



# **2022 STATUTORY BOARDS REVIEW**

**FINAL REPORT OF REVIEWER  
JAMAL S. SMITH, LL.B.(Hons.), FCIArb.**

*Presented to His Excellency John Rankin, CMG, Governor  
and Dr. the Hon. Natalio Wheatley, Premier  
on 31 December 2022*



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## FINAL REPORT

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## TABLE OF CONTENTS

<b>FORWARD</b>	<b>8</b>
<b>PART I: EXECUTIVE SUMMARY</b>	<b>9</b>
<b>PART II: METHODOLOGY</b>	<b>11</b>
<b>PART III: ESTABLISHMENT</b>	<b>18</b>
RECOMMENDATION NO. 1	22
RECOMMENDATION NO. 2	22
<b>A. STATUTORY BOARDS UNDER THE CONSTITUTION</b>	<b>23</b>
RECOMMENDATION NO. 3	26
RECOMMENDATION NO. 4	26
<b>B. ADJUDICATORY BOARDS</b>	<b>27</b>
DISCIPLINARY TRIBUNAL UNDER THE LEGAL PROFESSION ACT, 2015	29
RECOMMENDATION NO. 5	30
RECOMMENDATION NO. 6	30
RECOMMENDATION NO. 7	30
<b>C. ADVISORY BOARDS</b>	<b>31</b>
<b>D. REGULATORY BOARDS</b>	<b>33</b>
INTERNATIONAL TAX AUTHORITY (“ITA”)	35
FINANCIAL SERVICES COMMISSION (“FSC”)	35
RECOMMENDATION NO. 8	38
RECOMMENDATION NO. 9	39
RECOMMENDATION NO. 10	39
RECOMMENDATION NO. 11	39
RECOMMENDATION NO. 12	40
TELECOMMUNICATIONS REGULATORY AUTHORITY (“TRC”)	40
RECOMMENDATION NO. 13	42
RECOMMENDATION NO. 14	43
VIRGIN ISLANDS GENERAL LEGAL COUNCIL (“VIGLC”)	44
RECOMMENDATION NO. 15	44
RECOMMENDATION NO. 16	45
FINANCIAL INVESTIGATION AGENCY (“FIA”)	45
<b>E. PRIVATE ENTERPRISES</b>	<b>45</b>
RECOMMENDATION NO. 17	47
THE BVI AIRPORTS AUTHORITY LIMITED (“BVIAA”)	47
THE BVI ELECTRICITY CORPORATION (“BVEIC”)	48
THE BVI PORTS AUTHORITY (“BVIPA”)	48
THE BVI HEALTH SERVICES AUTHORITY (“BVIHSA”)	49
THE BVI INTERNATIONAL ARBITRATION CENTRE (“BVI IAC”)	49
RECOMMENDATION NO. 18	51
THE WICKHAM’S CAY DEVELOPMENT AUTHORITY (“WCDA”)	51

RECOMMENDATION NO. 19	52
<b>F. CHARITABLE PURPOSE BOARDS</b>	<b>52</b>
THE SOCIAL SECURITY BOARD	53
RECOMMENDATION NO. 20	53
THE H. LAVITY STOUTT COMMUNITY COLLEGE (“HLSCC”)	53
RECOMMENDATION NO. 21	54
THE NATIONAL PARKS TRUST (“NPT”)	54
RECOMMENDATION NO. 22	55
THE RECOVERY AND DEVELOPMENT AGENCY (“RDA”)	55
THE SCHOLARSHIP TRUST FUND BOARD (“STFB”)	56
RECOMMENDATION NO. 23	56
THE VIRGIN ISLANDS FESTIVAL AND FAIRS COMMITTEE (“VIF&FC”)	57
 <b>PART IV: MAINTENANCE</b>	 <b>58</b>
 (A) MEASURABLE MANDATES AND OBJECTIVES BY WHICH ITS PERFORMANCE CAN BE EVALUATED BY ITS APPOINTING AUTHORITY.	 58
RECOMMENDATION NO. 24	59
RECOMMENDATION NO. 25	59
(B) AN ANNUAL BUDGET, ANNUAL WORK PLAN, ANNUAL REPORTS AND ANNUAL EXTERNAL AUDIT.	59
RECOMMENDATION NO. 26	60
RECOMMENDATION NO. 27	60
(C) APPROPRIATE FUNDING FROM THE CENTRAL GOVERNMENT FOR PUBLIC POLICY OBJECTIVES ONLY WHICH ARE FULLY DISCLOSED.	61
RECOMMENDATION NO. 28	62
RECOMMENDATION NO. 29	63
(D) INTERNAL CONTROLS AND INTERNAL AUDITS WHERE THOSE STATUTORY BOARDS HAVE THE POWER TO DEAL WITH THEIR OWN FUNDS, WHETHER COLLECTING FUNDS AND/OR SPENDING FUNDS.	63
(E) COMPETITIVE PUBLIC PROCUREMENT PROCESSES.	64
RECOMMENDATION NO. 30	64
(F) INDEPENDENT APPOINTMENT OF STAFF	64
RECOMMENDATION NO. 31	65
RECOMMENDATION NO. 32	66
RECOMMENDATION NO. 33	66
RECOMMENDATION NO. 34	66
(G) CONFLICT OF INTEREST	67
RECOMMENDATION NO. 35	68
RECOMMENDATION NO. 36	69
(H) COMPLAINTS PROCEDURE	69
RECOMMENDATION NO. 37	69
RECOMMENDATION NO. 38	70
(I) SPECIALIZED COMMITTEES	70
(J) EXEMPTIONS	70
RECOMMENDATION NO. 39	71
(K) PUBLIC-PRIVATE PARTNERSHIPS	71
RECOMMENDATION NO. 40	71

<b>PART V: EXECUTIVE POWERS</b>	<b><u>72</u></b>
<b>PART VI: CHALLENGES</b>	<b><u>73</u></b>
<b>PART VII: SPECIFIC RECOMMENDATIONS</b>	<b><u>74</u></b>
<b>PART VIII: CONCLUSIONS</b>	<b><u>80</u></b>
<b>PART IX: ACKNOWLEDGEMENTS</b>	<b><u>81</u></b>
<b>PART X: APPENDICES</b>	<b><u>82</u></b>

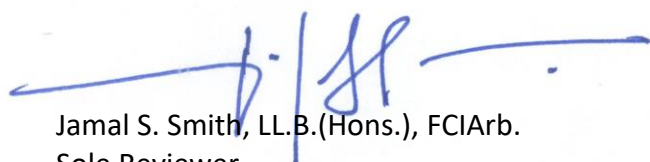
## FORWARD

22 November 2022

Over the years I have served on various statutory boards within the Virgin Islands, starting with my very first appointment as the first alumni of the H. Lavity Stouff Community College to serve on its Board of Governors appointed by then Chief Minister, D. Orlando Smith, OBE, as well as the Chairperson of the Social Security Appeals Tribunal appointed by then Premier, the late Ralph T. O'Neal, OBE. Other statutory boards with which I have had the privilege of serving over the years include most recently as the Chairperson of the Labour Arbitration Tribunal, the Prison Visiting Committee, the Intellectual Property Advisory Committee, the Virgin Islands General Legal Council and the Telecommunications Regulatory Commission. Internationally, I have had the privilege of serving on boards and committees in civil society that requires a great deal of transparency and disclosure with public reporting requirements, such as the Standing Committee on Constitution, Canons, Structure and Governance of The Episcopal Church headquartered in New York (2019 – 2021), having been appointed by the then President of the House of Deputies of The Episcopal Church, The Rev. Gay Clarke Jennings, and in various leadership roles within the International Trademark Association also headquartered in New York, which is the world's largest association of brand owners and professionals.

While I have learned a great deal from each of those roles and have built lifelong friendships with many persons with whom I have served, I am acutely aware of the demands which these roles place on persons willing to serve and the commitment that those persons make for the greater good of all. Therefore, any criticism that I make within this report should never be seen as an attack on those volunteers who give of their time and talents for the betterment of the Virgin Islands. Instead, it is my hope that it can be seen as a road sign on a long journey to avoid the annoying GPS having to say, yet again, "recalculating" and help improve the quality of life for all Virgin Islanders and those friends who willingly call the Virgin Islands their home.

However, my experience serving on statutory boards, coupled with my twenty (20) plus years as a legal practitioner within the Virgin Islands, are only enough to assess the legislation creating statutory boards. However, an understanding of corporate governance to address the implications of the global standards for good governance in statutory boards is an element of this exercise that requires some skill and acumen. An understanding of various models of corporate governance, including the *OECD Guidelines on Corporate Governance of State-Owned Enterprises (2015 Edition)* must be brought to bear when assessing the establishment, maintenance and powers exercised by the executive government in respect of statutory boards. It is against this backdrop that I make my forty (40) recommendations, with the hope that the Virgin Islands will be all the better for them.



Jamal S. Smith, LL.B.(Hons.), FCI Arb.  
Sole Reviewer



## PART I: Executive Summary

### The Scope of Works

- 1.1. The Scope of Works under the Terms of Reference for COI Recommendation B25 required that a list of statutory bodies be prepared by the COI Implementation Unit and provided to the Sole Reviewer. The list of statutory boards that was provided by the COI Implementation Unit in accordance with the Letter of Appointment only contained 18 statutory boards out of a possible 70 statutory boards. Therefore, a working list to supplement the one provided was prepared and sent to the COI Implementation Unit to assist with implementing COI Recommendation B25.

### The Background

- 1.2. It is necessary to put COI Recommendation B25 in its proper context. During the COI deliberations concerns arose about the creation of statutory boards, their independence and the interplay between the executive and these statutory boards. An example of how that interplay functioned was the COI's linear focus on the Cruise Pier Development Project, which involved the BVI Ports Authority and the then Minister for Communications and Works. Some questions arose whether or not the exercise of executive power in the manner that occurred with that project was acceptable. Another example, was the dismissal of the entire Board of Trustees of the Virgin Islands Climate Change Trust Fund by the then Premier and the Cabinet discussions surrounding it as well as the legal advice provided by the then Attorney General. Therefore, there was sufficient reason for the COI to recommend further review of statutory boards within the context of COI Recommendation B25, and this is notwithstanding the several other recommendations for reviews of statutory boards for various reasons.

### Rationalization of the Number of Statutory Boards

- 1.3. A major observation of this report is that the number of statutory boards is categorically too high for the population and budgetary constraints of the Virgin Islands. A rationalization of the current statutory boards is necessary and measures to curb the further proliferation of statutory boards is essential. There has been precedent for the consolidation of statutory boards through a similar rationalization process in the UK, in particular, with the consolidation of statutory tribunals in accordance with the UK's Tribunals, Courts and Enforcement Act 2007.

### The OECD Standards

- 1.4. Based on international standards, several statutory boards have been properly established, are adequately maintained and have the right balance of executive powers exercised in respect of them. However, two statutory boards should be singled out as the gold standard

among statutory boards, namely, the International Tax Authority (the “ITA”) and the Recovery and Development Agency (the “RDA”). Among all statutory boards the ITA and RDA have been found to meet all international standards for their establishment, maintenance and the powers exercised with respect to them and exemplify how a statutory board should operate. Additionally, those statutory boards that fall under the Ministry of Education and Culture that provided responses to the COI Implementation Unit are among the very few statutory boards whose appointment of their members are generally done on time and kept up-to-date. However, there are serious deficiencies with respect to a few statutory boards that require urgent attention as it relates to their establishment, maintenance and the exercise of executive powers in respect of those statutory boards.

## General Recommendations

- 1.5. There are some forty (40) recommendations as a result of this review. These recommendations are benchmarked against the OECD Standards and, therefore, cover the various items that would improve the corporate governance model used by various statutory boards. It starts off with ensuring that everyone is on the same page about what is a statutory board, where it is noted that this same issue plagued the COI deliberations with considerable epistemological variations over the very nature of a statutory board. This is seen as a major cause for concern where something as simple as what is a “statutory board” could cause such debate in a 21<sup>st</sup> Century Virgin Islands suggests that there is considerable work to be done starting with the very foundations. Therefore, the recommendations are wide and sweeping, with an indication as to what steps need to be taken to implement those recommendations. At the very end of the document there is a comprehensive list, in numerical order, of all forty (40) recommendations.

## PART II: Methodology

- 2.1 On 29 September 2022 the Permanent Secretary in the Premier's Office issued a letter of appointment after prior approval by Cabinet (the "**Letter of Appointment**") as the sole reviewer in accordance with Recommendation B25 of the Report of the Commission of Inquiry ("**COI**") which attached a Terms of Reference to be returned by 01 October 2022. On 29 September 2022 the signed Terms of Reference was returned to the Permanent Secretary in the Premier's Office. The Scope of Work was as follows:
1. Obtain a list of Statutory Boards in the British Overseas Territory of the Virgin Islands (the "**BVI**", and only where a statute uses "British Virgin Islands" will that term be used, otherwise "Virgin Islands" will be used as the constitutionally established name of the Territory).
  2. Review the provisions under which statutory boards are established and maintained.
  3. Specifically, for each Statutory Board identify any powers that are exercised in respect of such boards by the executive government.
  4. For each Board, recommend the appropriate powers that should be in statutory provision.
- 2.2 In accordance with the Letter of Appointment, the Commission of Inquiry Recommendations Implementation Unit (the "**COI Implementation Unit**") provided a list of statutory boards was provided by the Permanent Secretary in the Premier's Office on 02 October 2022 which included the name of the Chairperson and contact information for only 18 statutory boards as shown in Part I of **APPENDIX 1**. However, it was necessary to supplement that list to ensure that the objectives of Recommendation B25 is achieved and for this purpose a full list of statutory boards (and subsequently supplemented after further information revealed additional statutory boards) was prepared as Part II of **APPENDIX 1** and submitted to the COI Implementation Unit along with a draft letter and questionnaire to be sent to each statutory board as shown in **APPENDIX 2**. This initial stage of preparing the list of statutory boards revealed that there are at least 70 statutory boards in the Virgin Islands established by numerous enactments.
- 2.3 In accordance with the Letter of Appointment, the COI Implementation Unit gathered the information on each statutory board and then assisted the Sole Reviewer by sending a signed version of the draft letter and questionnaire to each statutory board. The questionnaire was to be returned to the COI Implementation Unit by 25 October 2022. Of the 18 statutory boards included in Part I of **APPENDIX 1**, only 15 submitted the completed questionnaire even where there were some extensions granted.
- 2.4 On 05 October 2022 the Financial Services Commission (the "**FSC**") submitted a letter making various inquiries about the process, which was very welcomed and a response was provided on 06 October 2022 which granted them an exceptional extension of time to submit their questionnaire by 28 October 2022. Despite the grant of an extension, on 18

October 2022, an entire week in advance of the deadline, the FSC submitted a comprehensively completed questionnaire. In light of this, it was thought prudent to review the FSC's completed questionnaire extensively and give a preliminary assessment to the FSC which was done by a letter to its Managing Director on 19 October 2022 and offering the FSC an opportunity to provide extensive responses to the concerns raised within its exceptionally granted extension of time. The FSC provided a very comprehensive response to those questions on 27 October 2022, still a day earlier than the exceptionally granted deadline. That very comprehensive response has proven extremely helpful with the entire review process.

2.5 In addition to the FSC, the BVI Electricity Corporation (the “**BVIEC**”) submitted its questionnaire on 20 October 2022, well in advance of the deadline. For that reason, the Sole Reviewer thought it prudent to give the BVIEC an opportunity to respond to concerns raised during a preliminary assessment which was sent to the BVIEC on 21 October 2022 and resulted in a more comprehensive response.

2.6 It should be noted that despite the Taxi and Livery Commission being one of the statutory boards identified by the COI Implementation Unit in Part I of APPENDIX 1, the Director of the Taxi and Livery Commission, Mr. Jevaughn Parsons, wrote to the COI Implementation Unit on 18 October 2022 noting that:

“The Taxi and Livery Commission is currently working towards statutorization but the process is not yet complete, therefore, I am of the view that it may be premature if we are included in this exercise.”

2.7 The Sole Reviewer sent a written response dated 18 October 2022 to Mr. Parsons through the COI Implementation Unit in an attempt to clarify that the Taxi and Livery Commission had already been established pursuant to the Road Traffic (Taxi and Livery Commission) Regulations, 1997 (S.I. No. 24 of 1997), as amended and asking him to reconsider his position. Despite this, the Taxi and Livery Commission chose not to participate in this process.

2.8 Due to the serious lack of responses from the statutory boards, the Sole Reviewer then prepared letters to the Deputy Governor's Office and each Ministry specifically noting those 55 statutory boards that had not yet provided a completed questionnaire. Due to the limited time left for reviewing the data, it was necessary to solicit limited information on a rapid basis. However, through this process, it became clear that many of the statutory boards that were not included in the list in Part I of APPENDIX 1 had not received the questionnaire. For this reason, the Sole Reviewer sought to communicate directly with those statutory boards that indicated their non-receipt of the questionnaire from the COI Implementation Unit. The only responses received in this second attempt to get clarification was from the Deputy Governor's Office, the Premier's Office and the Ministry of Education and Culture. The Ministry of Health and Social Development was unable to locate the information requested by the deadline and even after giving some additional

time by delaying the production of this preliminary report, they were still unable to provide the requested information for the statutory boards falling under their Ministry. Absolutely no response was received from the Ministry of Communications and Works.

- 2.9 As part of the review process, the Sole Reviewer utilized the best corporate practice accepted internationally. However, the only relevant guidance for good corporate governance within the public sector can be found in the *OECD Guidelines on Corporate Governance of State-Owned Enterprises (2015 Edition)* (the “**OECD Guidelines**”). The OECD Guidelines make it clear that every country has different interpretations as to what may constitute a State-Owned Enterprises (“**SEO**”), but it limited its application to corporate entities or any statutory corporation whose activities, or part of their activities, are of a largely economic nature. However, the OECD Guidelines are also based on the *OECD Principles of Corporate Governance* so that principles which were borne out of catastrophic events within global corporate governance regimes were made applicable to public sector based governance models. Although all the standards outlined in the OECD Guidelines (the “**OECD Standards**”) would apply to statutory boards engaged in commercial activities, not all the OECD Standards would apply to other statutory boards. It, therefore, required an approach that sifted through the OECD Standards and carefully assess the types of statutory boards in the Virgin Islands and which OECD Standards should apply to each type.
- 2.10 The OECD Guidelines contain seven (7) Chapters containing various standards, plus a section with annotations for each standard in each of those seven (7) Chapters. For the purposes of this exercise, all of that information has been contracted and condensed into twenty-eight (28) specific OECD Standards as follows:
1. **LEGAL FORM:** There should be a simple and standardized legal form for statutory boards. The role of statutory boards should be clearly defined in legislation, preferably according to company law.
  2. **OPERATIONAL POLICIES:** Statutory Boards operational policies should follow commonly accepted corporate norms.
  3. **OPERATIONAL AUTONOMY:** Statutory Boards should have full operational autonomy to achieve their defined objectives.
  4. **INDEPENDENCE:** Central Government should refrain from intervening in Statutory Board’s management and respect their independence. Statutory board composition should allow the exercise of objective and independent judgment.
  5. **OWNERSHIP ENTITY:** The exercise of ownership rights should be centralized in a single ownership entity, or, if that is not possible, carried out by a coordinating body. This “ownership entity” should have the capacity and competencies to effectively carry out its duties. The “ownership entity” should be held accountable

to the relevant representative, bodies and have clearly defined relationships with relevant public bodies, including the state supreme audit institutions. Represented at general shareholders meetings and effectively exercising voting rights. The Chair, in coordination with other board members, should act as the liaison for communications with the ownership entity.

6. **BOARD NOMINATION AND APPOINTMENT:** Well-structured, merit-based and transparent board nomination processes which is also diverse. All board members, including any public officials, should be nominated based on qualifications and have equivalent legal responsibilities.
7. **BOARD MANDATES AND OBJECTIVES:** Central Government should set and monitor the implementation of board mandates and objectives, including financial targets, capital structure objectives and risk tolerance levels. Statutory boards should effectively carry out their functions of setting strategy and supervising management, based on broad mandates and objectives set by Central Government
8. **BOARD REPORTING SYSTEMS:** Central Government should set up reporting systems that regularly monitor, audit and assess performance, and oversee and monitor compliance with applicable corporate governance standards. Statutory boards should report, where relevant and feasible, with regard to labour, creditors and affected communities. Statutory boards should report material financial and non-financial information in line with high quality internationally recognized standards of corporate disclosure
9. **DISCLOSURE POLICY:** A disclosure policy that identifies what information should be publicly disclosed, the appropriate channels for disclosure, and mechanisms for ensuring quality of information. Where statutory boards combine economic activities and public policy objectives, high standards of transparency and disclosure regarding their cost and revenue structures must be maintained, allowing for an attribution to main activity areas
10. **EXTERNAL AUDITORS:** Central Government should maintain continuous dialogue with external auditors and specific control organs
11. **BOARD REMUNERATION POLICY:** Central Government should establish a clear remuneration policy for all boards that attracts and motivate qualified professionals
12. **EXECUTIVE REMUNERATION:** Statutory boards should set executive remuneration levels



13. **REDRESS PROCESS:** There should be an efficient redress process (either legal or arbitration) when interested parties consider that their rights have been violated
14. **FUNDING:** Costs related to public policy objectives should be funded by the Central Government and disclosed
15. **EXEMPTIONS:** As a general principle, statutory boards undertaking economic activities should not be exempt from the application of general laws, tax codes and regulation. Statutory boards' economic activities should face market consistent conditions regarding access to debt and equity finance, in particular, their relations to financial institutions should be based on purely commercial grounds, economic activities should not benefit from any indirect financial support that confers an advantage over private competitors, such as preferential financing, tax arrears or preferential trade credits from other statutory boards, and they should not receive inputs (such as energy, water or land) at prices or conditions more favourable than those available to private competitors. Transactions between Central Government and statutory boards, and between statutory boards, should take place on market consistent terms
16. **COMPETITIVE PUBLIC PROCUREMENT:** When statutory boards engage in public procurement, whether as bidder or procurer, the procedures involved should be competitive, non-discriminatory and safeguarded by appropriate standards of transparency.
17. **COMMUNICATION:** Statutory boards should develop an active policy of communication and consultation with Central Government
18. **JOINT VENTURES & PPP:** Cooperative projects such as joint ventures and public-private partnerships should ensure that contractual rights are upheld and that disputes are addressed in a timely and objective manner
19. **INTERNAL CONTROLS:** Statutory boards should develop, implement, monitor and communicate internal controls, ethics and compliance programmes or measures, including those which contribute to preventing fraud and corruption. Statutory boards should observe high standards of responsible business conduct and expectations established by the Central Government in this regard should be publicly disclosed and mechanisms for their implementation be clearly established
20. **POLITICAL ACTIVITIES:** Statutory boards should not be used as vehicles for financing political activities and should not make political campaign contributions
21. **INTERNAL AUDIT:** Statutory boards should develop efficient internal audit procedures and establish an internal audit function that is monitored by and

reports directly to the board and to the audit committee or the equivalent corporate organ.

