Jaspert's utterances impugn the integrity of all Virgin Islanders. To the extent that there were corrupt activities taking place in Government prior to the 25 February, 2019 General Elections, it was only a handful of individuals who were involved – not the population at large. Governor Jaspert was therefore irresponsible and out-of-line to broad brush the entire BVI population in the way that he did.

Governor Jaspert owes the people of the Virgin Islands an apology.

5. The electorate of the Virgin Islands voted out the previous Administration and voted in a new Government in last year's General Election, signalling a rejection of that Administration's method of operation and values.

This is the opposite of what happened in TCI.

6. The reference to the TCI situation is a direct and open threat to the self-rule status of the BVI. This was not justified. We are now forced to question whether there is a plan under coordination by the Office of the Governor to steal the long-fought and hard-earned Constitutional rights of the people of the BVI and to have our shores once again invaded by morally and intellectually "superior" overlords?

When you and I met last September in London, we agreed to work towards mending the strained relationship between the UK and the BVI. The conduct of Governor Jaspert in this and other instances have sown distrust. Platitudes of a modern partnership based on mutual respect are being rendered into a charade. Nothing has been done by this Governor to support our mission to reset BVI-UK relations, as you and I resolved to doing.

If the undermining of the autonomy of the BVI people, the sabotage of our efforts to rebuild the BVI-UK relationship and the issuing of unjustified threats and insults to the duly elected Government and People of the Virgin Islands, can take place and the response of the hierarchy of the UK Government is, 'This is our Governor, in whom we are well pleased,' then it says a lot for the UK Government's policy towards the BVI as an Overseas Territory.

Finally, I wish to clarify my remarks with respect to investigations into allegations of serious corruption under the last Government. At no time did I ask or insinuate that the Governor should interfere in any investigation.

During the tenure of the previous Administration, I, as did many other citizens of the Virgin Islands, called on the Governor to exercise the responsibilities and powers associated with his office to initiate inquiries into several high-profile matters where there were strong reasons to suspect corruption. The Governor, who also Chairs the Cabinet, which has the general oversight of these matters, did nothing at the time. Yet, he now takes the liberty to inflict intense scrutiny on an innocent Government that is trying hard to do what is right and focused on the well-being of the people of the Virgin Islands and the resilience of our economy.

**Lord (Tariq) Ahmad**  
**4<sup>th</sup> February, 2020**  
**Page 3**

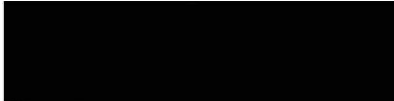
While other offices have initiated some action with regard to the \$7.2 million BVI/BV Airways and the \$1.6 million Elmore Stoutt High School perimeter wall project, nothing has been done to find out the details of more than \$50 million in cost overruns at the Tortola Pier Park project. The Governor has the power to initiate a Commission of Inquiry into that matter, though with the amount of time that has been allowed to lapse, one wonders what evidence is left to be found.

Another falsehood is the purported lack of interest of my Government to Good Governance legislation. When my Government took office in February 2019, we met a number of pressing matters left undone – most noteworthy a substantive budget. Several other matters including the legislative agenda were set by the previous administration and were not followed through with.

This year, under my Government, the Speech from the Throne which was delivered by His Excellency the Governor on 19 November, 2019 and which was written by the Office of the Premier, has been aligned with the Legislative Agenda and the National Budget. Included in this framework is Good Governance legislation such as Integrity in Public Life and Procurement legislation. My Government has, even as recently as this week, emphasised to all stakeholders that achieving every item on that agenda is our priority.

In this regard, Lord Ahmad, I have no reason to regret the position that I have enunciated, which I stand by in execution of my Constitutional responsibilities to protect the people of the Virgin Islands, and in ensuring that the members of my Government are treated with fairness in an economy that is self-governing.

Respectfully,



Andrew A. Fahie  
Premier and Minister of Finance

Cc: Rt Honourable Boris Johnson, Prime Minister of the UK  
First Secretary of State for Foreign and Commonwealth Affairs  
HE Augustus J U Jaspert, Governor of the Virgin Islands  
Mr Ben Merrick, Director of Overseas Territories, UK Foreign and Commonwealth Office



**OFFICE OF THE GOVERNOR**

P. O. Box 702  
Road Town, Tortola  
Virgin Islands

Telephone: (284) 468-3501

Honourable Premier  
Office of the Premier  
Ralph O'Neal Administration Complex

21 February 2020

*Dear Premier,*

I am writing in reference to your letter to Lord Ahmad of 17 February.