22. **INDEPENDENT EXTERNAL AUDIT:** Annual financial statements should be subject to an independent external audit based on high-quality standards.
  23. **ANNUAL REPORT ON STATUTORY BOARDS:** The ownership entity should develop consistent reporting on statutory boards and publish annually an aggregate report on statutory boards. Good practice calls for the use of web-based communications to facilitate access by the general public
  24. **APPOINTMENT OF CEO:** Statutory boards should have the power to appoint and remove the CEO. Good practice calls for the Chair to be separate from the CEO
  25. **CONFLICT OF INTEREST:** Independent board members, where applicable, should be free of any material interests or relationships with the enterprise, its management, other major shareholders and the ownership entity that could jeopardize their exercise of objective judgment. Mechanisms should be implemented to avoid conflicts of interest preventing board members from objectively carrying out their board duties and to limit political interference in board processes
  26. **EMPLOYEE REPRESENTATION:** If employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence
  27. **SPECIALIZED COMMITTEES:** Statutory boards should consider setting up specialized committees, composed of independent and qualified members, to support the full board in performing its functions, particularly in respect to audit, risk management and remuneration
  28. **ANNUAL PERFORMANCE SELF-EVALUATION:** Statutory boards should, under the Chair's oversight, carry out an annual, well structured evaluation to appraise their performance and efficiency.
- 2.11 After reviewing each legislation establishing the seventy (70) statutory boards the Sole Reviewer then reviewed the questionnaire provided by the fifteen (15) statutory boards that provided responses and the limited information provided by the Deputy Governor's Office and those Ministries that cooperated with the process. After collating the information provided in each questionnaire and assessing the statutory requirements against the OECD Standards, specific recommendations can be made with respect to each statutory board. Only the specific boards for which information was provided will receive

specific consideration. The recommendations will apply to all statutory boards unless specifically indicated.

- 2.12 It is important to note that there are some statutory boards where the OECD Guidelines would generally apply, like the National Bank of the Virgin Islands Limited and the Prospect Reef Resort Management Company Limited, which are SEOs in the true sense of the term. However, absolutely no cooperation has been received in respect of these enterprises, which raises significant concerns in light of the problems with several other statutory boards, these specific boards participate in the economic sphere which can cause serious socio-economic harm if not properly managed.

## PART III: Establishment of Statutory Boards

- 3.1. Statutory boards are a form of “public authority” but separate from the public service which is part of the central government as shown in the High Court case of Claude Skelton-Cline v. The Cabinet of the Virgin Islands<sup>1</sup> where it was said:

“... all public authorities serve a public function which would inure to the benefit of a public interest and so therefore the decisions of public authorities are *prima facie* susceptible of review. However, ... not all public bodies constitute central government. Public authorities could be divided into two discrete classifications; those which fall under the chapeau of the public/civil service and those which are classified as statutory bodies/bodies corporate. . . [Only] those persons employed in central government are designated as public servants . . .”<sup>2</sup>

- 3.2. A statutory board is defined by the Interpretation Act (Cap. 136) as “any board, commission, committee, council or other like body established by or under an enactment”.<sup>3</sup> Therefore, any Act passed by the House of Assembly (or prior to 2007, by the Legislative Council) or any statutory instrument made under such an Act may establish a statutory board. It should be noted that the withdrawn Disaster Management Bill, 2011 used the same definition but also distinguished between a statutory board and a statutory body, the latter term would have been an entity established by or under “any Act” as opposed to “any enactment” which would be governed by a statutory board. As that dichotomy has not yet entered into law, it remains that a body established by an enactment would also be a statutory board for the purposes of this exercise.

- 3.3. As the vast majority of problems with the review process surrounded a general misunderstanding of what a statutory board is, with considerable time having been spent

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<sup>1</sup> BVIHCV2016/0063.

<sup>2</sup> n.1, para. 15.

<sup>3</sup> Section 43 of the Interpretation Act (Cap. 136). See also, s2, Statutory Boards (Special Loans) Act (Cap. 279) which has an identical definition. However, s.2, Statutory Boards (Remuneration of Public Officers) Act, 2004 (No. 13 of 2004) defines it as “any board, authority, corporation, commission, committee, council, trust or other like body established by or under a relevant enactment”, so that it adds the words “authority”, “corporation” and “trust” and the enactment must be a “relevant enactment” which “in relation to a statutory board, means the enactment establishing the statutory board and under which a function or power is performed or exercised with respect to the statutory board”. This limitation does not exist under the aforementioned two (2) statutes, and is specific to public officers remuneration for service on statutory boards, therefore, that limitation will not apply for the purposes of this exercise. Additionally, s.2 of the Disaster Management Act, 2003 (No. 3 of 2003) uses the expanded definition under the Statutory Boards (Remuneration of Public Officers) Act, 2004, except it does not use the phrase “relevant enactment” and just an “enactment”. Additionally, for comparative purposes, section 57 of the Antiguan Interpretation Act (Cap. 224 of the Laws of Antigua and Barbuda) provides a similar definition as section 43 of the Interpretation Act (Cap. 136) except that instead of under any “enactment” it must be established by “an Act” and it has the additional phrase that it is any similar body “whether corporate or unincorporate”. Also, for comparative purposes, section 11(2) of the New Zealand Finance Act 1950 provides a similar definition as section 43 of the Interpretation Act (Cap. 136) except that it includes a “committee or sub-committee of a statutory board”.

on clarifying that singular issue with several statutory boards, it is recommended that the Interpretation Act (Cap. 136) be amended to model the definition of the Disaster Management Bill, 2011 (save and except its use of “any Act” instead of “any enactment”) to bring the law in conformity with the general perception. The law should be practical and easily understood by the public, and if the public has a general perception of the law, it is either that the law catches up with that general perception or the public be brought up to speed with the law. As it does not appear practical to expect that the public can be brought up to speed with the current law, the recommendation would be to amend the law to meet the people’s perception of it.

- 3.4. Generally, a statutory board is established for some public purpose, or for engagement in private enterprise through a corporate vehicle with the Crown as the sole or majority shareholder. Thus, the first three (3) categories of statutory boards are: (1) unincorporated statutory boards; (2) bodies corporate established by statute; and (3) bodies corporate incorporated or existing under the BVI Business Companies Act, Revised Edition 2020. From these three (3) types of statutory boards comes various other categories based on functionality.
- 3.5. There are generally five main categories of purposes for which statutory bodies are established: (1) advisory; (2) regulatory; (3) private enterprise; (4) charitable purpose; and (5) adjudicatory. An advisory board has very limited authority, and after conducting its review should provide a report to the executive authority who must act on that report, either by accepting or rejecting the contents of the report, and, therefore, there is inherently a requirement to interact with the executive government. While regulatory bodies have vast powers over their regulated entities, they still would be required to interact with the executive government on various aspects of their functions. Those private enterprises that are incorporated entities would function similarly to a publicly traded company in relation to the executive government who serves as shareholder. Those which are established for charitable purposes, based on what is known as the Macnaghten categories from the old UK case of *IRC v. Pemsel*<sup>4</sup> which divided charitable purposes into: relief of poverty, advancement of education, advancement of religion, and other purposes beneficial to the community, seek to determine how public funds are to be spent for some greater public good separated from the central government. Finally, adjudicatory boards are established to settle disputes within specialized areas separate from the traditional court system to provide some benefit or improve on some deficiency within the established courts.
- 3.6. There are three (3) pieces of legislation that apply generally to statutory boards:
- (a) The Interpretation Act;<sup>5</sup>

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<sup>4</sup> [1891] AC 531.

<sup>5</sup> n.3

- (b) The Statutory Boards (Special Loans) Act;<sup>6</sup> and
- (c) The Statutory Boards (Remuneration of Public Officers) Act, 2004.<sup>7</sup>

- 3.7. Section 40 of the Interpretation Act<sup>8</sup> applies to all statutory boards unless the establishing enactment provides otherwise. Therefore, unless the enactment creating the statutory board provides for the appointment of the Chairperson, there is an implied power to appoint the Chairperson from time to time as occasion requires and to appoint individual persons as alternative members to that statutory board to act in the place of a member of the statutory board. A person may be appointed as a member of a statutory board either by name or by virtue of the office that they hold.
- 3.8. The power to appoint the Chairperson or other members of a statutory board also implies the discretionary power to remove or suspend or otherwise discipline that member.<sup>9</sup> The fact that it is a discretionary power implies that it must be exercised judiciously and by necessary implication requires the principles of natural justice to be used when exercising such discretionary power.
- 3.9. A statutory board may be a body corporate or unincorporated. If it is established as a body corporate it may simply incorporate the words of section 21 of the Interpretation Act<sup>10</sup> or alternatively provide that it is established as a body corporate with the power to sue and be sued in its own corporate name, have a common seal and any other powers the legislature deems appropriate to grant. If the statutory board is not a body corporate then it does not have a separate legal personality from its members and, therefore, cannot sue and be sued in its own corporate name, hold property, whether real or personal, or employ staff. Additionally, unless the enabling statute provides a limitation of liability, or there is some indemnity insurance, the members may be held personally liable for actions of the statutory board. It is important to note that being sued is different from judicial review proceedings where special rules would apply, or where an appeals procedure is outlined by an enactment from decisions made by the statutory board. In effect, a body corporate can sue and be sued in its own name, but an unincorporated statutory board cannot, but any type of statutory board can be subject to judicial review proceedings in the High Court.
- 3.10. For those statutory boards that have incorporated section 21 of the Interpretation Act, they have the power to acquire and hold any real or personal property and to dispose of or charge that property at pleasure. This is a significant power for a statutory board where it can negotiate leases, open bank accounts, collect monies, issue cheques and generally deal with its assets as it deems appropriate. The power to charge its property must also be read in conjunction with the power to borrow granted to all statutory boards, subject to the

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<sup>6</sup> n.3

<sup>7</sup> n.3

<sup>8</sup> n.3

<sup>9</sup> s.20(1), Interpretation Act (Cap. 136)

<sup>10</sup> n.3



prior approval of the House of Assembly, under the Statutory Boards (Special Loans) Act.<sup>11</sup> It also has the power to employ staff as it deems necessary for the performance of its functions, as well as regulate its own procedure and business. This latter power to regulate its own procedure is supplemented where the statutory board is also an adjudicative board, such as a tribunal, by virtue of section 23 of the Interpretation Act, so that the adjudicative board has the additional power to make rules or orders regulating costs, fees, witnesses' expenses and other expenses as appear to it to be necessary for regulating the practice and procedure of the tribunal in the exercise of its jurisdiction. This is, however, subject to the exception that any monies to be collected into, or disbursed from, the Consolidated Fund, must be approved by the Minister of Finance. Additionally, it provides to the members an exemption from personal liability for the debts and obligations of the statutory board, which unless there is a specific exemption in the enactment would otherwise not be afforded to members of statutory boards. The members of a statutory board that is not also a body corporate, which has no separate legal personality from its members, have personal liability for any action of the statutory board.

- 3.11. As not all statutory boards have the same powers outlined in section 21 of the Interpretation Act, it becomes necessary to examine whether a statutory board has more or less powers than those standard powers. Additionally, those statutory boards incorporated under the BVI Business Companies Act, Revised 2020 Edition, may have even broader powers and duties than other statutory boards. With respect to the power to employ staff, some statutory boards have special provisions that deal with the transfer of staff from the public service or from a former entity which preserves certain rights and privileges for that class of staff upon transferring from the public service to the statutory board and, sometimes, vice-versa.
- 3.12. While there is currently a constitutional review process being undertaken which has as one of the matters for consideration under its terms of reference, the question whether to establish a Statutory Boards Commission, it is not intended to contradict any generally accepted views of the Virgin Islands people by making any recommendation that may appear to discredit the establishment of a Statutory Boards Commission. However, a fundamental finding of this review is that there has been a significant proliferation of statutory boards in the Virgin Islands over the years that creates too many statutory boards for the population and economic size of the Territory which needs to be rationalized for optimal economic and social benefit. It would, therefore, not be in keeping with that fundamental finding for this report to recommend the creation of yet another statutory board for the singular purpose of dealing with the routine tasks of a suitably qualified corporate secretary. For this reason, instead of recommending a Statutory Boards Commission, and this is separate and apart from the wisdom of the general populace as to how they would like their country to be structured constitutionally, it would appear more prudent to fund the training of a business graduate from within the public service at the Robert Mathavious Institute at HLSCC to qualify as a corporate secretary and centralize the

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<sup>11</sup> n.3

management of the processes for appointments. As it appears that the Ministry of Education and Culture has the best record across the Central Government for the maintenance of its statutory boards that the suitable candidate be recruited from that Ministry, but in any event the net should be cast as wide as possible within the public service and a selection committee appointed that would include two (2) representatives of statutory boards, preferably the ITA and the RDA who exemplify the best practices for all statutory boards.

### Recommendation No. 1

**The Interpretation Act should be amended to create a separate definition for “statutory body” along similar lines contemplated by the Disaster Management Bill, 2011.**

- 3.13. This recommendation does not require any amendment to the Constitution, nor will it affect any existing statutory board.
- 3.14. Cabinet must authorise the amendments after public consultation and the House of Assembly would need to pass the amendments in an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill.
- 3.15. For the purposes of any recommendation where any legislation is required, it is essential that public consultation be part of the process. Democratic engagement, which is a pillar of the constitutional arrangements under the 2007 Constitution, requires not only that the legislative process be utilized to enact laws but that the public be made aware of the legislative development and be kept informed at each stage of the process. Therefore, public consultation should be encouraged at each stage of the amendment process for every legislation that must be passed by the House of Assembly. This will encourage public buy-in for the significant changes, and mind-set, proposed by many of these recommendations. Making these changes without public involvement will not have the desired effect of changing the way business is done in the Virgin Islands.

### Recommendation No. 2

There should be a Statutory Boards Desk Officer in the Premier’s Office (which has a supervisory role over all Ministries and ultimate accountability to the House of Assembly), who should be a public servant designated as such by the Governor, with oversight for the establishment and maintenance of all statutory boards. The qualifications for this position should be at least the completion of the Chartered Governance Foundation Programme at the Robert Mathavious Institute at the H. Laverty Stoutt Community College, while a suitably qualified business graduate within the public sector should be identified for fully-funded training to assume this role, through a rigorous selection process. The person would operate as a corporate governance specialist within the public sector whose general role would be to ensure that all statutory boards are legally constituted, financially sustainable and properly

organized. The specific responsibilities would include maintaining an up-to-date roster of all statutory boards, coordinating the nomination and appointment processes of all statutory boards, facilitating all reporting mechanisms between statutory boards and the Central Government as well as between the Central Government and the House of Assembly and also ensuring that all audits and other financial reports are properly produced. This person should also prepare an annual report on the work done in respect of all statutory boards that is to be laid before the House of Assembly. The Statutory Boards Desk Officer's annual report should include: (a) an overview of all nominations and appointments to statutory boards for the year, and those that remain outstanding; (b) an overview of all annual reports submitted by statutory boards for the year, and those that remain outstanding; (c) an overview of all audits completed by statutory boards for the year, and those that remain outstanding; (d) any other information about work conducted by the Statutory Boards Desk Officer during the year.

3.16. This recommendation does not require any amendment to the Constitution, nor will it affect any existing statutory board. However, it will require budgetary allocations and the process to be followed to create a new post to be filled internally.

3.17. Cabinet must approve the new position to ensure support from the very top of government.

#### A. STATUTORY BOARDS UNDER THE CONSTITUTION

3.18. Within the framework of the definition of a statutory board it would inevitably mean that similar bodies established under the Virgin Islands Constitution Order 2007<sup>12</sup> (the “**Constitution**”) would not be considered statutory boards. This requires an examination of the Constitution itself, and in particular section 3(3) of the Constitution, which refers to “any board, committee or other similar body (whether incorporated or not) established by any law in force in the Virgin Islands”. Understanding that the Constitution is a law in force in the Virgin Islands, bodies created under the Constitution are also statutory boards for the purposes of this exercise. These statutory boards established by the Constitution would include:

1. The Human Rights Commission,<sup>13</sup> however, the Constitution merely provides that it “may be established by law” and does not in fact create a Human Rights Commission. It, therefore, requires an enactment to establish the Human Rights Commission;
2. The Advisory Committee on the Prerogative of Mercy;<sup>14</sup>
3. The National Security Council;<sup>15</sup>

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<sup>12</sup> UK S.I. 2007 No. 1678.

<sup>13</sup> Section 34(1) of the Constitution.

<sup>14</sup> Section 44(1) of the Constitution.

<sup>15</sup> Section 57(1) of the Constitution.

4. The Public Service Commission;<sup>16</sup>
5. The Teaching Service Commission;<sup>17</sup>
6. The Judicial and Legal Services Commission;<sup>18</sup> and
7. The Police Service Commission.<sup>19</sup>

- 3.19. It should be noted that there is no statutory provision governing the Advisory Committee on the Prerogative of Mercy or the National Security Council, both of which may regulate their own proceedings. However, there are statutory provisions passed by the House of Assembly dealing with all the service commissions except the Police Service Commission.<sup>20</sup> All these constitutionally established statutory bodies have an advisory role and none of them have been established as bodies corporate, therefore, they do not incorporate, or have any of the powers under, section 21 of the Interpretation Act. This is acceptable for their purposes, and nothing turns on that situation. However, there is no national security legislation and the role, functions and scope of the National Security Council has never been outlined by any statute. The scope of national security issues, including public interest immunity, should be outlined in legislation. This concern was raised by the Labour Arbitration Tribunal in its Final Award in *Devonni Christopher v. BVI Health Services Authority*<sup>21</sup> and published on its page on the government's website. It is unfortunate that after 15 years in existence the National Security Council has not produced such critical legislation, but it is not surprising since the Sole Reviewer when serving as Chairperson of the BVI Chamber of Commerce and Hotel Association in 2012 was a member of the Crime Reduction/Community Safety Strategy Drafting Team established by the National Security Council and to date the hard work on the Crime Reduction/Community Safety Strategy remains a mystery to the Sole Review and the general public. Therefore, the National Security Council requires serious attention to engage its full potential and scope where the Sole Reviewer was specifically mentioned in the Report of the 2005 Constitutional Review Commission on various recommendations that found its way into the 2007 Constitution, including the National Security Council, and has a keen interest to see the National Security Council begin to function in the way that it was envisioned.
- 3.20. The Deputy Governor's Office provided very helpful information with respect to the Public Service Commission and the Judicial and Legal Services Commission. The COI Implementation Unit also received very helpful information from the Ministry of Education and Culture in respect of the Teaching Service Commission. However, the COI

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<sup>16</sup> Section 91(1) of the Constitution.

<sup>17</sup> Section 93(1) of the Constitution.

<sup>18</sup> Section 94(1) of the Constitution.

<sup>19</sup> Section 96(1) of the Constitution.

<sup>20</sup> Service Commissions Act, 2011 (No. 8 of 2011).

<sup>21</sup> BVILAT2021/008, delivered on 18 January 2022.

Implementation Unit received no other information concerning any other statutory board falling under the Constitution.

- 3.21. There are several other bodies established by the Constitution which are public offices, and, therefore, not statutory boards. For example, the Cabinet Secretary,<sup>22</sup> the Attorney General,<sup>23</sup> the Director of Public Prosecutions,<sup>24</sup> and the Auditor General.<sup>25</sup> However, there are two (2) offices created by the Constitution that does not indicate that those offices are public offices, namely, the Complaints Commissioner<sup>26</sup> and the Registrar of Interests.<sup>27</sup> However, it is important to look at the nature of their establishment clause to determine the character of their office. While it is clear that the intention in each case was to create an independent body, it does not appear that it was meant to create a statutory board for these purposes, and those offices would still be public offices with a higher degree of independence than other public offices. Additionally, neither the Complaints Commissioner Act, 2003<sup>28</sup> or the Register of Interests Act, 2006<sup>29</sup> create any statutory board or body corporate, and merely refer to the person appointed under the Constitution. For these reasons, the Complaints Commissioner and the Registrar of Interests are not statutory boards for the purposes of this review.
- 3.22. Sections 72 and 117 of the Constitution authorizes the creation of the Standing Orders of the House of Assembly for the regulation of its own proceedings. For the purposes of this exercise, those Standing Orders are not legislative enactments, so that any committee or other body established by the House of Assembly pursuant to those Standing Orders or by resolution of the House of Assembly, would not be a statutory board for the purposes of this exercise.
- 3.23. It appears that all the statutory boards created under the Constitution suffer from the same ailments and afflictions that plague many statutory boards in the Virgin Islands. The nomination and appointment processes do not meet the OECD Standards, and those processes also do not meet the OECD Standards of transparency and disclosure where it is difficult to find who are the current members of those boards on any publicly available medium. None of them have their own websites nor any dedicated page on any other site, including the government's official website. Their work appears to be veiled in secrecy with no way of knowing who the members are, and if the COI Implementation Unit was having difficulty accessing information about these boards, it is clear that the ordinary member of the public, in whose interest they were established, would have an even more difficult task. This state of affairs with respect to all the constitutionally established boards should be

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<sup>22</sup> Section 51(1)(b) of the Constitution.

<sup>23</sup> Section 58(1) of the Constitution.

<sup>24</sup> Section 59(1) of the Constitution.

<sup>25</sup> Section 109(1) of the Constitution.

<sup>26</sup> Section 110(1) of the Constitution.

<sup>27</sup> Section 112(1) of the Constitution.

<sup>28</sup> No. 6 of 2003.

<sup>29</sup> No. 5 of 2006.

remedied as a matter of urgency. They should be held to the highest standards of probity and lead the charge for excellence among statutory boards.

- 3.24. However, the process of nomination and appointment must be as transparent, and information equally readily available to the public about these constitutionally established boards, in the same manner as any other board. It is critical that the government's official website dedicate a page to each of these constitutionally established boards and at least six (6) months before a vacancy is to occur on the boards the nomination process should begin, and that process should be open and transparent to the public.
- 3.25. It is noted that concern has been raised whether the National Security Council should have its own website or even a page on government's official website. While it is accepted that national security would create some sensitive information that should not be made public, it cannot be accepted that the enabling legislation, its governing documents that regulate its proceedings and information about the nature of its work (as opposed to details) must be public. It is critical that any statutory board, including the National Security Council, does not operate in total secrecy except where it is required in a democratic society for certain public purposes. It is a public body and it must remain accountable to the people it is meant to protect. The public should never be left wondering, at any time, who the members of the NSC are. It should be easily available and information about what it does and how it does it should also be easily available.

### Recommendation No. 3

**If each statutory board established by the Constitution, and any other statutory board, cannot maintain their own independent website, or until such time as that is done, a page should be created on the government's official website to provide easy access to information about statutory boards and their composition to meet internationally accepted standards of transparency and disclosure.**

- 3.26. This recommendation does not require any amendment to the Constitution, nor will it affect any existing statutory board. However, it will require budgetary allocations to determine the cost of a new page on government's official website or the creation of their own website.
- 3.27. Cabinet must approve the budgetary allocation and if it is not already included in the annual estimates of revenues and expenditure approved by the House of Assembly, then a supplemental appropriation would need to be approved by the House of Assembly.

### Recommendation No. 4

**The Statutory Boards Desk Officer should, within six (6) months before a vacancy occurs on a statutory board established by the Constitution, or any other statutory board, commence the**



**nomination and appointment process to avoid any vacancy and interruption in the critical functions of these boards.**

3.28. This recommendation does not require any amendment to the Constitution, nor will it affect any existing statutory board. However, it will require budgetary allocations and the establishment of a nominations process for these boards.

3.29. Cabinet should approve the new nomination process.

## **B. ADJUDICATORY BOARDS**

3.30. Section 90 of the Constitution allows for the establishment of courts and tribunals subordinate to the Eastern Caribbean Supreme Court. The Constitution itself anticipates one such court, the Magistrate's Court, by virtue of a Magistrate being a public officer to be appointed on the advice of the Judicial and Legal Services Commission.<sup>30</sup> However, **other tribunals created by statute are not public offices and, therefore, would be statutory boards for the purposes of this review.** There are at least eleven (11) such tribunals as follows:

1. The Education Appeal Tribunal established under section 161 of the Education Act, 2004;<sup>31</sup>
2. The Insurance Tribunal established under section 11 of the Financial Services (Continuity of Business) Act, 2017;<sup>32</sup>
3. The Financial Services Appeal Board established under section 3 of the Financial Services Appeal Board Act, 2016;<sup>33</sup>
4. The Labour Arbitration Tribunal established under section 29 of the Labour Code, 2010;<sup>34</sup>
5. The Disciplinary Tribunal established under section 27 of the Legal Profession Act, 2015;<sup>35</sup>
6. The Mental Health Review Board established under section 30 of the Mental Health Act, 2014;<sup>36</sup>
7. The Appeals Tribunal established under section 65 of the Physical Planning Act, 2004;<sup>37</sup>
8. The Public Assistance Appeal Board established under section 30 of the Public Assistance Act, 2013;<sup>38</sup>

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<sup>30</sup> Section 95(4)(c) of the Constitution.

<sup>31</sup> No. 10 of 2004, as amended by No. 8 of 2014 and No. 4 of 2016.

<sup>32</sup> No. 21 of 2017.

<sup>33</sup> No. 9 of 2016.

<sup>34</sup> No. 4 of 2010.

<sup>35</sup> No. 13 of 2015.

<sup>36</sup> No. 11 of 2014.

<sup>37</sup> No. 15 of 2004.

<sup>38</sup> No. 14 of 2013.

9. The Social Security Appeal Tribunal established under regulation 5(1) of the Social Security (Decisions and Appeals) Regulations, 1981, as amended by the Social Security (Decisions and Appeals) (Amendment) Regulations, 1997;<sup>39</sup>
  10. The Veterinary Appeal Tribunal established under section 19 of the Veterinary Act, 2015;<sup>40</sup>
  11. The Trade Commission Tribunal established under section 30 of the Virgin Islands Trade Commission Act, 2020;<sup>41</sup>
- 3.31. With the exception of the Insurance Tribunal, which has a mediation role as opposed to adjudicative powers, all the tribunals make binding decisions that are subject to the supervisory jurisdiction of the Eastern Caribbean Supreme Court. In effect section 90 of the Constitution provides some structure to the proliferation of these lower courts and tribunals in a similar way that the UK's Tribunals, Courts and Enforcement Act 2007 radically reformed the system of courts and tribunals in the UK based on the Leggatt Report.<sup>42</sup> Sir Andrew Leggatt found that the UK tribunals were not sufficiently independent from the government offices under which they fell, which drove him to recommend that all tribunals should be centrally administered by a "Tribunals Service". Tribunals are created to ensure that there is a "user-friendly" system to obtain justice without the need for legal representation. To achieve this, the Government of the United Kingdom ("HMG") published a white paper<sup>43</sup> that introduced the concept of "proportionate dispute resolution" ("PDR"). The tribunal system allows for the same benefits as courts with specialists and specialized procedures that make them more attractive than the formal structure of the courts. Despite this, **Virgin Islands tribunals do not have the same guarantees of independence as exercised by courts, and unlike in the UK where tribunal members are appointed by the independent Judicial Appointments Commission which also appoints judges, masters, recorders and magistrates, the Virgin Islands tribunal members are appointed by Ministers. The person with the power to appoint also has the power to remove, and where there is limited controls on that power, the independence of these tribunals can be jeopardized. It is critical that the independence of these bodies must be paramount.** This would also dovetail with a later recommendation for the appointment of a Statutory Boards Desk Officer, which would then advise on the appointment of the non-legal members of each Tribunal.
- 3.32. In comparative terms, **the BVI has too many Tribunals. The UK, with a population of about 67 million people has only about 130 tribunals, the BVI would be approximately 0.05% of that population but would have 8% of the total Tribunals.** Provisions should be made for bringing the numerous tribunals under a single umbrella by creating the Virgin Islands General Tribunal similar to what is called in the UK, the First-Tier Tribunal. This would

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<sup>39</sup> S.I. No. 33 of 1997.

<sup>40</sup> No. 8 of 2015.

<sup>41</sup> No. 9 of 2020.

<sup>42</sup> Sir Andrew Leggatt, *Tribunals for Users – One system, One Service* (Norwich: The Stationery Office, 2001).

<sup>43</sup> Department of Constitutional Affairs' White Paper, *Transforming Public Services: Complaints, Redress and Tribunals*, 2004.

ensure the proper administration of justice by the merger of the various tribunals and minimize the constant proliferation of tribunals. The creation of Chambers of the General Tribunal from time to time would assist with the swift dispatch of business. This would also assist with the problems that will be highlighted under PART IV of this Report, in particular as it relates to funding.

- 3.33. There is a need for a General Mediation and Conciliation Service, similar to that of the US Federal Mediation and Conciliation Service (FMCS) and the UK's Advisory, Conciliation and Arbitration Service (ACAS). This would have the potential to concentrate the mediation and conciliation programmes of the Insurance Tribunal, the processes under the Labour Code and extend this programme to other Tribunals in a similar fashion as the successful mediation programme of the Eastern Caribbean Supreme Court. This would also have the potential of better marshalling the human capital expended in limited areas in a more realistic, economical and coordinated manner. However, this is not a formal recommendation that can be made for the purposes of this exercise as it falls outside the scope of this review, but it is hoped that it will be considered elsewhere.

### Disciplinary Tribunal under the Legal Profession Act, 2015

- 3.34. The only information received from any adjudicatory board was from the Disciplinary Tribunal, and only as a result of the limited information requested from the Deputy Governor's Office, who quickly facilitated the information. **This is totally unacceptable as information about a body that has wide powers over legal practitioners should not only be readily available but the process by which it is constituted should also not be secretive, but open and transparent.** The legal profession in the Virgin Islands is very small in comparative terms, which can cause very incestuous relationships to develop among an even smaller inner circle of legal practitioners. The integrity of the legal profession is too important not to ensure that the Disciplinary Tribunal is established in a manner that meets, and in fact, exceeds international best practice.
- 3.35. **The mere fact that the Disciplinary Tribunal does not even have a webpage on the government's official website is unacceptable after about 6 years of operation.** The UK's Bar Standards Board has several pages on its website dedicated to its Disciplinary Tribunal. Across the world there are similar bodies established, for example, the Solicitors Disciplinary Tribunal of Ireland has a very basic website. As an attempt to rationalize the vast proliferation of tribunals, this one seems especially unnecessary. In Jamaica, for example, the General Legal Council has a disciplinary function as part of its overall regulatory function. **It appears unnecessary, and exorbitant, to separate the regulatory from the disciplinary functions for such a small jurisdiction. It is recommended, that as will be seen later, neither the Virgin Islands General Legal Council nor the Disciplinary Tribunal have met the OECD Standards in any respect, it would be practical to consolidate these bodies, so that the Disciplinary Tribunal will not fall within the other recommendations to consolidate the other Tribunals, but will be consolidated with the Virgin Islands General Legal Council.**

### Recommendation No. 5

**The Disciplinary Tribunal established under the Legal Profession Act, 2015 should be consolidated with and into the Virgin Islands General Legal Council in keeping with similar bodies within the Commonwealth Caribbean.**

- 3.36. This recommendation does not require any amendment to the Constitution, but it will require an amendment to the Legal Profession Act, 2015.
- 3.37. Cabinet must authorise the amendments after public consultation before introducing the amendment to the House of Assembly.

### Recommendation No. 6

**In keeping with the principles of the Leggatt Report, where any Tribunal requires its members to have legal training, which is normally required by the Chairperson, that person should be appointed on the advice of the Judicial and Legal Services Commission following an application and selection process by that body.**

- 3.38. This recommendation does not require any amendment to the Constitution, but it will require an amendment to each of the statutory provisions establishing the relevant Tribunals as shown in Appendix 3 to this Report.
- 3.39. Cabinet must authorise the amendments in Appendix 3 after public consultation and the House of Assembly would need to pass the amendments in an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill.

### Recommendation No. 7

**In keeping with the UK's Tribunals, Courts and Enforcement Act 2007, a rationalization of the numerous tribunals in the Virgin Islands is necessary to allow for the consolidation of the existing tribunals, and prevent the need for more tribunals in the future, as follows:**

- (a) There should be a General Tribunal, similar to the First Tier Tribunal in the UK, that combines all the existing tribunals (except the Mental Health Review Board, the Insurance Tribunal and the Financial Services Appeal Board) which would serve as Chambers of that Tribunal. It would be comprised of a roster to which the legally qualified members are appointed by the relevant Minister on the recommendation of the Judicial and Legal Services Commission and the other members appointed by the relevant Minister after a recruitment process managed by the Statutory Boards Desk Officer. The President of Tribunals, appointed by the Governor on the recommendation

of the Judicial and Legal Services Commission, should assign the chairperson of any panel considering a matter within his or her Chamber.

**(b) Appeals should continue to be made to the High Court, as opposed to creating an Upper Tribunal as in the UK.**

3.40. This recommendation does not require any constitutional amendment, but it will require the passage of special provisions similar to the UK's Tribunals, Courts and Enforcement Act 2007.

3.41. Cabinet must authorise the Statutory Boards (Miscellaneous Provisions) Bill after public consultation, as well as consultation with HMG to avoid any reason for assent to be refused and the House of Assembly would need to pass the Bill.

### **C. ADVISORY BOARDS**

3.42. Apart from the advisory boards established under the Constitution, there are at least twenty-one (21) advisory boards created by various statutes as follows:

1. The Archives Advisory Board established under section 8 of the Archives and Records Management Act, 2010,<sup>44</sup> which although the Act has not been brought into force section 18 of the Interpretation Act<sup>45</sup> allows for the appointment of statutory boards before the commencement of the enactment for the purpose of making the enactment effective when it comes into force. Despite this, this statutory board has never been appointed;
2. The National Disaster Management Council established under section 9 of the Disaster Management Act, 2003,<sup>46</sup> whose functions are simply to “review and advise” or “report”, with a power to promote comprehensive disaster management and an incidental powers clause, but no executive powers;
3. The National Drug Advisory Council established under section 3 of the Drugs (Prevention of Misuse) Act;<sup>47</sup>
4. Parent Teachers Associations established under section 25 or alternatively School Committees established under section 26 of the Education Act, 2004;<sup>48</sup>
5. The Education Advisory Board established under section 10 of the Education Act, 2004;<sup>49</sup>
6. The Council on Early Education established under section 87 of the Education Act, 2004;<sup>50</sup>

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<sup>44</sup> No. 5 of 2010.

<sup>45</sup> Cap. 136.

<sup>46</sup> No. 3 of 2003.

<sup>47</sup> Cap. 178.

<sup>48</sup> No. 10 of 2004.

<sup>49</sup> No. 10 of 2004.

<sup>50</sup> n.49.

7. The Council on Special Education established under section 87 of the Education Act, 2004;<sup>51</sup>
8. The TVET Council established under section 132 of the Education Act, 2004;<sup>52</sup>
9. Subject Panels established under section 153 of the Education Act, 2004;<sup>53</sup>
10. The Education Review Committee to be established at least once every five (5) years under section 159 of the Education Act, 2004;<sup>54</sup>
11. The Board of Immigration established under section 13 of the Immigration and Passport Ordinance,<sup>55</sup> which will be given special consideration under PART VI of this Report;
12. The Internal Audit Advisory Committee established under section 6 of the Internal Audit Act, 2011,<sup>56</sup> which will be subject to special consideration under PART VI of this Report;
13. The Law Reform Commission of the Virgin Islands established under section 3 of the Law Reform Commission Act, 2000,<sup>57</sup> which will be given special consideration under PART VI of this Report;
14. The Parole Board established under section 3 of the Parole Act, 2009;<sup>58</sup>
15. The Prison Visiting Committee established under section 6 of the Prison Ordinance;<sup>59</sup>
16. The Joint Anti-Money Laundering and Terrorist Financing Advisory Committee established under section 27A of the Proceeds of Criminal Conduct Act, 1997;<sup>60</sup>
17. The Economic Advisory Council established under section 17A of the Public Finance Management Act, 2004;<sup>61</sup>
18. Public Health Boards and Committees established under section 8 of the Public Health Ordinance;<sup>62</sup>
19. The Central Tenders Board established under section 5 of the Public Procurement Act, 2021,<sup>63</sup> which will be given special consideration under PART VI of this Report
20. The Intellectual Property Advisory Committee established under section 132(1) of the Trade Marks Act, 2013; and
21. The Company Law Review Advisory Committee established under section 228A of the BVI Business Companies Act, 2004.

3.43. The COI Implementation Unit received no response from any of these statutory boards. After reviewing each of the statutory provisions establishing these statutory boards, none

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<sup>51</sup> n.49.

<sup>52</sup> n.49.

<sup>53</sup> n.49.

<sup>54</sup> n.49.

<sup>55</sup> Cap. 130.

<sup>56</sup> No. 1 of 2011.

<sup>57</sup> No. 10 of 2000.

<sup>58</sup> No. 7 of 2009.

<sup>59</sup> Cap. 166.

<sup>60</sup> No. 5 of 1997.

<sup>61</sup> No. 2 of 2004.

<sup>62</sup> Cap. 194.

<sup>63</sup> No. 39 of 2021.



of them incorporate section 21 of the Interpretation Act and none of them have been created as bodies corporate. They are, therefore, unincorporated statutory boards with no substantive power and their roles are merely to advise. No recommendation is, therefore, being made about the nomination or appointment process, as it is believed once the other recommendations are implemented any problems with the nomination and appointment process for these boards will be largely remedied.

- 3.44. It appears that most of these Boards are not properly constituted. However, none of these boards have their own website, or any publicly accessible information, even on government's official website. All the advisory boards within the Virgin Islands have failed to meet even the basic levels of transparency and disclosure as it relates to the nomination and appointment process for their boards under the OECD Standards. This includes the two (2) advisory boards which fall under the Financial Services Commission, namely, the Intellectual Property Advisory Committee and the Company Law Review Advisory Committee. These advisory boards do not even have a dedicated page on the FSC's website, nor is it clear about the membership of these statutory boards or how they were selected. Apart from the Central Tenders Board, whose members all hold a public sector position specified in the enabling statute, the process for nomination and appointment of these advisory boards is unclear and wholly unsatisfactory.
- 3.45. It should also be noted that there are some advisory boards which are not statutory boards such as the Stamp Advisory Committee under the Ministry of Finance. These boards do not form part of this review as their establishment were not created by any statutory provision for which the COI Implementation Unit could provide. Despite this, it is noted that the Stamp Advisory Committee is listed on the Ministry of Finance's webpage on the government's official website, but none of the other advisory boards falling under the Ministry of Finance are listed on its webpage. This makes it extremely difficult for the public to have access to the relevant information across all Ministries, including the Deputy Governor's Office and the Premier's Office. It is critical for transparency and disclosure that the public's right of access to information be facilitated by the simple maintenance of the government's official website with up-to-date information. The moment a change occurs the webpage should be updated and it should be an unofficial repository of relevant public information where it is easy to find who holds which position and serves on which statutory board.

#### **D. REGULATORY BOARDS**

- 3.46. There are at the moment some fifteen (15) Regulatory Boards, with the legislative pipeline expected to push out a few more shortly after the publication of this Final Report, which include the following:

1. The Building Authority established under section 4 of the Building Ordinance,<sup>64</sup> which has responsibility for regulating and approving buildings and other structures in the Virgin Islands;
2. The Financial Investigation Agency and its Steering Committee established under section 3 of the Financial Investigation Agency Act, 2003,<sup>65</sup> which has responsibility for ensuring compliance with international and local legal obligations relative to non-financial services business within the Virgin Islands;
3. The Financial Services Commission established under the Financial Services Commission Act, 2001;<sup>66</sup>
4. The Higher Education Licensing Board established under section 3 of the Higher Education Licensing Act, 2016;<sup>67</sup>
5. The International Tax Authority established under section 3 of the International Tax Authority Act, 2018;<sup>68</sup>
6. The Land Surveyors' Board established under section 4 of the Land Surveyors Ordinance;<sup>69</sup>
7. The Virgin Islands General Legal Council established under section 3 of the Legal Profession Act, 2015;<sup>70</sup>
8. The Medical and Dental Council established under section 3 of the Medical Act, 2000;<sup>71</sup>
9. The Allied Health Professionals Council established under section 34 of the Medical Act, 2000;<sup>72</sup>
10. The Nurses and Midwives Council established under section 3 of the Nurses and Midwives Act, 2020;<sup>73</sup>
11. The Taxi and Livery Commission established under Road Traffic (Taxi and Livery Commission) Regulations, 1997,<sup>74</sup> as amended;
12. The Telecommunications Regulatory Commission established under section 5 of the Telecommunications Act, 2006;<sup>75</sup>
13. The Veterinary Board established under section 3 of the Veterinary Act, 2015;<sup>76</sup>
14. The Gambling (Gaming and Betting) Control Commission established under section 4 of the Virgin Islands Gaming and Betting Control Act, 2020;<sup>77</sup> and

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<sup>64</sup> Cap. 234.

<sup>65</sup> No. 19 of 2003.

<sup>66</sup> No. 12 of 2001.

<sup>67</sup> No. 5 of 2016.

<sup>68</sup> No. 7 of 2018.

<sup>69</sup> Cap. 215.

<sup>70</sup> No. 13 of 2015.

<sup>71</sup> No. 4 of 2000.

<sup>72</sup> No. 4 of 2000.

<sup>73</sup> No. 25 of 2020.

<sup>74</sup> S.I. No. 24 of 1997.

<sup>75</sup> No. 10 of 2006.

<sup>76</sup> No. 8 of 2015.

<sup>77</sup> No. 14 of 2020.

15. The Trade Commission Board established under section 6 of the Virgin Islands Trade Commission Act, 2020.<sup>78</sup>
- 3.47. The majority of responses received were in respect of regulatory boards. However, four (4) of the fifteen (15) regulatory boards fall under the Ministry of Health and Social Development which failed to provide any response within the original timeframe set for all other statutory boards but the late submitted responses were, however, taken into consideration even if they are not specifically referred to in this Final Report. Additionally, the Ministry of Natural Resources and Labour also provided late responses for those two (2) regulatory boards that fall under its authority.

### **International Tax Authority (“ITA”)**

- 3.48. The board membership of the ITA was easily accessible on its website, which meets the OECD Standards of transparency and disclosure. Due to the fact that its membership includes persons who hold specific posts within the public sector, there is no need for a nomination and appointment process like many other statutory boards. For this reason, unlike any other statutory board there was no questions or concerns raised with the ITA about the membership of its board.

### **Financial Services Commission (“FSC”)**

- 3.49. The FSC is charged with regulating financial serves business in the Virgin Islands and has been a respected regulator with recognition by several international bodies. However, this review is not about the FSC’s regulatory functions but about the corporate governance systems involved in its establishment, maintenance and any executive powers exercised in respect of it. Therefore, while the FSC is an internationally respected regulatory agency, it’s governance model leaves room for improvement.
- 3.50. It maintains an excellent website that supports transparency and disclosure but which also revealed a few issues of concern. For example, although the Interpretation Act allows for the masculine form of words to include the feminine form of words, it remains archaic to use words such as “Chairman” instead of “Chairperson” in respect of statutory boards. This became evident where the statute creating the FSC refers to a “Chairman” and a “Deputy Chairman” while on the FSC’s website it refers to the “Chairman” who happens to be male, but to the “Deputy Chair” because the current occupant happens to be female. This is not merely an issue of nomenclature, but one where the Constitution protects equality and discourages discrimination on the basis of gender. For this reason, more gender-neutral terms should be used in all legislation establishing statutory boards and an omnibus bill should include a change from male specific pronouns to more gender-neutral pronouns.

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<sup>78</sup> No. 9 of 2020.