Whilst I welcome the good governance commitments set out therein, I do not agree with much of the content of the letter, which I consider to be unnecessarily confrontational and misrepresentative of my conduct as Governor. Specifically, it is disappointing that you continue to raise, and misconstrue, the discussion we had at Cabinet on governance on 9 January 2020. The accurate record of that conversation is set out in the minutes of that meeting and this was agreed by all of Cabinet, including all Ministers at the time. This was an impartial record taken and documented by the Cabinet Secretary. Given this record was agreed, I do not consider that it is in the best interests of the people of the Virgin Islands to continue to correspond on the matter.

I also strongly refute the assertions you make regarding my intentions, actions and behaviour. I do not intend to address each one in turn other than to formally record that the assertions in your letter are without foundation. The overall tone of your letter I find deeply disrespectful.

More broadly, I welcome your ongoing expressed wish to improve governance, transparency and accountability in the Territory as set out in both your letter to Lord Ahmad and your statement last week and I hope we can work effectively together and with the relevant institutions on these matters. As you are aware, the Deputy Governor's Office in partnership with other Ministries and agencies has been spearheading work on the good governance agenda. Legislative and policy proposals to improve the standards and institutions to support strong integrity, including the introduction of the Ministerial Code, Register of Interests and the Integrity in Public Life Act are well underway. I will ask the Deputy Governor and his team to continue to work closely with your officials to support taking these, and other important governance initiatives, forward as a matter of urgency.

Augustus Jaspert  
Governor






cc: Ben Mansfield OTD FCO  
All Members of BVI Cabinet  
Deputy Governor

# CABINET MEETING NO. 1 OF 2020

**Published** · 08 January 2020 · Abe's by the Sea, East End



· **Agenda No:** C/2/AGEN/1/2020 (/agendas/46)

## Present

 (/minutes/48/minute_items/2144/edit) The Governor and Chairman	Mr. Augustus J. Jaspert	 (/minutes/48/minute_items/2144)
 (/minutes/48/minute_items/2145/edit) The Premier and Minister of Finance	Hon. Andrew A. Fahie	 (/minutes/48/minute_items/2145)
 (/minutes/48/minute_items/2146/edit) Deputy Premier and Minister for Health and Social Development	Hon. Carvin Malone	 (/minutes/48/minute_items/2146)
 (/minutes/48/minute_items/2147/edit) Minister for Natural Resources, Labour and Immigration	Hon. Vincent Wheatley	 (/minutes/48/minute_items/2147)
 (/minutes/48/minute_items/2148/edit) Minister for Transportation, Works and Utilities	Hon. Kye Rymer	 (/minutes/48/minute_items/2148)
 (/minutes/48/minute_items/2149/edit) Minister for Education, Culture, Youth Affairs, Fisheries and Agriculture	Dr. the Hon. Natalio Wheatley	 (/minutes/48/minute_items/2149)
 (/minutes/48/minute_items/2150/edit) Attorney General	Hon. Baba Aziz	 (/minutes/48/minute_items/2150)


## Absent

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 (/minutes/48/minute_items/2151/edit) (Annual Leave)	Cabinet Secretary	Ms. Sandra Ward	 (/minutes/48/minute_items/2151)
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## Cabinet Officials

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Deputy Cabinet Secretary for Cabinet Secretary	Mrs. Vicki Samuel- Lettsome	 (/minutes/48/minute_items/2152)
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## Commencement and Opening Prayer

 (/minutes/48/minute\_items/2153/edit)

The Chairman called the meeting to order at 9:45 a.m. The prayers were said by the Governor and Chairman.

The Chairman welcomed everyone to the first meeting of the year and wished Members a Happy New Year.



The Chairman congratulated the Premier for his decision of holding Cabinet meetings on the Sister Islands of Jost Van Dyke.

The Premier also welcomed Members and wished everyone a Happy and Prosperous New Year. He also thanked Members for supporting the initiative of holding Cabinet meetings on the Sister Islands.

The Premier added that he instructed the Speaker of the House of Assembly and Clerk to organise House of Assembly meetings on the Sister Islands as well.

## Matters Arising

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 (/minutes/48/minute_items/2114/edit)	REx/434/2019 (/decisions/188) .	 /minutes/48/minute_items/2114)
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presentation  
would be made to  
senior managers  
on Government's  
strategic plan  
which would  
include clear  
directions on  
some of what  
should be  
submitted to  
Cabinet for  
consideration.

91. The Premier  
further stated that  
the strategic plan  
was tied to the  
Government's  
Legislative  
Agenda and by  
extension the  
2020 Budget.