- 3.51. Additionally, although the disclosure and transparency requirements are also met by publication of appointments in the Gazette, it should be noted that there is no statutory requirement for such appointments to be published in the Gazette, except for the Managing Director. Section 9(2A)(b) of the Financial Services Commission Act only requires publication in the Gazette where the Cabinet decides to remove a Commissioner from office. This should be remedied to ensure that all statutory boards, not only the Financial Services Commission, have their appointments published in the Gazette that show the date of appointment and the intended duration of their appointment. Despite the fact that publication of appointments in the Gazette is not mandatory for the FSC, in an effort to ensure disclosure and transparency the FSC sought to have the appointments published in the Gazette and even where an error was brought to their attention in the publication made in the Gazette the FSC immediately undertook to ensure that this was corrected.
- 3.52. However, the nomination process for members of the FSC's Board raised some concerns which was adequately clarified in response to questions raised through the COI Implementation Unit. However, it is expected that once the system for nominations and appointments are in place generally for all statutory boards and a suitably qualified public servant is recruited from within the public service to serve as the Statutory Boards Desk Officer, a more streamlined and transparent process for nominating Commissioners of the FSC's Board would resolve any lingering concerns.
- 3.53. A recurring theme appears to be that many boards have long-serving board members, and in correspondence with the FSC this issue was raised and the FSC gave a very helpful response to this issue. As the OECD Standards does not make term limits for board members mandatory and only suggest consideration be given to it, the FSC's position that long-serving board members provide added value to its proceedings is an acceptable position. For this reason, no recommendation will be made in relation to term limits on statutory boards.
- 3.54. In the very detailed response by the Managing Director of the FSC dated 27 October 2022, the FSC accepted that like many statutory boards there was a period from 14 December 2020 to 19 March 2021 when there was no duly constituted board and during that period there was no meeting of the Board of Commissioners. However, the FSC sought to rely on the Financial Services (Exceptional Circumstances) Act, 2020 (the "**Exceptional Circumstances Act**") to overcome the problems caused by not having a valid board in place. While it is clear that the Minister had declared the COVID-19 pandemic to be an exceptional circumstance and this had been extended down to 31 March 2021 to cover that period, the failure to have a duly constituted board was not covered by the Exceptional Circumstances Act. While it is agreed section 6(3) requires any decision taken by the Chairperson to be ratified by the board, this cannot be achieved if there is no board. Section 6(4) of the Exceptional Circumstances Act places the issue beyond doubt by making it clear that those provisions only apply to matters of an "urgent nature" where it would be "impracticable to convene a meeting of the Board for the action or decision to be taken or made". It is to be noted "impracticable" does not imply a legal impossibility as where the Board does not

exist, but where due to circumstances the Board cannot reasonably meet due to financial, physical or other constraints. Those would make a meeting impracticable, but what transpired between 14 December 2020 to 19 March 2021 was a legal impossibility since there was no board legally constituted to which any action taken could have been ratified. As will be discussed more fully in respect of the BVI International Arbitration Centre, a board cannot ratify an illegality. This constant question of boards being allowed to lapse, only to rely on the possibility of their powers of ratification, may be misplaced and a misunderstanding of a board's powers of ratification. It is expected, however, that once the other recommendations provided in this Final Report are implemented this recurring problem would be remedied. Therefore, no specific recommendation will be made in this regard. It is significant to note that the FSC identified in its 27 October 2022 letter that those Commissioners whose terms were to expire on 13 December 2022 were already being processed to ensure that Cabinet took the necessary steps to have their appointments confirmed before the expiration date. Whether or not this was achieved, obviously is outside the hands of the FSC and require the action of the Ministry of Finance and the Cabinet.

- 3.55. The FSC outlined its process for the selection of its Commissioners, which involve its own internal vetting of candidates before being recommended to the Minister for appointment. Contrary to the position taken by the FSC, this raises several red flags where a statutory board is doing its own vetting and recommending the appointment of its own board members, even where as the FSC put it they are merely putting forward a pool of candidates from which the Cabinet may select. While there is no doubt that this process has produced some exceptional board members, and has proven beneficial to date, it cannot be said that a more independent process would not produce equally suitable candidates. While it is understood that a vetting process for board members are necessary to ensure that there are no conflicts as well as that they meet the necessary fit and proper test in accordance with section 5(4) of the Financial Services Commission Act, this cannot be done by the FSC itself for its own board. What is necessary is for an independent third party to be retained for this purpose and there are many organisations that provide this service. Additionally, the other requirement for Commissioners under section 5(4) of the Financial Services Commission Act would be having relevant knowledge, experience and expertise to aid the FSC in the performance of its functions. This merely requires an assessment of their curriculum vitae and letters of recommendations from persons outside the FSC and who are not regulated entities. Therefore, two things would be required for each candidate, a curriculum vitae and letters of recommendations from persons unconnected to the FSC. Those documents should then be forwarded to an external reviewer to conduct the fit and proper assessment before the Minister consults with the Leader of the Opposition and makes the recommendation to the Cabinet. This process should be employed for all statutory boards, not just the FSC, with the exception of the external reviewer which should only be used when the statutory requirements include the fit and proper test for board members, for example, this is also a requirement for the Virgin Islands General Legal Council.

- 3.56. While noting that section 6(2) of the Financial Services Commission Act allows Cabinet to give general directions to the FSC, the FSC indicated that it would be “very damaging to the [FSC]’s established standing as an independent financial services regulatory body if the [FSC]’s human resources procedures were to be the subject of directions from Cabinet.” A similar statement was also provided in respect of general directions that may be provided by the Cabinet in respect of financial policies, leases, divestment, insurance policies, its data protection system (noting in particular the reputational damage the *Panama Papers* and similar data breaches have had on the jurisdiction), disaster recovery plan or its communication plan. This position is agreed and it conforms to all the responses received from every statutory board. It raises a serious question as to the rationale for such a provision in the Financial Services Commission Act and would recommend that it be removed to ensure that its independence as a regulatory body is not compromised, despite the fact that it has never been used. Similar provisions with respect to other regulatory bodies should also be removed, for example, section 4 of the Telecommunications Act, as the same principles espoused by the FSC apply across the board to every regulatory body.
- 3.57. A significant concern is that there are at least two (2) advisory boards that fall under the remit of the FSC but absolutely no information was provided by the FSC in respect of these advisory boards. They are critical to ensuring that both company law and intellectual property (which fall under the remit of the FSC) are up-to-date and remain cutting-edge while ensuring that there is a fulsome dialogue between the regulator and regulated entities within these spheres. As the FSC has not risen to the challenge of adequately utilizing these advisory boards in the manner they were intended, it is advisable that all statutory boards linked to the FSC be removed from its management and placed directly under the Ministry of Finance so that these bodies advise the Minister directly. This recommendation is not made lightly understanding the numerous international challenges that the FSC has to constantly address and it is clear that its focus is not being placed on the areas that generate the most revenues, but on responding to a barrage of international requirements.

## Recommendation No. 8

**Gender-neutral pronouns should be used for statutory boards, in particular the word “Chairman” should be changed to “Chairperson” wherever it appears in enabling legislation for statutory boards.**

- 3.58. This recommendation does not require any amendment to the Constitution, nor will it affect any existing statutory board or require any budgetary allocation. However, it will require legislative amendments.
- 3.59. Cabinet should approve the omnibus amendment after public consultation.

### Recommendation No. 9

**All appointments to statutory boards should be published in the Gazette as soon as practicable after the decision to appoint has been made, and the appointments should also be identified on the websites of the relevant statutory board or on the government's official website.**

3.60. This recommendation does not require any amendment to the Constitution, nor will it affect any existing statutory board or require any budgetary allocation. However, it will require legislative amendments.

3.61. Cabinet should approve the omnibus amendment after public consultation.

### Recommendation No. 10

**The Company Law Review Advisory Committee and the Intellectual Property Advisory Committee should be removed from under the auspices of the FSC and directly advise the Minister of Finance.**

3.62. This recommendation does not require any amendment to the Constitution, but it will require legislative amendments to the BVI Business Companies Act, 2004 and the Trade Marks Act, 2013.

3.63. Cabinet should instruct the Attorney General and the FSC to draft the necessary amendments.

### Recommendation No. 11

**As part of the nomination process, the Statutory Boards Desk Officer should advertise any vacancy on any board at least six (6) months before the vacancy is to occur and require the submission of a curriculum vitae and at least two (2) letters of recommendation from persons unconnected to the statutory board but with some knowledge or experience with the skills of the candidate for at least five (5) years. Where there is a fit and proper requirement for any board member an independent agency should be used, including any person or agency approved by the National Security Council, to conduct a full investigation into the shortlisted candidate's criminal, financial, medical and employment history. Any shortlisted candidate seeking to be appointed to any position with a fit and proper requirement should be required to sign an agreement for such investigation to be conducted, as it would be inappropriate to conduct such invasive investigation without their consent. Additionally, in respect of any candidate for a statutory board position requiring a fit and proper test, they should also submit with their application a bank reference letter.**



- 3.64. This recommendation does not require any amendment to the Constitution, nor does it require any amendment to any existing legislation, but it may require some funding for the independent agency or person to conduct a fit and proper assessment.
- 3.65. Cabinet and the National Security Council should approve an independent agency to conduct a fit and proper assessment of shortlisted candidates for any statutory board which has a fit and proper requirement for board members.

## Recommendation No. 12

**Section 6(2) of the Financial Services Commission Act and section 4 of the Telecommunications Act, 2006 be repealed in their entirety.**

- 3.66. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention.
- 3.67. Cabinet should instruct the Attorney General to draft the amendments to both the Financial Services Commission Act and the Telecommunications Act, 2006.

## Telecommunications Regulatory Authority (“TRC”)

- 3.68. The establishment of the TRC has raised some concerns, whereby, section 7(2) of the Telecommunications Act, 2006 provides as follows:

“(2) The Board shall comprise a minimum of three and a maximum of five Commissioners, one of whom shall be the Chief Executive Officer and, without prejudice to the requirements specified in subsection (4), one Commissioner with a telecommunications services background shall be from outside the Virgin Islands.”

- 3.69. The information available on its website and the information provided to the COI Implementation Unit is that the Board has three (3) members, namely a “Chairman”, a Deputy “Chairman” and the CEO. However, neither the Chairperson nor the Deputy Chairperson are from outside the Virgin Islands. Therefore, although the Board meets the minimum number required, in order to be properly constituted it must have another member on its board who is from outside the Virgin Islands. Additionally, there is no information on the TRC’s website about its Commissioners or the nomination and appointment process, that would indicate the qualifications of those persons to serve in those roles. However, this must be balanced against the stringent appointment requirements under section 7(3) of the Telecommunications Act, 2006 which provides:

“(3) The Minister shall, after consultation with the Leader of the Opposition, recommend to the Council the appointment of one of the Commissioners as

Chairman and another as Deputy Chairman, and the appointment of the Chairman and Deputy Chairman by the Minister shall be subject to the approval of the [House of Assembly] by resolution.”

- 3.70. This is one of the most stringent and transparent appointment processes for any statutory board. Not only is the Minister required to “consult” with the Leader of the Opposition, but the appointment of the Chairperson and Deputy Chairperson are subject to the approval of the House of Assembly. While all the Minister needs to do to “consult” with the Leader of the Opposition is write to the Leader of the Opposition and that would be sufficient consultation in law, the fact that the appointments must be approved by the House of Assembly means the transparency of the process is placed beyond reproach, where there would be public scrutiny of such appointments. This prompts a recommendation for the creation of a Standing Select Committee of the House of Assembly through which appointments to boards can be scrutinized. This is in keeping with the OECD Standards which require oversight and would also ensure the fullest measure of disclosure and transparency. However, it does not change the fact that despite the statutory guidelines as to who should constitute the TRC’s Board, the TRC continues to operate without a duly constituted Board. It is either that the Telecommunications Act, 2006 be amended to remove this requirement that apparently cannot or isn’t intended to be filled or steps should be taken to fill the position with someone from outside the Virgin Islands. This was not the case when the CEO, who is also a member of the Board, was recruited from overseas, but where the CEO is also a person deemed to belong to the Virgin Islands it becomes critical for the TRC to recruit a board member from outside the Virgin Islands or change the statute.
- 3.71. All statutory boards should be subject to oversight by the House of Assembly, who after passing bills to create statutory boards rarely have an opportunity to exercise any legislative oversight to ensure that the statutory boards are functioning in the public interest (which is the primary purpose of every statutory board). While there must be a balance struck between reducing political interference and ensuring transparency in the process of nomination and appointment, the pendulum should always rest in favour of transparency and disclosure. This should have the effect of making the executive accountable for their actions with respect to statutory boards and ensure that the best candidates are always appointed with the House of Assembly as the final check on that process. There are precedents for this even within the Caribbean, for example, the neighbouring U.S. Virgin Islands and Puerto Rico which follow a form of American republicanism, as well as St. Martin and Guadeloupe which, as constituent parts of France, use French republicanism. In both systems the legislative branch exercises oversight over the executive branch through a confirmatory process of key appointments. There are few examples of this within the Commonwealth Caribbean, except the Co-operative Republic of Guyana, but there are great examples around the wider Commonwealth, particularly in Uganda, Ghana, Kenya and Malta. Additionally, there are examples from civil society where churches and service clubs have similar processes. Therefore, if the objective is to ensure

transparency and disclosure to meet international best practices for statutory boards, these steps should then be taken to ensure proper legislative oversight of statutory boards.

### Recommendation No. 13

**There should be established under the Standing Orders a new Standing Select Committee to be known as the Appointments Committee, or the Public Appointments Committee, as appropriate, that would approve the appointment of all statutory boards after the nomination process initiated by the Statutory Boards Desk Officer and the nominee named by the appointing authority.**

3.72. This recommendation does not require any amendment to the Constitution, except for those constitutionally appointed statutory boards, but it will require an amendment to Order 72 of the Standing Orders of the House of Assembly, and an additional Standing Order created, with suggested wording as follows:

- “(1) There shall be a Standing Select Committee to be designated the Appointments Committee, which shall consist of not more than five, and not less than three, members nominated at the commencement of each session, provided that no person shall be qualified to be nominated if he or she holds or is acting in the Office of Minister.
- (2) The Chairperson of the Appointments Committee shall be one of its members nominated by the Premier after consultation with the Leader of the Opposition.
- (3) Three Members of the Committee shall form a quorum.
- (4) The Statutory Boards Desk Officer, designated as such by the Governor, shall be the Adviser to the Appointments Committee.
- (5) The functions of the Appointments Committee shall be
  - (a) to receive and consider any nomination for appointment to any statutory board by the Governor, the Cabinet, a Minister or any other person in accordance with any Act or other statutory instrument, whether or not the Governor, the Cabinet, a Minister or any other person is to act in accordance with the advice of some other person or body;
  - (b) to receive and consider any report which by any law is to be laid before the House of Assembly by, or in respect of, any statutory board;
  - (c) to consider and report to the House of Assembly on the exercise of any borrowing powers by any statutory board in accordance with the Statutory Boards (Special Loans) Act;

- (d) to report to the House of Assembly on any nomination for appointment to any statutory board within six (6) weeks of receipt of any nomination, or at the next sitting of the House of Assembly thereafter; and
  - (e) to report to the House of Assembly on any measure it considers appropriate to ensure that any statutory board is acting within its functions and is adequately carrying out its functions in accordance with law.
- (6) In the event the Appointments Committee fails, for whatever reason, to report to the House of Assembly in accordance with sub-paragraph (d) of Sub-Order (5), the nomination for appointment shall be deemed accepted by the House of Assembly.
  - (7) Notwithstanding Sub-Order (6), during any period when the House of Assembly is prorogued the time required to report to the House of Assembly in accordance with sub-paragraph (d) of Sub-Order (5) shall be excluded from the computation of time.
  - (8) Notwithstanding Sub-Order (6), during any period when the House of Assembly is dissolved, no nomination for appointment shall be deemed accepted by the House of Assembly, and the nomination shall be deemed abandoned if the Appointments Committee fails to report to the House of Assembly prior to the dissolution of the House of Assembly.
  - (9) Notwithstanding Sub-Order (6), the Appointments Committee may request an extension of time of the House of Assembly for consideration of any nomination for appointment to any statutory board within the period fixed for its report to the House of Assembly, but if the House of Assembly denies to grant the extension of time, then Sub-Order (6) shall be deemed to apply from the date fixed for its report to the House of Assembly.
  - (10) Subject to the foregoing provisions, the rules and procedure for Select Committees shall apply to the Appointments Committee.”

3.73. Cabinet should submit the recommendation to the Standing Orders Committee of the House of Assembly for consideration with a view to debate in the House of Assembly and the ultimate adoption of an omnibus amendment bill to all statutory boards.

#### Recommendation No. 14

**Section 7(2) of the Telecommunications Act, 2006 should be amended to remove the phrase “and, without prejudice to the requirements specified in subsection (4), one Commissioner with a telecommunications services background shall be from outside the Virgin Islands” to avoid the statute being honoured more in the breach than in the observance.**

- 3.74. This recommendation does not require any amendment to the Constitution, but it does require an amendment to the Telecommunications Act, 2006 and it will have no effect on any statutory board.
- 3.75. Cabinet should consider the amendment after a consultation process led by the TRC before submitting the amendment to the House of Assembly for adoption as amendment to the Telecommunications Act, 2006.

### Virgin Islands General Legal Council (“VIGLC”)

- 3.76. Section 5(a) of the Legal Profession Act, 2015 requires the VIGLC to regulate and supervise generally the legal profession, but in exercise of its duties and powers is not a body corporate and remains an unincorporated entity that may open its members to personal liability in certain situations. This is unacceptable in accordance with the OECD Standards and as a regulatory body highly irregular. However, as the COI Implementation Unit was unable to obtain any information about the VIGLC, the Deputy Governor’s Office provided very useful information about the historical composition of the VIGLC. This information is not readily available to the public and again there is no transparency or disclosure about the selection process so that the VIGLC does not meet the OECD Standards in this regard.
- 3.77. It should be noted that the VIGLC after having been constituted since 2016 still does not have its own website or any proper means from which to carry out its functions. Finding information about a body charged with regulating the legal profession is uncharacteristically painful. It is made none-the-less daunting when the Chairperson of the VIGLC is to be nominated by the Chief Justice of the Eastern Caribbean Supreme Court, but there is no published criteria or selection process that outlines how the Chief Justice exercises this discretionary power of making a nomination. For these reasons, the VIGLC does not meet the OECD Standards. It is hoped that this situation can be remedied urgently and a world-class regulatory agency for the legal profession can finally find its way forward.

### Recommendation No. 15

**The VIGLC should be established as a body corporate with or without reference to section 21 of the Interpretation Act, although incorporating that section would be preferred.**

- 3.78. This recommendation does not require any amendment to the Constitution, but it does require an amendment to the Legal Profession Act, 2015 and it will have no effect on any statutory board.
- 3.79. Cabinet should consider the amendment after a consultation process led by the TRC before submitting the amendment to the House of Assembly for adoption as amendment to the Legal Professional Act, 2015.

## Recommendation No. 16

**The criteria for the nomination and selection process for the Chairperson of the VIGLC used by the Chief Justice of the Eastern Caribbean Supreme Court should be made public.**

- 3.80. This recommendation does not require any amendment to the Constitution, but it does require an amendment to the Legal Profession Act, 2015 and it will have no effect on any statutory board.
- 3.81. Cabinet should consider the amendment after a consultation process led by the VIGLC before submitting the amendment to the House of Assembly for adoption as amendment to the Legal Profession Act, 2015.

## Financial Investigation Agency (“FIA”)

- 3.82. While the FIA has a website which indicates who the members of its Board are, its information is extremely basic, with a fleeting reference to the position and not the actual person who holds the post. As all members of the Board are holders of specific public positions it is easy to identify who those persons are, but it would be helpful to ensure that instead of merely identifying the positions that are members of the Board, to identify the actual holders of those positions and by their name as well. Apart from this situation, however, the FIA would meet the minimum requirements under the OECD Standards. Therefore, no specific recommendations will be made as it relates to the FIA in this regard.

## E. PRIVATE ENTERPRISES

- 3.83. The private enterprises would include the following:

1. The BVI Airports Authority Limited established pursuant to section 4 of the Airports Act, 2003;<sup>79</sup>
2. The National Bank of the Virgin Islands Limited pursuant to section 3 of the Development Bank of the Virgin Islands (Transfer of Assets and Liabilities) Act, 2004;<sup>80</sup>
3. Prospect Reef Resort Management Company Limited pursuant to section 3 of the Prospect Reef Resort Management Act, 2005;<sup>81</sup>
4. The BVI Electricity Corporation established by section 3 of the British Virgin Islands Electricity Corporation Ordinance;<sup>82</sup>
5. The BVI Ports Authority established by section 3 of the British Virgin Islands Ports Authority Act, 1990;

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<sup>79</sup> No. 16 of 2003.

<sup>80</sup> No. 3 of 2004.

<sup>81</sup> No. 6 of 2005.

<sup>82</sup> Cap. 277.

6. The BVI Health Services Authority established by section 5(1) of the BVI Health Services Authority Act, 2004;<sup>83</sup>
7. The BVI International Arbitration Centre established by section 93 of the Arbitration Act, 2013;<sup>84</sup>
8. The BVI Tourist Board established under the Tourist Board Ordinance (Cap. 280);
9. The Wickham's Cay Development Authority established by section 3 of the Wickham's Cay Development Authority Ordinance (Cap. 281).

3.84. Private enterprises have all been created as bodies corporate, with the first three (3) on this list having been incorporated under the BVI Business Companies Act, 2004, as amended, and the others being statutory corporations. With the exception of the National Bank and the Prospect Reef Resort, they operate for some public purpose or, as in the case of the BVI Electricity Corporation, controls a monopoly. The National Bank and the Prospect Reef Resort are both pure economic entities owned by the government and are true SEOs in accordance with the OECD Standards. It is unfortunate that both those organizations only received the Questionnaire after the deadline had long past. However, they both submitted information which was reviewed against the OECD Standards.

3.85. It should also be noted that the BVI Finance Limited is not part of this exercise. It is a company by which the Government of the Virgin Islands has an interest without any statutory basis for such action. BVI Finance Limited is primarily responsible for the marketing of financial services while the BVI Tourist Board is responsible for marketing of tourism, however, BVI Finance Limited operates as a private enterprise with a public-private partnership structure and this anomaly should be seriously reviewed. Notwithstanding the noble aims of the entity, which before its incorporation as a limited liability company was a department of government spun off from the predecessor government department to the FSC to separate the regulatory functions from its marketing functions, it means public funds are being expended by an independent entity that operates totally outside the usual realms of a statutory board.

3.86. The fact that the National Bank of the Virgin Islands is listed on the Ministry of Finance's webpage on the government's official website as a board under its remit but it was never included in the 15 statutory boards presented by the COI Implementation Unit is a cause for concern. It appears that it is either the information on the government's official website is inaccurate, or it is impossible for the COI Implementation Unit to get information regarding an official board under the Ministry of Finance. This lack of transparency with a private institution that carries out a public function and owned by the public must raise grave questions about the operations and efficiency of that board. The last annual report published on its website is from 2020, which although it reflects information for 2020 it still indicates a series of resignations from its board in 2021. When a single member from a board resigns it is a cause for concern, but when numerous members of a board resign in

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<sup>83</sup> No. 14 of 2004.

<sup>84</sup> No. 13 of 2013.



short order it is a serious red flag. Additionally, as the Social Security Board is a significant minority shareholder in the Bank, with the other shareholder being the Financial Secretary, and both have failed to provide any response to the COI Implementation Unit raises serious concerns about the governance and oversight of the National Bank.

- 3.87. The Prospect Reef Resort Management Company Limited is another anomaly which would fit squarely into the category of an SEO within the OECD Standards. Therefore, even more scrutiny of its operations are required than an ordinary statutory board. There is no published data anywhere about this entity and it has the potential to cause serious economic and reputational damage to the Territory as a whole. The Chairperson of the Prospect Reef Resort Management Company Limited, Tamara Maduro, indicated that she became aware of the Questionnaire rather late and completed it out of time which was received and considered. It is clear that upon her appointment she met a company that needed to be restored to the register of companies, the inability to access bank accounts and several other issues, including pending lawsuits. However, for this herculean task of turning around the Prospect Reef Resort Management Company Limited, an experienced commercial lawyer like its current Chairperson is best placed to lead the transformation process that is clearly needed in that case. For that reason, what is required with respect to the Prospect Reef Resort Management Company Limited is that a schedule of action items over a 12 month period be agreed between its board and Cabinet and a quarterly progress report be provided to Cabinet.

### **Recommendation No. 17**

**An independent review should be conducted into the corporate governance structure of the National Bank of the Virgin Islands by an accountant, legal practitioner or chartered secretary with significant experience in corporate governance. An agreed schedule of action items over a 12-month period should be agreed between Cabinet and the board of directors of Prospect Reef Management Company Limited and a quarterly progress report be provided to Cabinet.**

- 3.88. This recommendation does not require any amendment to the Constitution, but it does require budgetary allocation and the appointment of an independent investigator.
- 3.89. Cabinet should consider budgetary allocation and the appointment of the independent investigator.

### **The BVI Airports Authority Limited (“BVIAA”)**

- 3.90. The BVIAA has a website but was not very helpful for the purposes of this exercise. There is a dead link to a page meant for the Board of Directors and so no information is available to the public about the current members of the board or the nomination and appointment process. While it is clear that the statutory process under section 6(2) of the Airports Act, 2003 and Article 8.1 of the Articles of Association were followed to appoint the current

board, again, the issue of transparency and disclosure where the public interest is at the core of its operations failed to be considered. The system of nomination and appointment to all boards must be open and transparent, especially in respect of an SEO. For this reason, the BVIAA fails to meet the basic requirements under the OECD Standards.

### **The BVI Electricity Corporation (“BVIEC”)**

- 3.91. The BVIEC is a member of the Caribbean Electric Utility Services Corporation (CARILEC), which is an association of electric energy solutions providers and other stakeholders from around the Caribbean, Central and South Americas and the wider world, where it has regularly been awarded great accolades for its work. The BVIEC has an excellent website that provides up-to-date information on the board members. However, the nomination and appointment process of these members are not clear and there was a period where some members appointments had lapsed causing them to have to be retroactively appointed.
- 3.92. Section 4(1)(a) of the British Virgin Islands Electricity Corporation Ordinance requires the “Chairman” to be appointed, subject to the approval of the House of Assembly. Again, this is the highest form of transparency and disclosure that can be provided for any statutory board and if it were extended to all members of the board then the entire process would be totally transparent. It is hoped that serious consideration will be given to Recommendation No. 8 to ensure that transparency and openness is practiced with respect to the nomination and appointment of all statutory boards including the BVIEC. However, for the purpose of this review, the BVIEC meets the minimum requirements of the OECD Standards.

### **The BVI Ports Authority (“BVIPA”)**

- 3.93. The BVIPA is established under section 3 of the British Virgin Islands Ports Authority Act, 1990<sup>85</sup> as a body corporate but does not incorporate section 21 of the Interpretation Act so it may have certain limitations on its powers. There is no separation of the BVIPA’s board and the body corporate unlike several other statutory bodies. The BVIPA suffers from the same problems as several other statutory boards of a lack of transparency and openness in the nomination and appointment process. Additionally, while the BVIPA has a website it does not have any information about its members or management. Therefore, the serious lack of transparency with this board should be a priority to reduce any national security risks, since the management of our ports is directly linked with the transshipment and importation of illegal goods as well human trafficking. However, no specific recommendation is made with respect to the failures under the BVIPA as it is expected that once the other recommendations are implemented it should improve the standards and quality of the BVIPA.

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<sup>85</sup> No. 12 of 1990.

## The BVI Health Services Authority (“BVIHSA”)

3.94. The BVIHSA is established pursuant to section 5(1) of the BVI Health Services Authority Act, 2004,<sup>86</sup> and section 5(2) makes it a body corporate but does not incorporate section 21 of the Interpretation Act and so it may have some limitations on its powers. It is to be managed by a Board established pursuant to section 5(3) of that Act. The BVIHSA has a website with minimal information that does not include any information about its board of directors except for the Acting CEO. There are no annual reports available that would provide this information either. However, based on the information provided to the COI Implementation Unit, the Leader of the Opposition has nominated six (6) members of the Board and two (2) were nominated by the Minister. This would be particularly unusual and incongruous with the enabling statute, which by virtue of section 5(5), the Leader of the Opposition is only to nominate two (2) members and the Minister is to consult with the Leader of the Opposition on the “Chairman”, who shall be subject to approval from the House of Assembly. Therefore, there is no way of ascertaining the accuracy of the appointments to the Board. However, as the same issues arise for the BVIHSA as appears to arise for several other statutory boards, no specific recommendation is made with respect to the failures under this body as it is expected that once the other recommendations are implemented it should improve the standards of transparency within the Board of the BVIHSA.

## The BVI International Arbitration Centre (“BVI IAC”)

3.95. The BVI IAC is established under section 93 of the Arbitration Act, 2013<sup>87</sup> and makes it a body corporate, but does not incorporate section 21 of the Interpretation Act so it does have some limitations on its powers. The Board of the BVI IAC is established pursuant to section 98 of the Arbitration Act, 2013, which also protects its independence so that it is established adequately to meet the OECD Standards of independence.

3.96. There are several irregularities that were noted with respect to the appointment of members of the Board of the BVI IAC which would cause it not to meet the OECD Standards. First, three members of its Board, John Beechy, CBE, Murray Smith, KC and Mark Forte, were first appointed in 2015 and then retroactively appointed by Cabinet on 17 April 2019 with effect from 07 September 2017 (more than 1 year and 7 months earlier). Additionally, Cherno Jallow, KC and Felice Swapp were similarly retroactively reappointed on the same date with effect from 7 September 2018 (over 6 months earlier). A similar situation by a few months delay occurred by Cabinet decisions on 15 January and 04 November 2020.

3.97. Paragraph 5(1) of the BVI International Arbitration Centre (Functions and Procedures of the Board) Order, 2016<sup>88</sup> requires its Board to meet at least four (4) times a year. Therefore,

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<sup>86</sup> No. 14 of 2004.

<sup>87</sup> No. 13 of 2013.

<sup>88</sup> S.I. No. 71 of 2016.

there must have been at least six (6) meetings between 7 September 2017 and 17 April 2019. It is either that there were no meetings during that period, in which case, that would raise a serious illegality, or during that period there were not sufficient board members to hold a quorate meeting, but wouldn't invalidate the proceedings. Therefore, regardless of what happened during that period, there was a serious irregularity. It was attempted to cure the problem by making the appointments retroactive. However, a retroactive appointment cannot cure an illegality. If something was illegal when it was done, a retroactive appointment changes nothing. Even if the board, once it is properly constituted, ratifies its previous actions, again, ratification implies retroactivity and the rule remains that a retroactive act cannot cure an illegal act. The effect of retroactivity is that they are entitled to benefits and privileges during the retroactive period, so that there is a financial burden created without any real benefit during the retroactive period, unless the board makes some retroactive step to approve matters that would not otherwise be illegal.

- 3.98. There is nothing prohibiting ex post facto legislation in the BVI. This, therefore, allows the Cabinet to appoint persons or make reappointments to statutory boards with retroactive effect. The worst example of this is the reappointment of the board of the BVI IAC which continued to operate without a valid board in place for over 1 year and 7 months from 2017. However, it should be noted that Hurricane Irma (a category 5 storm) hit the Virgin Islands on 6 September 2017, the day before the appointment of the majority of the BVI IAC's board members expired. Had the FSC and the Central Government not been so relaxed about the expiration of the board, the reappointments could have taken place prior to the arrival of Hurricane Irma and the lapse of 1 year and 7 months would not have taken place. Further comments will be made about the FSC's involvement in the affairs of the BVI IAC when addressing the serious issue of funding the BVI IAC.
- 3.99. It is clear that after Hurricane Irma the government's priorities would have been elsewhere in light of the devastation that gripped the Territory. However, that is not a sufficient excuse since there were several emergency measures passed during that 1 year and 7 months period, including on the recommendation of the FSC, such as the Financial Services (Continuity of Business) Act, 2017. That 2017 Act, among other things, suspended the statutory requirements for the number of meetings required of the FSC's Board, the dispensation with a quorum and allowing decisions of the FSC's Board to be taken by the Chairperson of the FSC in his or her absolute discretion. It is unfortunate that similar legislation was not considered for several other statutory boards constituted within the Territory during that time of crisis. This failure resulted in the unfortunate circumstances with poor governance of the BVI IAC where it is clear it does not meet the OECD Standards. A recommendation must be made to emulate the provisions of the Financial Services (Continuity of Business) Act, 2017 for other statutory boards in the future during periods of emergency. It should be noted that the Financial Services (Continuity of Business) Act, 2017 came to an end in accordance with its own sunset powers, but in response to the COVID-19 pandemic in 2020 a similar legislation was passed, the Financial Services (Exceptional Circumstances) Act, 2020 discussed earlier with respect to the Financial Services Commission.

3.100. Additionally, paragraph 8 of Schedule 4 of the Arbitration Act, 2013 (No. 13 of 2013), as amended by section 8 of the Arbitration (Amendment) Act, 2015, requires the appointment and revocation of Board members to be published in the Gazette. Although the BVI IAC has an Arbitration Committee and a BVI Arbitration Group, their members are prominently displayed on its website, but the BVI IAC's Board is not so easy to find. This raises additional questions as to whether or not it functions as a statutory board is required to do. For these reasons, the BVI IAC does not meet the OECD Standards in respect of the nomination and appointment of its board and the requirements for transparency and disclosure.

### Recommendation No. 18

**Similar provisions to the Financial Services (Continuity of Business) Act, 2017 and the Financial Services (Exceptional Circumstances) Act, 2020 should be included in an omnibus bill as part of business continuity measures for other statutory boards to continue to function and operate during and after an emergency.**

3.101. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention to affect all statutory boards other than the FSC.

3.102. Cabinet must authorise the omnibus bill after public consultation and the House of Assembly would need to pass the measures in an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill.

### The Wickham's Cay Development Authority ("WCDA")

3.103. The WCDA was established in 1975 after HMG advanced monies to the local government for the repurchase of large portions of land leased by British businessman, Ken Bates, which sparked great protests in the Territory led by national hero, Noel Lloyd. One of its primary objectives was to repay the loan to HMG as well as to develop Wickham's Cay. As long as no appointments were made to the Authority, all the power of the Authority vests in the Minister. The Governor was able to transfer Crown land to the WCDA which then had the responsibility to lease and otherwise deal with the land to meet its objectives. Since 1975 no Authority was ever appointed and so all power remained with the Minister, who could then appoint a General Manager. There have been significant leases of Wickham's Cay since 1975 and various other development projects including the construction of what was then known as the Palm Grove Shopping Centre, which was destroyed by Hurricanes Irma and Maria in September 2017. There may still be outstanding leases for occupants of the Palm Grove Shopping Centre and the management of Wickham's Cay continues to be the province of the Minister. There has been the appointment of a "City Manager" who has assumed the responsibilities of the General Manager of the WCDA contrary to the statutory provisions and several other actions taken without the Authority. After more than 47 years,

it is time to review the WCDA in its entirety. Such a review falls outside the remit of this review.

### Recommendation No. 19

**There should be an independent review of WCDA that should not be limited merely to corporate governance, but should be a wholesale review of its purpose, present role and future viability.**

3.104. This recommendation does not require any amendment to the Constitution.

3.105. Cabinet should authorise this independent review.

### F. CHARITABLE PURPOSE BOARDS

3.106. There are several other statutory boards which perform some charitable purpose, which are mainly non-revenue earning entities that simply spend public funds for a public benefit or otherwise determines how certain public funds are to be expended. They include:

1. The Board of Governors of the H. Lavity Stoutt Community College established by section 6 of the H. Lavity Stoutt Community College Act, 1990 (No. 14 of 1990) as amended;
2. The National Parks Trust Board established by section 5 of the National Parks Trust Act;
3. The Virgin Islands Recovery and Development Board established by section 6 of the Virgin Islands Recovery and Development Agency Act, 2018 (No. 1 of 2018);
4. The Scholarship Trust Fund Board established by section 4 of the Scholarship Trust Fund Act (Cap. 118);
5. The Virgin Islands Festival and Fairs Committee established by section 2 of the Virgin Islands Festival and Fairs Committee Act, 2005 (No. 4 of 2005);
6. Asset Seizure and Forfeiture Management Committee established by section 4 of the Asset Seizure and Forfeiture Act, 2020 (No. 20 of 2020);
7. The Board of Governors of the Fund established by section 3 of the British Virgin Islands College Fund Act (Cap. 113);
8. BVI National Commission for UNESCO established by section 3 of the BVI National Commission for UNESCO Act, 2009 (No. 12 of 2009);
9. The Police Welfare Association established by section 81 of the Police Act (Cap. 165);
10. The Public Assistance Committee established by section 3 of the Public Assistance Act, 2013 (No. 14 of 2013);
11. The Recreation Trust established by section 3 of the Recreation Trust Ordinance (Cap. 278);
12. The Social Security Board established by the Social Security Ordinance (Cap. 266);
13. The Board of Trustees of the Virgin Islands Climate Change Trust established by section 12 of the Virgin Islands Climate Change Trust Fund Act, 2015 (No. 12 of 2015).

## The Social Security Board

3.107. The Social Security Board provided no response to the Questionnaire despite being one of the original eighteen (18) statutory boards identified by the COI Implementation Unit. This is significant since it manages the largest amount of public funds and it is critical that its corporate governance systems are above reproach to ensure that there is no reputational damage or problems with the future old age pension and other benefits to be provided to the public. Therefore, it is recommended that an independent review into the Social Security Board's establishment, maintenance and any exercise of executive power into this board be conducted.

### Recommendation No. 20

**There should be an independent review of the Social Security Board into its corporate governance structure.**

3.108. This recommendation does not require any amendment to the Constitution.

3.109. Cabinet should authorise this independent review.

## The H. Lavity Stoutt Community College ("HLSCC")

3.110. HLSCC is an accredited community college by the Middle States Commission on Higher Education ("**MSCHE**"), a U.S. accrediting body. It is not established as a body corporate, but instead the H. Lavity Stoutt Community College Act (the "**College Act**") establishes it as "an education institution" and unlike any other statutory board it is the Board of Governors that is established as a body corporate by section 7(1) of the College Act, which incorporates section 21 of the Interpretation Act. This peculiar establishment is unique to academic institutions, so that as an education institution it provides a well-known and historic charitable purpose, but the business is to be handled by its Board of Governors. This appears to have given rise to some confusion. HLSCC itself has no power to hold property, open accounts, or anything that a body corporate may do, but the Board of Governors have all the powers of a body corporate and the widest powers by virtue of its application of section 21 of the Interpretation Act.

3.111. While HLSCC has a website with a page dedicated to its Board of Governors, that page is outdated and has no real information about the members of the Board of Governors. Additionally, there is no information about the nomination and appointment process for Governors. For this reason, HLSCC does not meet the minimum requirements required under the OECD Standards as it relates to the establishment, nomination and appointment of its board. However, no specific recommendation is made with respect to the failures



under HLSCC as it is expected that once the other recommendations are implemented it should improve the standards and quality of governance at HLSCC.

- 3.112. It should also be noted that there was originally a College Fund Board of Governors established under the British Virgin Islands College Fund Act (Cap. 113). This was set up to fund the establishment of HLSCC, but since the establishment of HLSCC the College Fund was never closed and this body which while still in existence *de jure*, it is *de facto* defunct. There is a need to provide for a transfer of assets and liabilities and dissolve this body. There are several examples of this being done, for example, the Development Bank which ultimately became the National Bank through a legislative transfer of assets and liabilities.

### Recommendation No. 21

**There should be enacted a British Virgin Islands College Fund (Transfer of Assets and Liabilities) Act to close the College Fund and transfer its assets and liabilities to the Board of Governors of the H. Lavity Stoutt Community College.**

- 3.113. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention.

- 3.114. Cabinet must instruct the Attorney General to draft the British Virgin Islands College Fund (Transfer of Assets and Liabilities) Act.

### The National Parks Trust (“NPT”)

- 3.115. The NPT is one of the oldest continuously existing statutory boards in the Virgin Islands having been established in 1961 by the National Parks Ordinance (Cap. 243) which was repealed by section 82(1) of the National Parks Act, 2006 (No. 4 of 2006) (the “**National Parks Act**”) with effect from 04 May 2007.

- 3.116. Schedule 1 to the National Parks Act provides very specific requirements for membership of the NPT’s Board, which makes diversity mandatory for this Board and would, therefore, be an important element of the nomination process to meet the OECD Standards. While the geographic diversity of the NPT’s Board in accordance with Schedule 1 has been met based on the information provided to the COI Implementation Unit, there is no indication that the other membership requirements have been met, in particular the three (3) representatives of the business community with specific recreational or tourism interests and the three (3) representatives with knowledge or experience in biodiversity conservation. It does not appear that the curriculum vitae of each member of the Board, including the Chairperson, was ever provided to the Minister before the appointments were made to ensure that the statutory requirements were satisfied. Based on the information provided to the COI Implementation Unit, the NPT Chairperson cannot be part

of the geographic diversity since all those seats are filled by other persons, and it needs to be clear whether the Chairperson meets either of the other two (2) requirements.

3.117. The Secretary to the Board in accordance with paragraph 2(4)(b) of Schedule 1 to the National Parks Act is not a member of the Board and should basically have a background as a corporate secretary, if not at least either a corporate governance qualification from the Robert Mathavious Institute at HLSCC. The Secretary should not vote or otherwise participate in the meetings of the Board, but this unfortunately has happened. Additionally, while the NPT has its own functional website, there is no information on its website about its board.

3.118. Based on the information provided to the COI Implementation Unit, the NPT's Board is not properly constituted in accordance with paragraph 3 of Schedule 1 of the National Parks Act since there are 8 members, including the Chairperson and a resigned member, where half of the membership expired on 29 November 2021 and the other half will expire on 29 November 2022, instead of 1/3 of the membership. Additionally, with ½ the NPT's Board already expired, those members appear to have participated in meetings since 29 November 2021. This again is reminiscent of the problems which were mentioned in respect of the BVI IAC. However, unlike the BVI IAC these problems cannot be associated with the 2017 floods and hurricanes or any other natural disaster. This clearly demonstrates poor corporate governance on the part of the NPT's Board and unfortunately, it does not meet the OECD standards.

## Recommendation No. 22

**To ensure diversity of membership on statutory boards, the provisions of the National Parks Act should be emulated as closely as possible with a particular emphasis on key stakeholder representation as well as geographic diversity and gender diversity.**

3.119. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention to affect all statutory boards other than the regulatory boards.

3.120. Cabinet must authorise the omnibus bill after public consultation and the House of Assembly would need to pass the measures in an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill.

## The Recovery and Development Agency ("RDA")

3.121. Very little will be said about the RDA as its life is limited and expected to come to an end shortly. However, the knowledge and experience gained through one of the best managed statutory boards in the Virgin Islands should be replicated for other statutory boards. The RDA has an excellent website that provides full details about the Board members which is

easily accessible. The board is diverse in every respect and it is by far the most transparent and open board in the Virgin Islands.

- 3.122. It is noted that section 9(2) of the Recovery and Development Agency Act, 2018<sup>89</sup> makes provision for a member of the Board whose term expires to continue in office until his or her successor is appointed, although such extension shall not continue for more than three (3) months. This is a unique provision that unfortunately would not help any of the statutory boards, like the BVI IAC or the NPT, that had serious problems with delays in reappointments. However, it makes sense for this particular statutory board where there is a restriction on the number of reappointments where it has an intentional shelf-life. Therefore, the provisions for the RDA would be considered unique to its particular circumstances and no specific recommendations will be made to replicate those special provisions.

### The Scholarship Trust Fund Board (“STFB”)

- 3.123. The STFB is established by section 4 of the Scholarship Trust Fund Act.<sup>90</sup> This statutory board has no website, or even a dedicated page on the government’s official website, and so there is no information publicly available about the board. The information provided to the COI Implementation Unit shows that five (5) individual members of the board were appointed on 01 December 2021 with effect for three (3) years with two (2) additional members that include the Permanent Secretary in the Ministry of Education and Culture and the Manager of the National Bank of the Virgin Islands or his or her designee. It appears that the involvement of the National Bank is a hold-over from when it was the Development Bank. This, however, does not explain the rationale for the need for a Board to manage this fund. The Fund itself should be like any other government fund and the distribution of government scholarships should be based on merit, and no other consideration should be involved in the provision of scholarships. Therefore, all that would be required is a scholarship policy that is easily accessible by the public and clearly identifies the criteria for scholarships. Once a person meets the criteria then the relevant public officials should be required to authorize the grant of a scholarship. The Board remains an anomaly and should be dissolved with the Scholarship Trust Fund itself remaining.

### Recommendation No. 23

**The Scholarship Trust Fund Board should be dissolved by amending the Scholarship Trust Fund Act to remove section 4 and all references to the Board and replacing it with the Ministry to manage the Scholarship Trust Fund based on clear and easily accessible policies about the criteria for scholarships.**

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<sup>89</sup> No. 1 of 2018.

<sup>90</sup> Cap. 118.

- 3.124. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention.
- 3.125. Cabinet must instruct the Attorney General to draft the amendments to the Scholarship Trust Fund Act.