(/minutes/48/minute\_items/2137/edit)

## **BV Airways Arbitration Matter**



/minutes/48/minute\_items/2137)

92. The Premier  
expressed the  
concern of his  
Ministers and him  
in regards to the  
arbitration  
proceedings that  
BVI/BV Airways  
had launched  
against the British  
Virgin Islands  
government in a  
court in New York.

93. The Premier with the support of his Ministers requested that the Chairman launched a formal criminal investigation on the BV/BVI Airways matter to recoup the \$7.2 million on behalf of the people of the Virgin Islands. The Premier stated that it was obvious that this case was "cut-and-dry" - no money, no plane, no flights.
94. The Premier stated that this was one of the matters that his Administration campaigned on and that it must be investigated, adding that Cabinet Members would not tolerate inaction on this matter or any other matter that would require the maintaining of good governance.



95. The Premier reiterated that \$7.2M have disappeared, and that those persons who were directly involved with this agreement must be held accountable. He stated that there was a former Financial Secretary that served six months in jail for less than these types of acts and that Government should not turn a blind eye on this matter just because others may deem it as a political vendetta.
96. The Premier further stated that the circumstantial evidence on this matter led to a criminal investigation.
97. The Deputy Premier stated that there were lessons to be learnt from this and that the matter must be

properly  
documented  
through a  
commission of  
enquiry or  
criminal  
investigation.

98. The Deputy Premier added that the Chairman had continuously stated that his silence must not be taken for non-action; but that the fact remained that the public from Jost Van Dyke to Anegada continue to enquire about this matter and that he as Minister would also continue to enquire about it.

99. The Deputy Premier indicated that there were eight million dollars (\$8M) that were taken from First Caribbean Bank and went to the BVI Ports Authority without the proper process being done. He added that this type of

behaviour must come to an end, be addressed and that Government must know if there were lessons to be learned from such actions.

100. The Chairman expressed that he too wanted to ensure that the Territory's reputation was unblemished and that good governance standards were improved.

101. The Chairman stated that investigations, including criminal, had been launched on various Government projects or individuals due to a number of allegations or concerns. It was extremely important that these investigations be done properly by the respective authorities. He

added that he knew that it may be frustrating that more could not be said at present, but that proper procedures must be followed in order for authorities to be able to operate without interference.

102. As it relates to BV/BVI Airways the Premier stated that it was obvious that this matter required a full criminal investigation. The case was “cut-and-dry” - no money, no plane, no flight. The Chairman reminded Members that the Auditor General was undertaking a Value for Money Report on BV/BVI Airways agreement and that the report would be finalised shortly.

103. The Chairman expounded that once the final

report was submitted it would be reviewed and if there were areas which have to be referred to the police, that would be done.

104. The Chairman requested any additional information on the matter that the Premier may have received from the lawyers carrying the case.

105. The Premier responded that his office sent all the information they had on this matter to the Chairman and the Attorney General.

106. The Premier insisted that the reason for being at this juncture now was because these types of matters that had needed to be addressed were never addressed.

107. The Chairman stated there were things that could be done in order to improve Government's systems and improve good governance. He further stated that it was important to focus on the following two areas:

1. Ensuring that lessons would be learnt by improving governance legislation, policies and practices, mechanisms and institutions; and
2. Institutions and authorities being able to investigate and hold persons to account

108. The Premier acknowledged the Chairman's comments but stated that there

were areas of concerns that he had flagged since he was in the Opposition including BDO BOSS contract, the BVI Ports Authority, BV/BVI Airways, among others. He stated that all these flagged matters had the same players who were now sitting at the Recovery Development Agency (RDA).

109. The Premier indicated that in order for a lesson to be learned one must be taught, adding that over the years the office of the Governor had refused to act on these matters.

110. The Chairman reiterated that it was important to improve the systems and accountability.

111. The Premier indicated that it was also

important to have  
a partnership that  
was balanced.

112. The Deputy  
Premier pointed  
out that there  
were specific  
reasons why  
Government had  
to abide by the  
thirty (30)  
conditions for the  
granting of the  
loan guarantee  
and that there  
were those  
conditions that  
referred to  
violations of  
Protocols of  
Effective Financial  
Management.,  
and if so these  
must be well  
articulated.

113. The Chairman  
stated that he was  
meeting with the  
Premier and could  
have specific  
discussions on the  
following areas:

1. improved  
governance  
and  
processes
2. RDA  
partnership



3. loan  
guarantee  
conditions

114. The Premier requested that his Ministers be included in the meeting/s as well.

115. The Chairman agreed.


116. **Action by:**

117. The Chairman agreed to hold meeting/s with the Premier and Ministers to further discuss the aforementioned matters.


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## Confirmation and Signing of the Minutes

Minutes for meeting No. C/2/MEET/37/2019 (/minutes/47)  (/minutes/48/minute\_items/2143) were confirmed.