### **The Virgin Islands Festival and Fairs Committee (“VIF&FC”)**

- 3.126. The VIF&FC is established by section 2 of the Virgin Islands Festival and Fairs Committee Act, 2005.<sup>91</sup> While all appointments to the VIF&FC is up-to-date, it is a statutory board without its own website and, therefore, access to information about its board is non-existent for the general public.
- 3.127. This should not be confused with Virgin Islands Festival LLC, which is a company promoting festivals in the US Virgin Islands and whose website is virginislandsfestivals.com. The VIF&FC would be best positioned to determine how this can cause confusion and how it proposes to resolve that problem with the similarities in their names. However, no specific recommendation is made with respect to the failures under the VIF&FC as it is expected that once the other recommendations are implemented it should improve the standards and quality of the VIF&FC.

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<sup>91</sup> No. 4 of 2005.

## PART IV: Maintenance of Statutory Boards

- 4.1. Once a statutory board is established, there are several things that must be done to maintain it and ensure it can fulfil its functions based on the OECD Standards. In particular, the statutory board should have:
- (a) **Measurable mandates and objectives by which its performance can be evaluated by its appointing authority.**
- 4.2. The RDA has its mandate published on its website along with their results. Usually, the mandate comes from the enabling statute, and along with its specific mandate, the RDA published its enabling statute on its website. Several statutory boards with their own website also include their enabling statute on their website for easy access. It is hoped that should the Virgin Islands ever advance to the point where its legislation is easily accessible online all statutory boards can at least provide a link to that central repository of legislation where its statutory documents can be found.
- 4.3. Exceptionally, the RDA has all the meetings of its board, from its 1<sup>st</sup> meeting on 03 May 2018 to its 63<sup>rd</sup> meeting on 18 August 2022, published on its website. This provides the highest levels of transparency of any board. It is recognized, however, that for regulatory boards and private enterprises, full minutes of their meetings may not be appropriate, but a summary of meetings (similar to Cabinet Decisions) should be published on their websites, and all other statutory boards should have their full minutes published so that their work progress can be publicly evaluated.
- 4.4. In keeping with the OECD Standards every statutory board should conduct an annual self-assessment exercise and also be evaluated annually by the appointing authority. The MSCHE Accreditation Board recommends annual self-assessment for its accredited institutions and it is expected that this would have been done by HLSCC to obtain and maintain its accredited status. However, not only is this a good exercise for HLSCC but it is best practice for all statutory boards. HLSCC's Board of Governors should, therefore, host a seminar for all statutory boards on how to conduct a self-assessment so that it can be implemented by all statutory boards.
- 4.5. The manner by which the appointing body would be able to evaluate the performance of a statutory board is through the submission of timely reports and even with respect to Minutes. For example, section 5(3) of the National Parks Act requires monthly performance reports to be sent by the NPT to the Minister separately from its requirement to send minutes to the Minister. A common response received through the COI Implementation Unit from statutory boards was that many had a representative from the appointing Ministry on the board and the appointing body would have access to the Minutes. While there is some logic in that argument, it needs to be understood that when a person is serving on a statutory board, they must bring their independent judgment to that statutory

board and are not there at the direction of any other person. Therefore, where a Permanent Secretary in a Ministry, for example, serves on a statutory board it should not be assumed that the Permanent Secretary is acting as a delegate of the Minister, but is appointed because of the knowledge and skill that person possesses by virtue of being in that role. The statutory board must, therefore, treat the Permanent Secretary's presence at the board as any other board member and not assume that the Permanent Secretary is there as the surrogate or spy for the Minister.

- 4.6. The Final Report will make reference to specific statutory provisions that deal with minutes as a comparative exercise.

#### **Recommendation No. 24**

**The mandate of the board, which should include its enabling legislation, should be identified at an early opportunity and accessible to the public, and the progress of the Board should be followed by easily accessible minutes or a summary of decisions which should be available to the public, or at the very least to the appointing authority.**

- 4.7. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention to affect all statutory boards.
- 4.8. Cabinet must authorise the omnibus bill after public consultation and the House of Assembly would need to pass the measures in an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill.

#### **Recommendation No. 25**

**HLSCC's Board of Governors should facilitate self-assessment training for all statutory boards, including for its own members.**

- 4.9. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention to affect all statutory boards.
- 4.10. Cabinet must authorise the omnibus bill after public consultation and the House of Assembly would need to pass the measures in an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill.

#### **(b) An annual budget, annual work plan, annual reports and annual external audit.**

- 4.11. The RDA is required by its enabling statute to prepare a Recovery to Development Plan and this is published on its website for the period 2019 - 2023, this includes funding. It then publishes a monthly report on its website. This is by far the most transparent process that

far exceeds the OECD Standards. However, as a bare minimum each statutory board's annual budget should be easily accessible to the public.

- 4.12. There must be a means by which the mandate of the statutory board is carried out gets crystallized into a work plan for the year or for a particular period. Several statutory boards have incorporated this into their enabling statutes, while others have specific types of plans that should be prepared by that statutory board. For example, the NPT is required to have a Management Plan, but this is not available on its website, so there is no publicly available information that complies with the OECD Standards, but this is common for a wide range of statutory boards which would be remedied once the other recommendations in this report are implemented.

### **Recommendation No. 26**

**Every statutory board that is also a body corporate must ensure that its annual budget is publicly available and easily accessible, either on its own website or on its dedicated page on government's website. If the enabling statute does not create a financial year for the statutory board then every statutory board that is also a body corporate should be deemed to have a financial year, using the definition in section 39(7) of the Interpretation Act (Cap. 136). A deadline by which its annual budget is to be approved by its board should also be provided, unless the enabling statute provides some special mechanism for the approval of its budget.**

- 4.13. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention to affect all statutory boards.
- 4.14. Cabinet must authorise the omnibus bill after public consultation and the House of Assembly would need to pass the measures in an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill.

### **Recommendation No. 27**

**Every statutory board that does not have a statutory mandate to create an annual work plan or some other specialized plan must be required to prepare an annual work plan for approval by its appointing body. The work plan should include the approved annual budget, and a deadline by which that work plan should be submitted to the appointing body for approval. A copy of the approved work plan should then be submitted to the House of Assembly's Appointments Committee, as recommended to be established herein.**

- 4.15. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention to affect all statutory boards and also reference should be made to the proposed Sub-Order 5(b) in Recommendation No. 10.



4.16. Cabinet must authorise the omnibus bill after public consultation and the House of Assembly would need to pass the measures in an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill.

**(c) Appropriate funding from the Central Government for public policy objectives only which are fully disclosed.**

4.17. This issue is of particular concern since the Central Government has a duty to fund the public policy objectives of statutory boards, and not the private enterprise objectives. However, there appears to be a basic problem with the proper funding of statutory boards generally, which may be as a result of the large numbers of statutory boards for the size of the Territory's annual budget. Therefore, to avoid duplication of efforts the rationalization of statutory boards would be beneficial to reduce the strain on the public's purse and meet the duty of the Central Government to adequately fund the public policy objectives of these statutory boards. As an example, if only half of all statutory boards are remunerated by the Central Government based on the levels of remuneration approved by the Ministry of Finance it appears just to pay stipends for statutory boards would cost well over US\$1 million a year. This would be unsustainable and would not allow the statutory boards to meet their public policy objectives. However, outside the Adjudicatory Boards and the specific recommendations dealing with those boards, as well as the dissolution of the Scholarship Trust Fund Board, a rationalization of all 70 statutory boards would be outside the scope of the Terms of Reference. Therefore, a general recommendation would need to be made for a further exercise to examine which statutory boards can, or ought to, be consolidated or dissolved. For example, there has been various discussions over the years about the consolidation of the BVI Airports Authority and the BVI Ports Authority, which operate with two (2) separate regulatory environments. There have also been similar discussions with the marketing of tourism and financial services through the BVI Tourist Board and BVI Finance, respectively, where the duplicity has created some unintended consequences over the decades especially with the development of a country brand for tourism using "Nature's Little Secrets" that was counterproductive for marketing purposes in financial services. Therefore, there is a clear need for some synergy among boards, but whether or not boards should be merged requires closer scrutiny. What is clear, however, is 70 statutory boards, and counting, is unsustainable.

4.18. There are some specific concerns, however, as it relates to the Financial Services Commission and its funding of the BVI IAC. The FSC has a regulatory function, as well as certain educational functions that allow it to partner with HLSCC for training of persons within the financial services sector, as well as to provide the "Money Matters BVI" initiative. However, international arbitration is not a regulatory area under any of the financial services legislation and the avenues for the manner in which the Central Government can direct the FSC to utilize monies held in the Trust Account or surplus funds from its budgetary allocation would cause reasons to question the independence of the FSC.

It was intended that the FSC would fund the BVI IAC for an initial period of three (3) years from 2016 until 2019 by utilizing surplus funds. Based on information provided to the COI Implementation Unit, the Financial Secretary wrote a letter addressed to the CEO of the BVI IAC dated 18 April 2019 extending the “incubation period” for an additional period of three (3) years to September 2022 whereby the FSC would continue to provide funding to the BVI IAC. Additionally, as that extension came to an end in September 2022 there is no further letter from the Financial Secretary confirming that Cabinet has yet again granted a further extension of the said “incubation period”.

4.19. According to the BVI FSC Revenue & Budget Expenditure 2022 (page 6):

“The Government charged the Commission with setting up the BVI IAC and carrying out oversight responsibilities for an initial period of five years commencing September 2014. The Commission was also charged with funding the operational cost of the BVI IAC during the five years. In 2019 the incubation period was extended by the Government for an additional three years to September 2022. Discussions are currently undergoing to support the BVI IAC for a further two years upon the expiry of the current term.”

4.20. The OECD Standards require the public policy objectives of statutory boards to be funded by the Central Government and made public. To date the funding objectives for the BVI IAC has not been made public but continues to be supported by the FSC. This mechanism for supporting the BVI IAC not only raises concerns under the FSC’s enabling statute but also does not meet international standards. For this reason, a recommendation that is specific only to the FSC and the BVI IAC will be made in the Final Report, as this matter is being further considered while an opportunity is being given to the BVI IAC to respond to these concerns.

4.21. An ancillary issue to funding, is borrowing powers exercised by statutory boards. There is a general power granted to statutory boards under the Statutory Boards (Special Loans) Act. However, several enabling statutes create very specific borrowing powers, for example, the FSC has its own provisions dealing with borrowing and the limits on its borrowing powers. It is unfortunate that none of these enabling statutes make reference to the Statutory Boards (Special Loans) Act when dealing with borrowing, but that does not change the implications of that Act for all statutory boards to which it applies. As in every case there are various checks on a statutory board’s power to borrow, with even the House of Assembly’s involvement, and so there has not been any statutory provision dealing with borrowing that does not meet the OECD Standards.

## Recommendation No. 28

**There should be a separate review of all existing statutory boards with a view to rationalizing all existing statutory boards, including, but not limited to, preparing a framework policy for the creation of any future statutory boards and consolidating and dissolving existing statutory boards.**

**This exercise should be commenced immediately so as to dovetail with the other recommendations that involve statutory intervention.**

- 4.22. This recommendation does not require any amendment to the Constitution, but arising from any review undertaken as a result of this recommendation may require statutory amendments.
- 4.23. Cabinet should consider delaying any authorization of an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill, until after the completion of this review, so that any possible recommendations from this review resulting in the consolidation and dissolution of statutory boards can be included in that bill, as well as the framework policy for the creation of new statutory boards.

### **Recommendation No. 29**

**The FSC should cease and desist with immediate effect from any further funding of the BVI IAC.**

- 4.24. This recommendation does not require any amendment to the Constitution or any statutory intervention.
- 4.25. Cabinet should direct the Financial Secretary to cause this recommendation to be implemented immediately and separate funding sources from the Central Government should be identified for the BVI IAC.

**(d) Internal controls and internal audits where those statutory boards have the power to deal with their own funds, whether collecting funds and/or spending funds.**

- 4.26. Internal controls and internal audits must be considered in the context of the size of any statutory board. While every statutory board that handles money should have some form of internal control, the manner and nature of those internal controls will vary. What is not possible is for a statutory board that handles money to have absolutely no internal control. However, having internal controls must also be benchmarked for the purpose of audits (whether internal or external). A small statutory board whose resources are largely limited would not be expected to have an internal audit, for example, the VIF&FC admits that it does not have an internal audit mechanism and this would be understood, not measured by the size of its budget, but by the size of its operations, with a fully volunteer operation. However, not having an internal audit mechanism is separate from having internal controls and it is necessary to ensure that even small statutory boards, once they are dealing with funds, should have stringent internal controls benchmarked through the audit process.
- 4.27. As there is a separate review process dealing with audits, no separate recommendation in this regard will be made since internal controls should ordinarily be considered within the context of an audit process.

**(e) Competitive public procurement processes.**

4.28. Statutory boards are established for some public purpose, even when they operate as private enterprises, it is usually to manage a monopoly for the public good or to deliver a service that is necessary for the public that has not been met by entrepreneurial endeavours. They must be held to account in the same manner as any other public sector entity for the manner in which they acquire goods and services, which must be open and transparent. The RDA has an exemplary procurement process, where goods and services are subject to a request for proposal process that can be publicly accessed and scrutinized. While the Central Tenders Board is a statutory board for the purpose of public procurement in the public sector, it does not deal with public procurement for statutory boards which are independent of the public sector. For this reason, it is necessary that the standards of procurement required for the Central Government should also apply to statutory boards. It does not appear that all statutory boards have a transparent process, and in some cases, even any process at all, for public procurement of goods and services that meets internationally accepted standards. This should be a cause for concern and remedied urgently.

**Recommendation No. 30**

**Every statutory board that is also a body corporate should have a public procurement policy that is publicly accessible and encourages a fully transparent procurement process of the same standard as required by the Central Tenders Board.**

4.29. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention.

4.30. Cabinet must authorise the omnibus bill after public consultation and the House of Assembly would need to pass the measures in an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill.

**(f) Independent appointment of staff**

4.31. The CEO or other similar administrative head of the statutory board should be independently chosen by the statutory board. The NPT is peculiar among statutory boards in the way its Director is selected, possibly due to the age of that body. However, it is the Minister who selects the Director as opposed to the statutory board and that the Director is responsible for appointment of other staff. Several boards require the Minister to approve the appointment of the CEO, while all other staff are selected by the statutory board or the CEO.

4.32. In the middle of these extremes is the BVIPA where although Cabinet does not select the Managing Director, the appointment is subject to approval of Cabinet. Therefore, the

BVIPA's hands are tied by the excessive involvement not just by a Minister but by Cabinet. Therefore, Cabinet has the final say about the appointment of the Managing Director of the BVIPA instead of the statutory board making that decision. The appointment of the board itself would have political involvement through the Minister, but one of the purposes of the board (once duly appointed) should be to exercise its independent judgment to appoint the staff that is best suited for that organisation. It is inherently counter to the purpose of the board and not in accordance with international best practice for the board's power of appointment to be subverted by the Cabinet. As an example, in strict corporate governance terms, the board of directors would normally be the directing mind and will of a company who would be appointed by the shareholders to manage the day-to-day affairs of the company. However, the shareholders do not usually hire the Managing Director of the Company, although there are some variations on this theme where the shareholders may designate one of the directors as the Managing Director, but usually the board of directors is responsible for hiring the executive staff of the company and not the shareholders. For this reason, it is recommended that the division between ownership and control of statutory boards should strive to meet these basic internationally accepted standards of good governance. The board of directors of the statutory board should be appointed by the Central Government, but the board of directors should appoint the staff, even if they are required to "consult" with the Minister.

- 4.33. Similarly, the BVI IAC has a provision where before the board was established its CEO could have been appointed by the Minister after consultation with the FSC. While in law "consultation" simply can mean sending a letter to the FSC which would qualify as consulting whether the FSC responds or not, but the concern would be that the FSC is being consulted on a matter that it is not permitted to give technical advice on by virtue of its enabling statute. Even the BVI FSC Revenue & Budget Expenditure 2022 (page 6) acknowledges that Central Government calls on it from time to time to give technical advice on matters that are not necessarily within its remit. A statutory board only has such powers and can only do those things that are "necessarily within its remit". Anything else is *ultra vires*. Therefore, where the statute says "after consultation with the" FSC it becomes questionable whether that gives the FSC additional powers that its own enabling statute does not allow, where it is consulted, can the FSC then give advice where its enabling statute limits the scope of its advice? The boundaries of the FSC's powers are clear and it must be forced to operate within the four corners of those boundaries. Any seepage can cause irreparable reputational damage to the financial services industry. For this reason, the unnatural relationship between the FSC and the BVI IAC should be brought to an immediate end and a separate recommendation to that effect will be made.

### Recommendation No. 31

**An amendment to the National Parks Act should be made to remove the power of the Minister to appoint the Director and devolve that power exclusively to the National Parks Trust's Board, after consultation with the Minister.**

4.34. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention.

4.35. Cabinet must authorise the amendment to the National Parks Act and instruct the Attorney General to draft the relevant amendment after public consultation and the House of Assembly would need to pass the amendments to the National Parks Act.

### **Recommendation No. 32**

**An amendment to the British Virgin Islands Ports Authority Act, 1990 should be made to remove the power of Cabinet to approve the appointment of the Managing Director and devolve that power exclusively to the Ports Authority, after consultation with Cabinet.**

4.36. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention.

4.37. Cabinet must authorise the amendment to the British Virgin Islands Ports Authority Act, 1990 and instruct the Attorney General to draft the relevant amendment after public consultation and the House of Assembly would need to pass the amendments to the British Virgin Islands Ports Authority Act, 1990.

### **Recommendation No. 33**

**An amendment to the Arbitration Act, 2013 should be made to remove the involvement of the FSC in the composition of the Board or the appointment of the CEO.**

4.38. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention.

4.39. Cabinet must authorise the amendment to the Arbitration Act, 2013 and instruct the Attorney General to draft the relevant amendment after public consultation and the House of Assembly would need to pass the amendments to the Arbitration Act, 2013.

### **Recommendation No. 34**

**Any statutory board which is also a body corporate should have the power to appoint its staff without interference from the Central Government, although, the statutory board may be required to consult with its appointing authority on the most senior staff member such as a CEO, Managing Director or President.**

4.40. This recommendation does not require any amendment to the Constitution, but it does require legislative intervention.

- 4.41. Cabinet must authorise the omnibus bill after public consultation and the House of Assembly would need to pass the measures in an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill.

**(g) Conflict of interest**

- 4.42. The confusion with which the constitutional provisions dealing with conflict of interest has plunged the House of Assembly should not affect statutory bodies where their provisions are generally simple and straight forward. Those statutory bodies established under the BVI Business Companies Act have specific conflict clauses that are even simpler than the statutory provisions incorporated in the enabling statutes of other statutory bodies. Despite this, none of those provisions cause any confusion about when a conflict of interest can arise and what are the consequences of such conflict of interest. However, there are some enabling statutes that do not have any conflict of interest provisions and it is only for that reason that it is recommended to have an omnibus provision to ensure that all statutory bodies meet internationally accepted practice by having a conflict of interest clause.
- 4.43. While there is no generally accepted international standard in relation to public disclosure of interests for statutory boards, the general principle is in favour of public disclosure. For this reason, in the same manner as public disclosure is required for elected officials, and must be adopted for senior public officials, all politically exposed persons (“**PEPs**”) should be required to disclose their interests. It should restrict any PEP from being appointed to a statutory board, where a more restricted definition of “close family member” than the definition used under the financial services regulations should be limited to a spouse, parent or direct descendant (whether by birth or adoption) of an elected official or senior public official. This would require disclosure of interests for members of statutory boards and senior staff members in a register of interests for statutory boards. While the current disclosure requests by elected officials is unduly complex and overly invasive, the internationally accepted standard of disclosure used by several international organisations includes:
- (1) Full name and address, and any previous names and addresses for the past ten (10) years;
  - (2) Organisational memberships or affiliations (including religious and professional);
  - (3) Appointments, Employment, Directorships and Consultancies over the past ten (10) years;
  - (4) Direct Investments (including shareholdings, trusts and pensions);
  - (5) Appointments, Employment, Directorships & Consultancies of close family members;



(6) Direct Investments of close family members.

- 4.44. While persons providing professional and consulting services should never be required to disclose their clients publicly, certain professionals like accountants and legal practitioners have clearly defined obligations of disclosure with respect to their clients. Therefore, where these professionals are appointed in a professional capacity they would be bound by their professional standards to disclose any conflict of interest. Therefore, there should be specific safe harbour exemptions provided for the protection of the clients of such professionals.
- 4.45. Protecting personal data, as defined in the Data Protection Act, 2021 (No. 3 of 2021), such as information about identifiable individuals: their names, addresses and personal financial details, is a constitutionally guaranteed right. However, the loss of this constitutional protection is permissible where certain conditions are met to meet a public policy objective. The proportionality of a complete abrogation of this constitutional protection must be balanced against the need for transparency to curb corruption and maladministration. If the proportionality test cannot be weighed in favour of full public disclosure of such personal data, then restricted access is required. There has been no justifiable case made for full public disclosure of personal data where the public good cannot be achieved through less invasive means. For this reason, the recommendation will be that any register of interests for statutory boards should not be made public, but restricted access to the register of interests for statutory boards should be permitted. Anything further than this would be a gross human rights violation of sitting or potential members of any statutory board.

### Recommendation No. 35

**A register of interests for statutory boards should be created, subject to the following conditions:**

- (a) safe harbour exemptions should be created to protect the identities of clients of certified accountants and legal practitioners; and**
- (b) public access should be restricted with a fee to be paid for access with no copies to be made by, or provided to, the public, but access to law enforcement agencies and professional disciplinary bodies should not be impeded.**

- 4.46. This recommendation does not require any amendment to the Constitution, but consideration for amendments to the Register of Interests Act, 2006 (No. 5 of 2006), as amended, should be given so that a less cumbersome and more streamlined disclosure mechanism is provided that also protects the privacy rights of members of statutory boards.

- 4.47. Cabinet must authorise the amendments to the Register of Interests Act, 2006 and instruct the Attorney General to draft the relevant amendments.

### Recommendation No. 36

**Close family members of elected officials and senior public officers should be disqualified from being appointed to statutory boards. Close family members should be limited only to spouses, parents, siblings and direct descendants (by birth or adoption).**

- 4.48. This recommendation does not require any amendment to the Constitution, but it would require statutory intervention.
- 4.49. Cabinet must authorise the omnibus bill after public consultation and the House of Assembly would need to pass the measures in an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill.

#### (h) Complaints Procedure

- 4.50. The RDA has a complaints mechanism on its website and the ITA has a complete complaints procedure that is outlined on its website. Additionally, the FSC has its own appellate system for persons aggrieved by its decisions and as a regulatory body this is a perfect mechanism. While the TRC has enacted the Telecommunications Code (Part 4) (Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes) Procedures, 2010 that facilitate complaints by users of telecommunications services, there is no means of redress by its licensees or other users of its services other than through the courts or through the Complaints Commissioner (which is limited to maladministration). Similarly, other statutory boards which are also bodies corporate have no complaints procedure. It is critical that every statutory board has a complaints procedure that operates independently of the Complaints Commissioner, or as a first means of redress before the matter has to be taken to the Complaints Commissioner. This also has the added benefit of reducing judicial review proceedings against statutory boards where they have an internal complaints procedure to be followed.

### Recommendation No. 37

**The TRC should institute an internal complaints procedure separate and apart from the Telecommunications Code (Part 4) (Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes) Procedures, 2010 to be used by licensees and other persons utilizing its services.**

- 4.51. This recommendation does not require any amendment to the Constitution, or any statutory intervention.

- 4.52. Cabinet must authorise the Attorney General to draft the policy directive to the TRC to be issued by the Minister.

### **Recommendation No. 38**

**All statutory boards that do not have a statutory appeal procedure, or whose statutory provisions do not already have some other complaints mechanism, should implement a complaints procedure that is easily accessible to the public.**

- 4.53. This recommendation does not require any amendment to the Constitution, but it would require statutory intervention.
- 4.54. Cabinet must authorise the omnibus bill after public consultation and the House of Assembly would need to pass the measures in an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill.

#### **(i) Specialized Committees**

- 4.55. The FSC has specialized committees established by statute and there are several other statutory boards whose specialized committees are outlined by statute. However, the international best practice is that statutory boards should establish specialized committees to assist with their various functions, but this must be a determination for the particular statutory board taking into consideration its size and scope. For this reason, no general criticism or special observation will be noted for any statutory board that does not have or use specialized committees, except those specifically required by statute.

#### **(j) Exemptions**

- 4.56. As the OECD Standards specifically prohibit exemptions (such as tax exemptions) being granted to SEOs, this requirement does not apply generally to statutory boards. The rationale for the prohibition is that SEOs are participating in economic activity and they should be allowed to participate in the economy on an equal footing with other businesses. For example, the National Bank should not be given any preferential tax treatment over other commercial banks or the Prospect Reef Management Company should not be given any preferential tax treatment over other hotels and resorts. However, several statutory boards have been given specific carve outs for exemptions. For example, the FSC is exempt from documentary taxes. These types of exemptions are acceptable due to the public policy objectives that they are required to meet. Therefore, there is no specific recommendation that will be made with respect to these exemptions, except that the exemptions ought to be better rationalized to determine why some statutory boards are granted exemptions and others are not (other than private enterprises). It would appear unfair that an academic institution that occupies well over 180 acres of land has to pay documentary taxes when a regulatory body does not, and generally other exemptions that apply to other statutory

boards would not equally apply to that academic institution. However, that rationalization does not fall within the remit of this exercise.

### **Recommendation No. 39**

**There should be a separate review of all existing statutory boards with a view to rationalizing the exemptions granted to each statutory board, except those that are private enterprises.**

4.57. This recommendation does not require any amendment to the Constitution but arising from any review undertaken as a result of this recommendation may require statutory amendments.

4.58. Cabinet should consider delaying any authorization of an omnibus bill which, for the purposes of this report, will be referred to as the Statutory Boards (Miscellaneous Provisions) Bill, until after the completion of this review, so that any possible recommendations from this review resulting in the amendment of the legislation establishing the statutory boards can be included in that bill.

#### **(k) Public-Private Partnerships**

4.59. Additionally, as BVI Finance Limited is a peculiar creature. How it fits within the ambit of the OECD Standards which require specific considerations for dispute resolution and other matters by public-private partnerships is unclear. For the purpose of this exercise, BVI Finance Limited has not been considered, but a separate review of that entity to ensure its compliance with international best practice may be warranted, especially in light of the serious failures by other statutory bodies. The way in which this public-private partnership was created does not comply with the OECD Standards and should be carefully examined.

### **Recommendation No. 40**

**There should be an independent review of BVI Finance Limited with a view to determining whether it meets international standards of corporate governance and to ensure that information concerning its establishment and maintenance are easily accessible to the public. Additionally, the fact that it was created without any statutory intervention should also be part of this independent review.**

4.60. This recommendation does not require any amendment to the Constitution.

4.61. Cabinet should authorise this independent review.

## PART V: Executive Powers

- 5.1. The Central Government has a responsibility to the public to ensure that it maintains proper oversight by the exercise of certain powers. Those powers should be limited to: (a) the appointment of board members; (b) setting the mandate for the statutory board; (c) reviewing and monitoring the performance of the statutory board; (d) approving adequate funding (including borrowing); (e) setting the levels of remuneration for board members; and (f) reviewing the enabling legislation. To some degree each of these have been explored in relation to the maintenance of the statutory boards and so no additional specific recommendations will be made in respect of any exercise of these executive powers. It would not meet international best practice to allow the executive to exercise powers other than those identified, and once all the recommendations have been implemented there should be no reason to be concerned about inappropriate exercise of executive power.
- 5.2. It is critical that the Central Government understand its role when a statutory board is established. Its main purpose is to appoint the board to act in the public interest. Once the board is established it is independent of the Central Government which should not be involved in the day-to-day affairs of the statutory board. There must be a clear demarcation between ownership and control of statutory boards and the lines should never be crossed. Proper oversight of statutory boards should be exercised by the Central Government only through mechanisms for monitoring, but never by interfering in the exercise of their public duties. The full suite of recommendations, when viewed holistically, is meant to achieve this objective and minimize executive interference in the functions of statutory boards while maintaining checks and balances on the executive's exercise of powers and ensure that statutory boards are fulfilling their statutory mandates.

## PART VI: Challenges

- 6.1. The purpose of this review of statutory boards was to determine whether or not statutory boards are properly established, maintained and not improperly interfered with by the Central Government. When the Sole Review was originally contacted the intention was that the review would begin on 1 September 2022 and end on 31 December 2022, therefore, be almost four (4) months to completion. However, noting that the initial draft was only sent on 11 September 2022 that start date was clearly impractical. A task that should have been given six (6) months to complete, was reduced to four (4) months and then only allowed three (3) months to complete. This was an unreasonable timeframe, not for the Sole Reviewer, but for the public service which faced serious challenges to turnaround requests for information in a timely manner. Therefore, the first challenge was the unrealistic timeframe imposed by the Terms of Reference where the demands on the public service did not allow it to comply with such a strict timeline.
- 6.2. A Questionnaire was produced in as simple a form as possible to try to illicit the required information. The indication provided to the Sole Reviewer in casual conversation by a very senior public servant who serves on various statutory boards by virtue of their position was to criticize the length of the Questionnaire rather than provide any useful insight into how it could be improved or made more helpful to the process.
- 6.3. Despite the delayed start and short time frame to complete the review, it appeared that Ministries had not informed their statutory boards of the review. There was no public announcement for at least two (2) weeks into the review process. This posed a challenge as exemplified by the FSC whose Managing Director wrote requesting confirmation of the Terms of Reference of the review and the appointment of the sole reviewer. This could have had the potential of reducing the confidence in the review process. However, anticipating this problem it was necessary to utilize the COI Implementation Unit to initiate all contact with statutory boards instead of direct contact so that some official representation could have been made to statutory boards and they could appreciate that it was an official process. It is expected that in the future before a review is to begin critical groundwork would be laid so that statutory boards would be aware of the appointment and terms of reference in advance of any first contact by the reviewer.
- 6.4. Finally, and most critically, was the lack of response from several statutory boards. All the above factors played a role, to some degree, in how seriously the statutory boards perceived the need for their responses. Despite the shortened timeline, late responses were still considered appropriate even though they were too late to have any significant impact on the Final Report with only minor adjustments to the final recommendations.

## PART VII: Specific Recommendations

7.1. The following is a summary of the specific recommendations made:

1. The Interpretation Act should be amended to create a separate definition for “statutory body” along similar lines contemplated by the Disaster Management Bill, 2011.
2. There should be a Statutory Boards Desk Officer in the Premier’s Office (which has a supervisory role over all Ministries and ultimate accountability to the House of Assembly), who should be a public servant designated as such by the Governor, with oversight for the establishment and maintenance of all statutory boards. The qualifications for this position should be at least the completion of the Chartered Governance Foundation Programme at the Robert Mathavious Institute at the H. Lavity Stoutt Community College, while a suitably qualified business graduate within the public sector should be identified for fully-funded training to assume this role, through a rigorous selection process. The person would operate as a corporate governance specialist within the public sector whose general role would be to ensure that all statutory boards are legally constituted, financially sustainable and properly organized. The specific responsibilities would include maintaining an up-to-date roster of all statutory boards, coordinating the nomination and appointment processes of all statutory boards, facilitating all reporting mechanisms between statutory boards and the Central Government as well as between the Central Government and the House of Assembly and also ensuring that all audits and other financial reports are properly produced. This person should also prepare an annual report on the work done in respect of all statutory boards that is to be laid before the House of Assembly. The Statutory Boards Desk Officer’s annual report should include: (a) an overview of all nominations and appointments to statutory boards for the year, and those that remain outstanding; (b) an overview of all annual reports submitted by statutory boards for the year, and those that remain outstanding; (c) an overview of all audits completed by statutory boards for the year, and those that remain outstanding; (d) any other information about work conducted by the Statutory Boards Desk Officer during the year.
3. If each statutory board established by the Constitution, and any other statutory board, cannot maintain their own independent website, or until such time as that is done, a page should be created on the government’s official website to provide easy access to information about statutory boards and their composition to meet internationally accepted standards of transparency and disclosure.
4. The Statutory Boards Desk Officer should, within six (6) months before a vacancy occurs on a statutory board established by the Constitution, or any other statutory



board, commence the nomination and appointment process to avoid any vacancy and interruption in the critical functions of these boards.

5. The Disciplinary Tribunal established under the Legal Profession Act, 2015 should be consolidated with and into the Virgin Islands General Legal Council in keeping with similar bodies within the Commonwealth Caribbean.
6. In keeping with the principles of the Leggatt Report, where any Tribunal requires its members to have legal training, which is normally required by the Chairperson, that person should be appointed on the advice of the Judicial and Legal Services Commission following an application and selection process by that body.
7. In keeping with the UK's Tribunals, Courts and Enforcement Act 2007, a rationalization of the numerous tribunals in the Virgin Islands is necessary to allow for the consolidation of the existing tribunals, and prevent the need for more tribunals in the future, as follows:
  - (a) There should be a General Tribunal, similar to the First Tier Tribunal in the UK, that combines all the existing tribunals (except the Mental Health Review Board, the Insurance Tribunal and the Financial Services Appeal Board) which would serve as Chambers of that Tribunal. It would be comprised of a roster to which the legally qualified members are appointed by the relevant Minister on the recommendation of the Judicial and Legal Services Commission and the other members appointed by the relevant Minister after a recruitment process managed by the Statutory Boards Desk Officer. The President of Tribunals, appointed by the Governor on the recommendation of the Judicial and Legal Services Commission, should assign the chairperson of any panel considering a matter within his or her Chamber.
  - (b) Appeals should continue to be made to the High Court, as opposed to creating an Upper Tribunal as in the UK.
8. Gender-neutral pronouns should be used for statutory boards, in particular the word "Chairman" should be changed to "Chairperson" wherever it appears in enabling legislation for statutory boards.
9. All appointments to statutory boards should be published in the Gazette as soon as practicable after the decision to appoint has been made, and the appointments should also be identified on the websites of the relevant statutory board or on the government's official website.
10. The Company Law Review Advisory Committee and the Intellectual Property Advisory Committee should be removed from under the auspices of the FSC and directly advise the Minister of Finance.

11. As part of the nomination process, the Statutory Boards Desk Officer should advertise any vacancy on any board at least six (6) months before the vacancy is to occur and require the submission of a curriculum vitae and at least two (2) letters of recommendation from persons unconnected to the statutory board but with some knowledge or experience with the skills of the candidate for at least five (5) years. Where there is a fit and proper requirement for any board member an independent agency should be used, including any person or agency approved by the National Security Council, to conduct a full investigation into the shortlisted candidate's criminal, financial, medical and employment history. Any shortlisted candidate seeking to be appointed to any position with a fit and proper requirement should be required to sign an agreement for such investigation to be conducted, as it would be inappropriate to conduct such invasive investigation without their consent. Additionally, in respect of any candidate for a statutory board position requiring a fit and proper test, they should also submit with their application a bank reference letter.
12. Section 6(2) of the Financial Services Commission Act and section 4 of the Telecommunications Act, 2006 be repealed in their entirety.
13. There should be established under the Standing Orders a new Standing Select Committee to be known as the Appointments Committee, or the Public Appointments Committee, as appropriate, that would approve the appointment of all statutory boards after the nomination process initiated by the Statutory Boards Desk Officer and the nominee named by the appointing authority.
14. Section 7(2) of the Telecommunications Act, 2006 should be amended to remove the phrase "and, without prejudice to the requirements specified in subsection (4), one Commissioner with a telecommunications services background shall be from outside the Virgin Islands" to avoid the statute being honoured more in the breach than in the observance.
15. The VIGLC should be established as a body corporate with or without reference to section 21 of the Interpretation Act, although incorporating that section would be preferred.
16. The criteria for the nomination and selection process for the Chairperson of the VIGLC used by the Chief Justice of the Eastern Caribbean Supreme Court should be made public.
17. An independent review should be conducted into the corporate governance structure of the National Bank of the Virgin Islands by an accountant, legal practitioner or chartered secretary with significant experience in corporate governance. An agreed schedule of action items over a 12-month period should be agreed between Cabinet

and the board of directors of Prospect Reef Management Company Limited and a quarterly progress report be provided to Cabinet.

18. Similar provisions to the Financial Services (Continuity of Business) Act, 2017 should be included in an omnibus bill as part of business continuity measures for other statutory boards to continue to function and operate during and after an emergency.
19. There should be an independent review of WCDA that should not be limited merely to corporate governance, but should be a wholesale review of its purpose, present role and future viability.
20. There should be an independent review of the Social Security Board into its corporate governance structure.
21. There should be enacted a British Virgin Islands College Fund (Transfer of Assets and Liabilities) Act to close the College Fund and transfer its assets and liabilities to the Board of Governors of the H. Lavety Stoutt Community College.
22. To ensure diversity of membership on statutory boards, the provisions of the National Parks Act should be emulated as closely as possible with a particular emphasis on key stakeholder representation as well as geographic diversity and gender diversity.
23. The Scholarship Trust Fund Board should be dissolved by amending the Scholarship Trust Fund Act to remove section 4 and all references to the Board and replacing it with the Ministry to manage the Scholarship Trust Fund based on clear and easily accessible policies about the criteria for scholarships.
24. The mandate of the board, which should include its enabling legislation, should be identified at an early opportunity and accessible to the public, and the progress of the Board should be followed by easily accessible minutes or a summary of decisions which should be available to the public, or at the very least to the appointing authority.
25. HLSCC's Board of Governors should facilitate self-assessment training for all statutory boards.
26. Every statutory board that is also a body corporate must ensure that its annual budget is publicly available and easily accessible, either on its own website or on its dedicated page on government's website. If the enabling statute does not create a financial year for the statutory board then every statutory board that is also a body corporate should be deemed to have a financial year, using the definition in section 39(7) of the Interpretation Act (Cap. 136). A deadline by which its annual budget is to be approved by its board should also be provided, unless the enabling statute provides some special mechanism for the approval of its budget.

27. Every statutory board that does not have a statutory mandate to create an annual work plan or some other specialized plan must be required to prepare an annual work plan for approval by its appointing body. The work plan should include the approved annual budget, and a deadline by which that work plan should be submitted to the appointing body for approval. A copy of the approved work plan should then be submitted to the House of Assembly's Appointments Committee, as recommended to be established herein.
28. There should be a separate review of all existing statutory boards with a view to rationalizing all existing statutory boards, including, but not limited to, preparing a framework policy for the creation of any future statutory boards and consolidating and dissolving existing statutory boards. This exercise should be commenced immediately so as to dovetail with the other recommendations that involve statutory intervention.
29. The FSC should cease and desist with immediate effect from any further funding of the BVI IAC.
30. Every statutory board that is also a body corporate should have a public procurement policy that is publicly accessible and encourages a fully transparent procurement process of the same standard as required by the Central Tenders Board.
31. An amendment to the National Parks Act should be made to remove the power of the Minister to appoint the Managing Director and devolve that power exclusively to the National Parks Trust's Board, after consultation with the Minister.
32. An amendment to the British Virgin Islands Ports Authority Act, 1990 should be made to remove the power of Cabinet to approve the appointment of the Managing Director and devolve that power exclusively to the Ports Authority, after consultation with Cabinet.
33. An amendment to the Arbitration Act, 2013 should be made to remove the involvement of the FSC in the composition of the Board or the appointment of the CEO.
34. Any statutory board which is also a body corporate should have the power to appoint its staff without interference from the Central Government, although, the statutory board may be required to consult with its appointing authority on the most senior staff member such as a CEO, Managing Director or President.
35. A register of interests for statutory boards should be created, subject to the following conditions:

- (a) safe harbour exemptions should be created to protect the identities of clients of certified accountants and legal practitioners; and
  - (b) public access should be restricted with a fee to be paid for access with no copies to be made by, or provided to, the public, but access to law enforcement agencies and professional disciplinary bodies should not be impeded.
- 36. Close family members of elected officials and senior public officers should be disqualified from being appointed to statutory boards. Close family members should be limited only to spouses, parents, siblings and direct descendants (by birth or adoption).
- 37. The TRC should institute an internal complaints procedure separate and apart from the Telecommunications Code (Part 4) (Investigation of Complaints by Consumers, Facilitation of Relief and Resolution of Related Disputes) Procedures, 2010 to be used by licensees and other persons utilizing its services.
- 38. All statutory boards that do not have a statutory appeal procedure, or whose statutory provisions do not already have some other complaints mechanism, should implement a complaints procedure that is easily accessible to the public.
- 39. There should be a separate review of all existing statutory boards with a view to rationalizing the exemptions granted to each statutory board, except those that are private enterprises.
- 40. There should be an independent review of BVI Finance Limited with a view to determining whether it meets international standards of corporate governance and to ensure that information concerning its establishment and maintenance are easily accessible to the public. Additionally, the fact that it was created without any statutory intervention should also be part of this independent review.

## PART VIII: Conclusions

- 8.1. Most statutory boards do not meet the minimum corporate governance requirements required by the OECD Standards. They are all established for some public purpose, but the very public for whom they are established has no information about their membership, how they are selected and how they are to operate. The standards of openness and transparency on statutory boards is grossly below standard and a tectonic shift among statutory boards is required across the Virgin Islands to bring them into compliance with international best practice. From the very definition of what is a statutory board to how statutory boards are maintained requires change in order for the public benefit for which they were created can be realized.

## PART IX: Acknowledgements

- 9.1. The assistance of the staff of THORNTON SMITH who accommodated the extra time that was necessary for the Sole Reviewer to be away from regular duties to complete this Final Report on time. They worked above and beyond to pick up the slack and the Sole Reviewer is extremely grateful.
- 9.2. The COI Implementation Unit for their assistance in liaising directly with the statutory boards and serving as a conduit for all communication between the Sole Reviewer and the statutory boards.
- 9.3. All statutory boards who responded in a timely manner to the request for information and in particular Dr. Cassander Titley-O'Neal, the Director of the National Parks Trust who was travelling on official business when the Questionnaire was sent to her and she made extra effort to ensure that the information was provided to the COI Implementation Unit on time and with supplemental information.
- 9.4. Mrs. Sharlene Dabreo-Lettsome, MBE, the Permanent Secretary in the Deputy Governor's Office for swiftly getting all the information requested from statutory boards under the Governor's Group which had not responded by the deadline.