## Adjournment

 (/minutes/48/minute\_items/2154/edit) The Chairman adjourned the meeting at 2:04 p.m.

Ms. Sandra Ward  
Cabinet Secretary  
17 January 2020



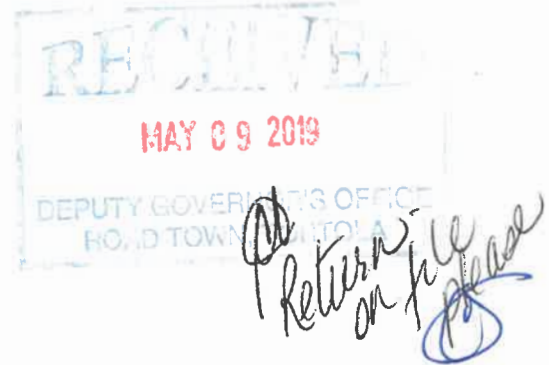
REF: PO/L2/036-III

FROM: Permanent Secretary (Ag.), Premier's Office

TO: Permanent Secretary, Deputy Governor's Office

DATE: 2<sup>nd</sup> May, 2019

SUBJECT: Implementation of an Integrity Commission



The Cabinet of the Virgin Islands was informed that the new Government through the Premier's Office will be leading the charge in the implementation of an Integrity Commission.

The Hon. Premier is requesting that all input on this matter from your kind office be submitted to the Premier's Office as a matter of urgency so that this Commission can be made a reality forthwith.

Your kind cooperation in this matter is greatly appreciated.

Elvia Smith-Maduro (Mrs.)  
Permanent Secretary (Ag.)

ESM:tms

pc: Deputy Governor

*Be file in  
two weeks  
(9/7/19)  
awaiting  
meeting with  
Ms. Finch  
28/6/19*

# Bill entitled, Integrity in Public Life Act, 2020

- **Signed** 13 December 2020 PO File: PO/M3/007 Mrs. Elvia Smith-Maduro

Memo No. 505/2020

## Background Information

1)The people of the British Virgin Islands have historically subscribed to the Good Governance principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership in the conduct of public affairs. These principles are reflected in the preamble to their Constitution, the Virgin Islands Constitution Order 2007, which acknowledges that the society of the Virgin Islands is based upon certain moral, and spiritual and democratic values, and that Virgin Islanders have developed themselves and their country based on qualities of honesty, integrity, mutual respect, among other noble principles.

2)The Constitution also affirms that the people of the Virgin Islands have generally expressed their desire to become a self-governing people and to exercise the highest degree of control over the affairs of their country at this stage of its development; which requires them to play an active and proactive role in the development and shaping of their institutions.

3)Attempts have been made since the 1990s to introduce Public Service Integrity Legislation in the Virgin Islands. Prior Virgin Islands Governments have recognised the need for a framework to guide, support and assure that the conduct of public affairs by public officials conforms with the internationally accepted standards of integrity. In 2003, a draft of an Integrity in Public Life Bill, 2003, was prepared and subject to various forums for consultation. However, for various reasons, this draft did not advance beyond this consultative stage. Major sections in the draft with the Registrar of Interests, Declaration of Interests, Assets, Income and Liabilities, and the Register of Interests. The Register of Interests Act was subsequently passed in the Legislative Council (now House of Assembly) on 2nd May, 2006.

4)On 11th January, 2018, Cabinet considered the paper titled "Status Report – Strategic Direction for an Improved Public Service". Cabinet approved the Good Governance strategy and requested full development and implementation of the following within the first Quarter of 2018:

- i. Public Service Management Act;
- ii. Integrity Commission; and

iii. Ministerial Code of Conduct, to be drafted for Cabinet.

5) To date, the Public Service Management Bill has been drafted and underwent extensive public consultation process. The feedback from the consultation has been incorporated into the draft and the Bill is on its final round of review and updates. Cabinet on 9th April, 2020 via Cabinet Memo No. 111/2020, approved the establishment of a Working Group to review the draft Ministerial Code of Conduct and make recommendations for amendments to the draft for Cabinet's approval. Due to the COVID-19 global pandemic, which resulted in imposition of many curfew orders, the Working Group was unable to complete their work within the original time frame of 1st October, 2020.

6) The Chairman of the Ministerial Code of Conduct Working Group has requested an extension of time from 1st October, 2020 to 30th November, 2020, to complete the review and submit recommendations for Cabinet's approval. Cabinet on 2nd December, 2020 approved an extension to 5th January, 2021, via Cabinet Memo No. 453/2020.

7) On 12th February, 2020, Cabinet noted via Memo No. 55/2020 the Premier's update on progress made to ensure Good Governance in public affairs in the first eleven (11) months of his government's administration and noted that the Integrity in Public Life will be among several pieces of good governance legislation that will come to Cabinet during the course of 2020. A copy of Cabinet Memo No. 55/2020 is attached for members ease of reference as **Appendix I**.

8) The need for Integrity legislation was championed by the current Premier and Minister of Finance. It is noted that when he was the appointed Leader of the Opposition that he also championed this cause. During his speech at the 30th June, 2017 Territory Day ceremony, he told the gathering, "The implementation of such legislation will create a victorious BVI because it would promote transparency." Now as the leader of this current Administration, the Premier is committed to bring forward this important piece of legislation, as his Government, pledged to place the people of the Virgin Islands first as well as its full commitment to integrity, the rule of law, transparency, accountability, stability, democratic principles, prosperity for the Virgin Islands, and to safeguard the rights of all who call the Virgin Islands home and ensure that those rights are fully respected and protected.

9) The Government also committed to put measures in place whereby elected members uphold our cherished institutions to the highest level and restrain from abusing their powers. This commitment was reinforced in the Speech from the Throne that was read in the House of Assembly on 14th November, 2019, by His Excellency The Governor, indicating that Integrity in Public Life legislation and other anti-corruption initiatives were on the 2020 Legislative Agenda.

10) Due to the emergence of the COVID-19 global pandemic in March 2020, Government's priorities were forced to be shifted towards mitigating the spread of the disease in the Territory and managing the social and economic impacts on the population. Circumstances hindered the legislature's ability to have regular sessions and thus impacted the implementation of the legislative agenda.



11)At the 2020 Speech from the Throne delivered by the Governor before the House of Assembly on 5th November, 2020, it was reiterated that the Government recognises that strengthening Governance remains important for having a stable economy. It was indicated that the Integrity in Public Life Bill remains a priority on the legislative agenda and that this legislation would promote and enhance ethical conduct standards by consolidating laws relating to the prevention of corruption and the award, monitoring, and investigating government contracts and prescribed licences.

12)Additionally, it was stated that the legislation would establish a single body responsible for supporting the establishment and enforcement of integrity standards that will promote and strengthen measures for preventing, detecting, investigating, judging, sanctioning, and prosecuting acts of corruption, linking with law enforcement as appropriate. To this end, the Integrity in Public Life Act, 2020 (**see Appendix II**) ("the Bill"), has been prepared and is now presented to Cabinet for consideration.

13)The Bill makes provision for a Code of Conduct and declarations of interest for public officials; for the offences of abuse of office, misconduct and neglect of duty; and in that connection to make provision for the establishment of Integrity Commission, its powers and functions; and to provide for related incidental matters.

14)Public officers and Persons in Public Life, listed in the First Schedule, would be required to sign the Code of Conduct set out in the Second Schedule of the Bill and observe, abide and conduct themselves in accordance with it. Public officers and Persons in Public Life would be required to complete and file, on the prescribed form, a declaration with the Commission of his or her income, assets, liabilities, private interests, and gifts in cash or kind that are received by himself or herself, his or her spouse or his or her dependent children. Thereafter, the public officer shall in each succeeding year that he or she continues to be a public officer, file further declarations of his or her income, assets, liabilities, and private interests. Assets may be placed in a blind trust. A copy of the trust deed shall also be filed with the Commission.

15)The Minister may, by regulations made under this Act, prescribe persons who occupy specific posts in the public service to complete and file declarations pursuant to the provisions of this Act.

16)Members of the Integrity Commission shall be appointed to hold office for a period not exceeding five (5) years and shall be eligible for re-appointment.

17)The Commission shall consist of:

- i. a chairman, who shall be a retired judge or an attorney at law of at least fifteen (15) years standing, appointed by the Governor in acting in his or her on deliberate judgment;
- ii. two (2) members appointed by the Governor on the advice of the Premier;
- iii. one (1) member appointed by the Governor on the advice of the Leader of Opposition; and

iv. one (1) member appointed on the advice of Christian Council.

18) All meetings of the Commission will require a quorum of three (3) members present at meetings.

19) A person appointed to the Commission shall be a person of high integrity, capable of exercising competence, diligence, sound judgment and impartiality in fulfilling his or her duties pursuant to the provisions of this Act.

20) The following persons are disqualified from being appointed a member of the Integrity Commission:

- i. a person in public life or is otherwise exercising a public function;
- ii. a person who has, at any time during the three (3) years preceding the date of appointment, been a person in public life or public servant;
- iii. a person who has, at any time during the five (5) years immediately preceding the date of appointment, held office in a political party; or
- iv. a person who would otherwise be disqualified, in accordance with the Constitution, to be a member of the House of Assembly.

21) The Act provides for vacancy in the membership of the Commission:

- i. where a Member is absent from three (3) consecutive meetings without the approval of the Chairman,
- ii. on the expiration of five (5) years from the Member's date of appointment,
- iii. on the death, resignation or revocation of the appointment of the Member,
- iv. if the Member is appointed as a Public Servant,
- v. if the Member is nominated as a candidate for election as a representative in the House of Assembly or is appointed the Speaker of the House of Assembly, and
- vi. if the Member otherwise becomes a public official.

22) The functions of the Integrity Commission shall be to receive, examine, and retain all declarations filed pursuant to the provisions of this Act; make such inquiries as it considers necessary in order to verify or determine the accuracy of any declaration filed pursuant to the Act; without prejudice to the provisions of any other enactment, conduct an investigation into any allegation of bribery or act of corruption under this Act referred to it by any person; and perform such other functions as may be required pursuant to the provisions of the Act or any other enactment.

23) The Commission shall not, in the exercise of its functions under this Act, be subject to the control or direction of any person or authority.

24)The Act makes provisions for removal of a Commissioner from office by the Governor based on the recommendation of a Disciplinary Tribunal that the Commissioner ought to be removed for inability or unwillingness to discharge the functions of his or her office or for misbehavior or other good cause.

25)Where the question of removing a Member of the Commission ought to be investigated, the Governor shall appoint a Disciplinary Tribunal consisting of one (1) person being either a Judge of the High Court or an attorney at law of fifteen (15) years standing, to inquire into and report on the facts thereof, and recommend to the Governor whether the Member should be removed from office.

26)The Act provides for the appointment of a Secretary to the Commission and appropriate staff, including qualified staff for conducting investigations.

27)In the performance of its investigative functions regarding complaints, the Commission shall have the powers, rights and privileges of the High Court at a trial as these relate to summoning witnesses to be examined under oath, affirmation or otherwise; and compelling the production of documents.

28)An inquiry shall not be commenced after five (5) years from the date when the person in respect of whose declaration the inquiry is being conducted, ceased to be a public official. In the course of investigations, the Commission may require, by notice in writing, any person to supply information to it or produce a document or thing.

29)An investigator may, upon production of his or her Official Identification Card if so required, enter premises occupied or used by a public authority for the purposes of searching for documents kept on the premises; inspecting documents or other things kept on the premises; and taking copies of relevant documents found on the premises.

30)The public authority concerned shall make available to the investigator any facilities necessary to enable the investigator to exercise his or her powers under subsection (2).

31)In the case of private premises where the investigator reasonably suspects that it is necessary to in furtherance of the investigation, the investigator may seek a warrant for the purpose of entering private premises to search for an inspect documents and other evidence.

32)The Act makes provisions for treating with the following offences:

- i. Abuse of Office (Clause 28) is committed if a public official:
  1. seeks or accepts personal or private benefit for himself or herself or a member of his or her family or person associated with him or her, whether or not the benefit places him or her under an obligation to the person given or offering the benefit;



2. uses public funds or resources for private purposes, including party political purposes;
  3. fails to act impartially, or gives undue preferential treatment to a person or group of persons;
  4. misuses information acquired in the course of his or her duties;
  5. acts in a way that allows or might reasonably be thought to allow, a conflict of interest to arise between the public duties and the private interests of the public official;
  6. interferes in, or seeks to influence, otherwise than as part of his or her duty, the appointment, promotion, suspension, demotion or dismissal of a public official or other persons; and
  7. induces or encourages another official to act contrary to the relevant Code of Conduct.
- ii. Misconduct and Neglect of Duty (Clause 29) is committed where a public officer misconducts himself or herself or neglects to perform his or her duties to such a degree as to amount to an abuse of public trust in the office holder;
  - iii. Obstruction and Providing False or Misleading Information (Clause 30); where any person obstructs or fails to assist an investigator in carrying out his investigative functions as set out in the Act, or where the individual gives false or misleading information to the investigator or the Commission;
  - iv. Failure to Furnish Information (Clause 31); an offence is committed where a person fails, without reasonable cause, to furnish to the Commission a declaration of further particulars thereof which he or she is required to furnish in accordance with the provisions of this Act, or where a person aids, abets, or facilitates another person in withholding information from the Commission.
  - v. Knowingly and mischievously makes or causes to be made a false report to the Commission or misleads the Commission by giving false information or by making false statements or accusations (Clause 27(2)).

33) In the case of the above-mentioned offences, the following penalties are prescribed under the Act, upon conviction of the individual:

- i. Abuse of Office – a fine not exceeding thirty thousand dollars (\$30,000) or imprisonment for a term not exceeding five (5) years. (Clause 28);

- ii. Misconduct and Neglect of Duty – a fine not exceeding twenty thousand dollars (\$20,000) or imprisonment for a term not exceeding two (2) years. (Clause 29);
- iii. Obstruction and Providing False or Misleading Information – a fine not exceeding \$15,000 or imprisonment for a term not exceeding two (2) years. (Clause 30);
- iv. Failure to Furnish Information – a fine not exceeding thirty thousand dollars (\$30,000) or imprisonment for a term not exceeding five (5) years. Where the non-disclosure applies to property acquired by the public official while he or she was still a public official, the court may impose an additional penalty of forfeiture of the property to the Territory in the case of local property, or ordered that an amount equivalent to the value of property, be paid by the person in public life to the Territory where the undisclosed property is situated outside of the Virgin Islands. (Clause 31);
- v. Knowingly and mischievously makes or causes to be made a false report to the Commission or misleads the Commission by giving false information or by making false statements or accusations – a fine not exceeding twenty thousand dollars (\$20,000) or imprisonment for a term not exceeding three (3) years, or both (Clause 27(2)).

34) Where the Commission is satisfied on the basis of its inquiry that a breach of any provision of the Act has been committed, it shall take any action as it deems fit. However, where it is satisfied that an offence has been committed, the Commission shall forthwith refer the matter to the Director of Public Prosecutions together with a certified copy of the declaration in question and a report of its findings; and forward to the Governor a report of its findings.

35) Where the Commission determines that the subject matter of an inquiry is under investigation by the police or the subject of any proceedings in a court of law, the Commission shall hold its own enquiry in abeyance, pending the final disposition of that investigation and the court proceedings.

36) Members of the Integrity Commission and its staff shall treat all declarations or information related to such declarations as secret and confidential and shall not disclose or communicate to any unauthorised person or allow any such person to have access to any such declaration or information. Breach of this confidentiality shall result, on summary conviction, in a fine of ten thousand dollars (\$10,000) or to a term of imprisonment not exceeding one (1) year or both.

37) The detailed Code of Conduct is contained in the Second Schedule and addresses General Principles, Conflict of Interest, Incompatible Outside Interest, Political or Public Activity, Reaction to Improper Offers, Susceptibility to Influence by Others and Confidentiality of Information Held by Public Authorities.

38) The Third Schedule of the Bill contains the form to be used for summoning witnesses before the Commission.

39)The Fourth Schedule contains the form for filing declarations of assets and interests under the Act.

## **Purpose**

40)The purpose of the Cabinet Paper is for Cabinet to review and note the draft Integrity in Public Life Act (2020) and approve that Premier's Office instruct the Attorney General Chambers to vet and finalise the draft Bill to be resubmitted for Cabinet's approval and subsequent submission to the House of Assembly.

## **Cross-Ministry Consultation**

41)None required at this time. The final draft Bill to be completed by the Attorney General's Chambers will be circulated to all Permanent Secretaries before it comes back to Cabinet for approval.

## **Financial Implications**

42)The presentation of this Bill is vital to protecting the public purse from actual losses of funds or property, or to prohibit or minimise the prospects of not receiving best value for money on sales or purchases within programmes and projects due to the offences listed in Part V of the Bill. This Bill is also a mitigating measure to protecting the image and reputation of the Government of the Virgin Islands, both locally and internationally, which also have a value, particularly to the twin pillars of the BVI economy - Tourism and Financial Services; and to those investors, suppliers or vendors, and other clients including taxpayers who otherwise would not be willing to transact business with the government or even within the Territory. A tarnished image or an unsavory reputation of the Government can have disastrous effects on BVI's position as the premier jurisdiction for financial services and which provides sixty percent (60%) of Central Government's revenue; however, it is hoped that the penalties therein are significant enough to encourage compliance.

## **Legal Implications**

43)There are no adverse legal implications, which would arise if Cabinet is minded to consider and approve the latest draft Bill entitled Integrity in Public Life Act, 2020.

44)Taking into consideration that the Premier's Office would have to instruct the Attorney General Chambers to vet and finalise the draft bill, (presumably with additional comments and amendments) and thereafter submit same to Cabinet for approval, Chambers would also be minded to provide the relevant legal comments on the final draft Bill.

## **Budget**

45)No budgetary implications to the decision sought.

## **Communication Strategy**

46)The normal Cabinet process.

## **Conclusion**

47)Cabinet is invited to consider and concur with the decision sought.

## **Decision Sought**

Cabinet is invited to:

- a. review and note the Bill entitled, Integrity In Public Life Act 2020 (the "Bill") (attached at **Appendix II**), which seeks to make provision for Code of Conduct and declarations of interest for public officers;
- b. decide that the Premier's Office instruct the Attorney General's Chambers to vet and finalise the draft bill to be resubmitted to Cabinet for approval; and
- c. decide that an expedited extract be issued to allow the decision of Cabinet to be acted upon before the confirmation of the Minutes.

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

Hon. Andrew A. Fahie  
Premier

16 December 2020

**EXPEDITED EXTRACT**

**Ref:** CO/C/070/2

**FROM:** Cabinet Secretary

**TO:** The Premier

**CC:** Financial Secretary  
Permanent Secretary, Premier's Office

**DATE:** 18th December, 2020

**Bill entitled, Integrity in Public Life Act, 2020**  
**Memo No. 505/2020 (/memorandums/931)**

Further to the decision made by the Cabinet on 16th December, 2020, below is the amended decision taken by the Cabinet in respect of the captioned matter:

Cabinet:

- a. reviewed and noted the Bill entitled, Integrity In Public Life Act 2020 (the "Bill") (attached at **Appendix II**), which seeks to make provision for Code of Conduct and declarations of interest for public officers;
- b. decided that Cabinet rescind the decision taken in Cabinet Memo No. 378/2019 at the meeting of 9th November, 2019, where the Deputy Governor was deemed to be given the sole lead on this matter;

- c. approved that the Deputy Governor and the Premier's Office work in collaboration on this matter with the Premier's Office as the lead seeing that the scope is wider than Public Officers;
- d. approved that all stakeholders must be consulted prior to the conclusion of this exercise;
- e. decided that the Premier's Office instruct the Attorney General's Chambers to vet and finalise the Bill noting items (c) and (d), prior to the Bill being resubmitted to Cabinet for approval; and
- f. decided that an expedited extract be issued to allow the decision of Cabinet to be acted upon before the confirmation of the Minutes.

Please be guided accordingly.

Ms. Sandra Ward  
18th December, 2020



Office of the Governor  
Government House  
P. O. Box 702  
Road Town, Tortola  
Virgin Islands

Telephone: (284) 468-3512

18<sup>th</sup> December, 2020

Mr. David D. Archer, Jr  
Deputy Governor  
Office of the Governor  
Road Town, Tortola

Ms. Dawn Smith  
Attorney General  
Attorney General Chambers  
Road Town, Tortola

Dear Deputy Governor and Attorney General:

**Integrity In Public Life Bill**

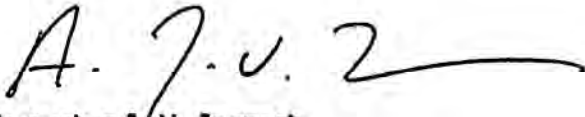
I am grateful for the work you and your offices, and colleagues across Government, have done to date on the Integrity In Public Life bill. It is a positive demonstration of cross-Ministry collaboration and I fully support the intent behind the bill, which is to improve good governance and transparency in BVI.

As you know, Cabinet Memo 378/2019 set out that Cabinet had agreed the Deputy Governor would work up a policy, and liaise with the Attorney General's Chambers to take this forward. At this week's meeting of Cabinet on December 16<sup>th</sup>, outside of that decision, the Premier presented his own paper and a separate Integrity In Public Life bill (the 'Premier's bill'). As I set out in Cabinet I believe this is inconsistent with Section 60 of the Constitution, which clearly sets out that terms and conditions of service of persons holding or acting in public offices are a responsibility of the Governor.

Accordingly, pursuant to Section 40(3) of the Constitution, I am requesting that you and your offices continue and complete the work underway on the Integrity In Public Life bill, being cognisant of the Premier's Bill to ensure that the final bill reflects all Ministries of Government and most importantly, delivers good governance and integrity for the people of BVI.

I look forward to seeing a final draft of the Integrity in Public Life bill early in the New Year, in order that I can take a paper to Cabinet early in the New Year.

Sincerely yours,

A handwritten signature in dark ink, appearing to read 'A. J. U. Jaspert', followed by a long horizontal flourish.

Augustus J. U. Jaspert  
**HM Governor**

Cc: Premier  
PS, Premier's Office  
Cabinet Secretary