## PART X: APPENDICES

### I. Index to Statutory Boards of the Virgin Islands

## PART I – List provided by COI Implementation Unit

STATUTORY BOARDS IN THE BVI

MINISTRY	NAME OF BOARD	CHAIRPERSON	CONTACT INFO.	MANAGING DIRECTOR	CONTACT INFO.	Permanent Secretary
Premier's Office	BVI Tourist Board	Ms. Delma Maduro	284 3402802 delmamaduro@bvitourism.com	Mr. Clive McCoy	284 441 8089 cmccoy@bvitourism.com	Mrs. Carolyn Stoutt-Igwe
	BVI Recovery and Development Agency	Mr. Ronnie W. Skelton	284 496 6909 ronnieWSkelton@gmail.com	Mr. Anthony McMaster	284 441 9060 anthony.mcmaster@bvirecovery.vg	Mrs. Elvia Smith-Maduro
Deputy Governor's Office	Financial Investigation Agency Board			Mr. Errol George	284-494-1335 egeorge@fiabvi.vg	Mrs. Sharleen Dabreo- Lettsome
Ministry of Finance	Financial Services Commission	Mr. Robin Gaul	284 340 2778 tropicaisle@gmail.com	Mr. Kenneth Baker	284 541 4012 bakerk@bvifsc.vg	Mr. Jeremiah Frett
	International Tax Authority	Mrs. Lisa Penn-Lettsome	284 540 6575 lpennlettsome@gmail.com	Ms. Latoya James	284 499 9568 lajames@bviita.vg	Mr. Jeremiah Frett
Ministry of Communication and Works	Taxi and Livery Commission	Ms. Lorna Christopher	<a href="mailto:chairman@bvitaxiandelivery.org">chairman@bvitaxiandelivery.org</a>	Mr. Jevaughn Parsons	<a href="mailto:director@bvitaxiandelivery.org">director@bvitaxiandelivery.org</a>	Mr. Ronald Smith-Berkeley
	Telecommunications Regulatory Commission	Mr. Vance Lewis	<a href="mailto:vance.lewis1@gmail.com">vance.lewis1@gmail.com</a>	Mr. Guy Malone	<a href="mailto:gmalone@trc.vg">gmalone@trc.vg</a>	Mr. Ronald Smith-Berkeley
	BVI Electricitry Corporation	Mrs. Rosemary Flax	<a href="mailto:r_flax@hotmail.com">r_flax@hotmail.com</a>	Mr. Leroy Abraham	<a href="mailto:bviectgm@bvielectricity.com">bviectgm@bvielectricity.com</a>	Mr. Ronald Smith-Berkeley
	BVI Ports Authority	Mrs. Roxane Ritter-Herbert	<a href="mailto:rritter@tortolaconcrete.com">rritter@tortolaconcrete.com</a>	Mr. Dean Fahie	<a href="mailto:dfahie@bviports.org">dfahie@bviports.org</a>	Mr. Ronald Smith-Berkeley
	BVI Airports Authority	Mr. Theodore Burke	<a href="mailto:theoburke@yahoo.com">theoburke@yahoo.com</a>	Mr. Kurt Menal	<a href="mailto:kmenal@bviaa.com">kmenal@bviaa.com</a>	Mr. Ronald Smith-Berkeley
	Wickhams Cay Development Authority					
Ministry of Natural Resources and Labour	National Parks Trust	Mr. Nelson Samuel	<a href="mailto:284_542_3900_nelson.samuel@nrsamuel.com">284 542 3900 nelson.samuel@nrsamuel.com</a>	Dr. Cassander Titley-O'Neal	284 343 9284 director@bvinpt.org	Mr. Joseph Smith-Abbott
Ministry of Health and Social Development	BVI Health Services Authority	Mr. Moleta A. Smith Jr.	340 998 8625 moletosmith@yahoo.com	Dr. June Samuel	284 852 7731 jusamuel@bvihsa.vg	Ms. Petrona Davies
	Corporate Secretary	Ms. Ioka Bobb	284 852 7638 ibobb@bvihsa.vg			
	BVI Social Security Board	Mr. Glenroy Forbes	284 5411 9190/441 7841 glenroy.forbes@forbeshare.com	Mrs. Jeanette Scatliffe-Boynes	284 852 7820 jboynes@vissb.vg	Ms. Petrona Davies
Ministry of Education, Culture, Youth Affairs and Sports	HLSCC Board of Governors	Professor Arthur Richardson	284 541 8576 agr@surfbvi.com	Dr. Richard W. Georges	TBC	Dr. Marcia Potter
	VI Recreation Trust			NONE		Dr. Marcia Potter
	Scholarship Trust Fund Board	Mr. Deon Vanterpool	284 541 8391 dvanterpool@hotmail.com	NONE		Dr. Marcia Potter
	Festival and Fairs Committee	Mr. Dirk Walters	284 499 1145 dirklwalters@gmail.com	NONE		Dr. Marcia Potter

## PART II – List Prepared by Sole Reviewer

AIRPORTS ACT, 2003 s.4 – <b>Limited Liability Company</b>	2003/16	10 May. 2004
ARBITRATION ACT, 2013 ss. 93 & 95 – <b>BVI IAC and Board</b>	2013/13	1 Oct 2014
ARCHIVES AND RECORDS MANAGEMENT ACT, 2010 s. 8 – <b>Archives Advisory Board</b>	2010/5	2 Sept 2010
ASSET SEIZURE AND FORFEITURE ACT, 2020 s. 4 – <b>Asset Seizure and Forfeiture Management Committee</b>	2020/20	6 Oct 2021
BRITISH VIRGIN ISLANDS COLLEGE FUND ACT s.3 – <b>Board of Governors of the Fund</b>	Cap. 113	
BRITISH VIRGIN ISLANDS COMMUNITY COLLEGE ACT, 1990 s. 6 – <b>Board of Governors</b>	1990/14	28 Feb 1991
BRITISH VIRGIN ISLANDS ELECTRICITY CORPORATION ORDINANCE s.3 – <b>BVIEC</b>	Cap. 277	
BRITISH VIRGIN ISLANDS PORTS AUTHORITY ACT, 1990 s.3 – <b>BVI Ports Authority</b>	1990/12	31 Oct 1990
BUILDINGS ORDINANCE s.4 – <b>Building Authority</b>	Cap. 234	
BVI HEALTH SERVICES AUTHORITY ACT, 2004 s.5 – <b>BVI Health Services Authority</b>	2004/14	11 Nov 2004
BVI NATIONAL COMMISSION FOR UNESCO ACT, 2009 s.3 – <b>BVI National Commission for UNESCO</b>	2009/12	17 Sept 2009
DEVELOPMENT BANK OF THE VIRGIN ISLANDS (TRANSFER OF ASSETS AND LIABILITIES) ACT, 2004 s.3 – <b>Limited Liability Company</b>	2004/3	1 April. 2004
DISASTER MANAGEMENT ACT, 2003 s.9 – <b>National Disaster Management Council</b>	2003/3	8 May. 2003
DRUGS (PREVENTION OF MISUSE) ACT s.3 – <b>National Drug Advisory Council</b>	Cap. 178	
EDUCATION ACT, 2004 s.10 – <b>Education Advisory Board</b> s.25 – <b>Parents Teachers Associations</b> s.26 – <b>School Committees in absence of PTA</b> s.66 – <b>Board of Management (Primary School)</b> s.73 – <b>Board of Management (Secondary School)</b> s.79 – <b>Board of Management (Assisted Primary School)</b> s.80 – <b>Board of Management (Assisted Secondary School)</b> s.82 – <b>Joint Board of Management</b> s.87 – <b>Council on Early Education</b> s.94 – <b>Council on Special Education</b> s.132 – <b>TVET Council</b> s.153 – <b>Subject Panels</b> s.159 – <b>Education Review Committee (every 5 years)</b> s.161 – <b>Education Appeal Tribunal</b>	2004/10	
FINANCIAL INVESTIGATION AGENCY ACT, 2003 s.3 – <b>FIA Board and Steering Committee</b>	2003/19	
FINANCIAL SERVICES APPEAL BOARD ACT, 2016 s.3 – <b>FSAB</b>	2016/9	1 July 2016
FINANCIAL SERVICES COMMISSION ACT, 2001 <b>FSC</b>	2001/12	
HIGHER EDUCATION LICENSING ACT, 2016	2016/5	5 Jan 2017

s.3 – <b>Higher Education Licensing Board</b>		
IMMIGRATION AND PASSPORT ORDINANCE s.13 – <b>Board of Immigration</b>	Cap. 130	
INTERNAL AUDIT ACT, 2011 s.6 – <b>Internal Audit Advisory Committee</b>	2011/1	
INTERNATIONAL TAX AUTHORITY ACT, 2018 s.3 – <b>International Tax Authority</b>	2018/7	3 Dec 2018
LABOUR CODE, 2010 s.29 – <b>Labour Arbitration Tribunal</b>	2010/4	4 Oct 2010
LAND SURVEYORS ORDINANCE s.4 – <b>Land Surveyors’ Board</b>	Cap. 215	
LAW REFORM COMMISSION ACT, 2000 s.3 – <b>Law Reform Commission of the Virgin Islands</b>	2000/10	9 Nov 2000
LEGAL PROFESSION ACT, 2015 s.3 – <b>Virgin Islands General Legal Council</b> s.27 – <b>Disciplinary Tribunal</b>	2015/13	11 Nov 2015
MEDICAL ACT, 2000 s.3 – <b>Medical and Dental Council</b> s.34 – <b>Allied Health Professionals Council</b>	2000/4	20 April. 2000
MENTAL HEALTH ACT, 2014 s.30 – <b>Mental Health Review Board</b>	2014/11	2 Jan 2015
NATIONAL PARKS ACT, 2006 s.5 – <b>National Parks Trust Board</b>	2006/4	4 May. 2007
NURSES AND MIDWIVES ACT, 2020 s.3 – <b>Nurses and Midwives Council</b>	2020/25	31 Dec 2020
PAROLE ACT, 2009 s.3 – <b>Parole Board</b>	2009/7	20 May 2009
PHYSICAL PLANNING ACT, 2004 s.65 – <b>Appeals Tribunal</b>	2004/15	1 Oct 2004
POLICE ACT s.81 – <b>Police Welfare Association</b>	Cap. 165	
PRISON ORDINANCE s.6 – <b>Prison Visiting Committee</b>	Cap. 166	
PROCEEDS OF CRIMINAL CONDUCT ACT, 1997 s.27A – <b>Joint Anti-Money Laundering and Terrorist Financing Advisory Committee</b>	1997/5	31 Dec 1997
PROSPECT REEF RESORT MANAGEMENT ACT, 2005 s.3 – <b>Limited Liability Company</b>	2005/6	14 April. 2005
PUBLIC ASSISTANCE ACT, 2013 s.3 – <b>Public Assistance Committee</b> s.30 – <b>Public Assistance Appeal Board</b>	No.14 of 2013	3 Feb 2013
PUBLIC FINANCE MANAGEMENT ACT, 2004 s.17A – <b>Economic Advisory Council</b>	2004/2	
PUBLIC HEALTH ORDINANCE s.8 – <b>Public Health Boards and Committees</b>	Cap. 194	
PUBLIC PROCUREMENT ACT, 2021 s.5 – <b>Central Tenders Board</b>	2021/39	
RECREATION TRUST ORDINANCE s.3 – <b>Recreation Trust</b>	Cap. 278	
ROAD TRAFFIC ACT <b>Taxi and Livery Commission</b>		
SCHOLARSHIP TRUST FUND ACT s.4 – <b>Scholarship Trust Fund Board</b>	Cap. 118	
SERVICE COMMISSIONS ACT, 2011	No. 8 of 2011	

s.96 of the VI Constitution Order – <b>Judicial and Legal Services Commission</b> s.91 of the VI Constitution Order – <b>Public Service Commission</b> s.93 of the VI Constitution Order – <b>Teaching Service Commission</b>		
SOCIAL SECURITY ORDINANCE <b>Social Security Board</b> <b>Social Security Appeal Tribunal</b>	Cap. 266	
TELECOMMUNICATIONS ACT, 2006 s.5 – <b>Telecommunications Regulatory Commission</b>	2006/10	
TOURIST BOARD ORDINANCE <b>Tourist Board</b>	Cap. 280	
VETERINARY ACT, 2015 s.3 – <b>Veterinary Board</b> s.19 – <b>Veterinary Appeal Tribunal</b>	2015/8	13 Nov 2015
VIRGIN ISLANDS CLIMATE CHANGE TRUST FUND ACT, 2015 s.12 – <b>Board of Trustees of the VICCT</b>	2015/12	1 Jan 2016
VIRGIN ISLANDS FESTIVALS AND FAIRS COMMITTEE ACT, 2005 s.2 - <b>VIFFC</b>	2005/4	14 April. 2005
VIRGIN ISLANDS GAMING AND BETTING CONTROL ACT, 2020 s.4 – <b>Gambling (Gaming and Betting) Control Commission</b>	2020/14	9 July 2021
VIRGIN ISLANDS RECOVERY AND DEVELOPMENT AGENCY ACT, 2018 s.6 – <b>VI Recovery and Development Board</b>	2018/1	
VIRGIN ISLANDS TRADE COMMISSION ACT, 2020 s.6 – <b>Trade Commission Board</b> s.30 – <b>Trade Commission Tribunal</b>	2020/9	
WICKHAM’S CAY DEVELOPMENT AUTHORITY ORDINANCE s.3 – <b>Wickham’s Cay Development Authority</b>	Cap. 281	
VIRGIN ISLANDS CADET CORPS ACT, 2008 s.5 – <b>VI Cadet Corps Board</b>	2008/6	28 Aug 2008

#### ADDITIONAL BOARDS

FINANCIAL SERVICES (CONTINUITY OF BUSINESS) ACT, 2017 s.11 – <b>Insurance Tribunal</b>	2017/21	
TRADE MARKS ACT, 2013 s.132(1) – <b>Intellectual Property Advisory Committee</b>		
BVI BUSINESS COMPANIES ACT, 2004 s.228A – <b>Company Law Review Advisory Committee</b>		

## II. Letter and Questionnaire to Statutory Boards





**JAMAL S. SMITH**, LLB(Hons), FCI Arb.  
Legal Practitioner, Certified Arbitrator, Notary Public

03 October 2022, Tortola, BVI

«Title» «First\_Name» «Last\_Name»

«Position»

«Company\_Name»

«Skip Record If...»«Address\_Line\_1»

«Skip Record If...»«Address\_Line\_2»

«City», «State» «ZIP\_Code»

«Country\_or\_Region»

Dear «Title» «Last\_Name»:

### **STATUTORY BOARDS REVIEW**

I wish to inform you that Cabinet recently approved the appointment of myself, Jamal S. Smith, to conduct a review of statutory boards in accordance with Recommendation B25 of the Commission of Inquiry Report delivered by Sir Gary Hickinbottom on 4 April 2022. The COI Report highlighted very serious problems in governance across consecutive Government Administrations and several urgent issues that must be addressed. My terms of reference require me to deliver a report by 31 December 2022 specifically on the establishment and maintenance of statutory boards, and in particular, in respect of each, any powers that are exercised in respect of such boards by the executive government, with a view to identifying appropriate powers in statutory provision.

For this purpose, I have prepared a questionnaire to be completed by each statutory board which is attached for your consideration and further action. If you have any questions or concerns, please contact the COI Implementation Unit headed by Ms. Hadassah Ward.

### **Purpose**

The purpose of this Questionnaire is to solicit the views of the statutory boards before preparing a preliminary report for submission to the Governor and the Premier.



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[jamal.smith@thorntonsmith.com](mailto:jamal.smith@thorntonsmith.com)



P.O. Box 3534

Road Town, Tortola VG1110

Virgin Islands (British)

### **Responding to the Questionnaire**

Responses to the questionnaire should reach the COI Implementation Unit by ***Tuesday, 25 October 2022***. The consultation period is extremely short because of the time frame by which the final report must be provided to the Governor and the Premier to comply with the Framework for the Implementation of the COI Recommendations.

All responses should be sent by e-mail to: [hward@gov.vg](mailto:hward@gov.vg)

Alternatively, responses may be delivered by hand to:

COI Implementation Unit  
Premier's Office  
Cutlass Building  
Road Town, Tortola  
British Virgin Islands  
Tel. (284)468-xxxx

Please make sure that any email responses are clearly marked '**Statutory Boards Review Questionnaire**'. You should complete all questions and may include additional pages for explanations by identifying the particular section of the Questionnaire that you wish to give additional information. Supporting documentations, as required by the Questionnaire, should also be attached when submitting the Questionnaire.

If anyone would like a face-to-face meeting about the statutory boards review, I would be happy to facilitate such a meeting on any Friday before the closing date for submission of the Questionnaire. For this purpose, please make sure that your e-mail response is clearly marked "**Statutory Boards Review: Meeting Request**".

### **Next steps in the process**

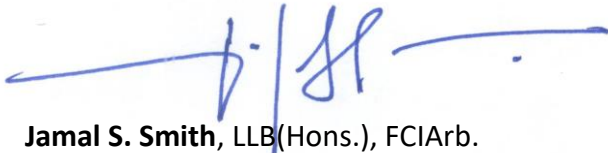
Following the closing date, all Questionnaires will be analysed and considered along with any other available information. A preliminary report will then be submitted to the Governor and the Premier on or about Friday, 25 November 2022. Any discussion with anyone about the contents of the preliminary report will be solely at the discretion of the Governor and the Premier and only comments from, or through, the Governor and the Premier will be entertained on the preliminary report. After final consideration of any comments provided by the Governor and the Premier, the final report will be prepared and delivered to the Governor and the Premier on or before Saturday, 31 December 2022.

**Confidentiality & Data Protection**

All information provided with the Questionnaire will be treated as secret and confidential. No confidential information provided will be used, communicated or revealed to any person or otherwise made use of or permitted to be made use of.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'J. Smith', with a long horizontal stroke extending to the right.

**Jamal S. Smith**, LLB(Hons.), FCI Arb.

cc. His Excellency, John Rankin, CMG, Governor  
Dr. the Hon. Natalio Whealthey, Premier

# 2022 STATUTORY BOARDS REVIEW QUESTIONNAIRE

Please complete all sections in BLOCK LETTERS and TICK where appropriate. Return this questionnaire to the COI Implementation Unit on or before Tuesday, 25 October 2022.

For the purpose of this Questionnaire, the following definitions apply:

**“Central Government”** means any one or more of the Governor, the Cabinet, a Minister, the Deputy Governor, the Attorney General, the Financial Secretary, a Permanent Secretary, a Head of Department or any public servant within a Ministry, Department or Agency of the Crown.

**“Non-Executive Member”** means a member of a Statutory Board who does not hold a contract of employment or provide specialized services under a contract of service with the Statutory Board, such as accounting or legal services, but does not include a member of a Statutory Board who is appointed to the Board because of those specialized skills.

**“Statutory Board”** has the same meaning as under both section 43 of the Interpretation Act (Cap. 136) and section 2 of the Statutory Boards (Special Loans) Act (Cap. 279) which is “any board, commission, committee, council or other like body established by or under an enactment”.

1. Name of Statute establishing the Statutory Board

2. Name of Statutory Board

3. Contact Details of the Statutory Board


Telephone Number

Email Address

4. Is the Statutory Board incorporated as a Company? ☐ YES ☐ NO, if YES, attach a copy of current corporate documents (Memorandum & Articles of Association as well as Certificate of Incorporation)

## 5. Outline the functions of the Statutory Board


## MEMBERSHIP

### 6. List of Non-Executive Members of the Statutory Board (even if there is a sole member)

*If you require space for additional members, please add Additional List*

FULL NAME	APPOINTED/RECOMMENDED WHOM	BY	DATE OF APPOINTMENT	DATE OF EXPIRATION

7. Are the appointments of Non-Executive Members published in the Gazette? ☐ YES ☐ NO, if YES, [attach a copy of the edition of the Gazette\(s\) where the appointments were published.](#)

8. Are the appointments of the Non-Executive Members, or any of them, subject to approval by the House of Assembly? ☐ YES ☐ NO, if YES, [attach a copy of the House of Assembly approval.](#)

9. Are the Non-Executive Members compensated? ☐ YES ☐ NO, if YES, [attach a copy of schedule of membership remuneration by categories](#) and indicate whether the compensation is determined by the Central Government or the Board:

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10. Are the Non-Executive Members required by statute to hold regular meetings? ☐ YES ☐ NO, if YES, please indicate whether the minutes of the meetings are provided to/accessed by the Central Government:


## STAFF

11. Is there a CEO or similar executive of the Statutory Board? ☐ YES ☐ NO, if YES, who appoints this person (the Board or Central Government) and also indicate if approval of Central Government is required:


12. Are there other staff members of the Statutory Board? ☐ YES ☐ NO, if YES, [attach a copy of the approved organizational chart](#) and indicate who has responsibility for hiring and firing staff, and whether approval from Central Government is required:


13. Is the Statutory Board subject to approval, review or directions (general or otherwise) from the Central Government with respect to human resources management? ☐ YES ☐ NO

## REPORTING MECHANISMS

14. Is the Statutory Board required to provide an Annual Report? ☐ YES ☐ NO, if YES, please indicate who the Annual Report is to be provided to, and what is required to be included in it:


15. Is the Statutory Board required to provide any other reports, such as a Work Plan? ☐ YES ☐ NO, if YES, please indicate who such additional reports is to be provided to, and what is required to be included in it:


16. Is the performance of the Statutory Board evaluated by Central Government? ☐ YES ☐ NO, if YES, please indicate how often this is done and [attach a copy of the most recent evaluation form](#):


## FINANCES

17. Is the budget of the Statutory Board required to be approved or reviewed by Central Government? ☐ YES ☐ NO, if YES, [attach a copy of the current approved Budget](#).

18. Does the Statutory Body receive regular financial reports that is reviewed against the approved budget? ☐ YES ☐ NO, if YES, are those regular financial reports provided to the Central Government? ☐ YES ☐ NO

19. Does the Statutory Board adjust its budget through a mid-year review exercise or similar process based on the regular financial reports? ☐ YES ☐ NO, if YES, is the budget adjustment process required to be approved or reviewed by the Central Government? ☐ YES ☐ NO, if YES, who within the Central Government:

20. Is the Statutory Board funded, either wholly or in part, from a subvention by the Central Government? ☐ YES ☐ NO, if YES, what percentage of the budget is funded by the Central Government?

21. Is the Statutory Board allowed to collect other revenues other than from a subvention by the Central Government? ☐ YES ☐ NO, if YES, what are the sources of the other revenues?

22. Does the Statutory Board have special borrowing powers without the involvement of the Central Government? ☐ YES ☐ NO, if YES, please explain the source of the special borrowing powers:

23. Is the Statutory Board required to audit its financial statements? ☐ YES ☐ NO, if YES, who appoints the auditor, the Board or the Central Government?

24. Are audited financial reports required to be provided to the Central Government? ☐ YES ☐ NO, if YES, when are they required to be provided?

25. Apart from the auditor, if the Statutory Board needs to retain the services of third parties, like accountants or lawyers, does the Board require approval from Central Government to enter into a contract those services? ☐ YES ☐ NO

26. Are there any spending limits or other contractual limitations beyond which approval from Central Government is required? ☐ YES ☐ NO

27. Does the Statutory Board have any bank accounts? ☐ YES ☐ NO, if YES, is the opening of those bank accounts subject to approval, review or directions (general or otherwise) from the Central Government?

28. Apart from bank accounts, is the Statutory Board subject to approval, review or directions (general or otherwise) from the Central Government with respect to finance management? ☐ YES ☐ NO

## CAPITAL ALLOCATIONS

29. Does the Statutory Board have the power to enter into leases, acquire or sell property and other assets? ☐ YES ☐ NO, if YES, are these powers subject to approval, review or directions (general or otherwise) from the Central Government? ☐ YES ☐ NO

30. Does the Statutory Board have the power to merger with or acquire other Statutory Boards, corporate entities or structures? ☐ YES ☐ NO, if YES, are these powers subject to approval, review or directions (general or otherwise) from the Central Government? ☐ YES ☐ NO

31. Does the Statutory Board have the power to divest itself of its operations, in whole or in part, or create sub-committees or separate entities to discharge its functions? ☐ YES ☐ NO, if YES, are these powers subject to approval, review or directions (general or otherwise) from the Central Government? ☐ YES ☐ NO

32. Does the Statutory Board have the power to make distributions of its profits (for example, by way of dividends)? ☐ YES ☐ NO, if YES, are these powers subject to approval, review or directions (general or otherwise) from the Central Government? ☐ YES ☐ NO

## RISK MANAGEMENT

33. Does the Statutory Board have insurance coverage for its Non-Executive Members and executive team (in particular, D&O Insurance)? ☐ YES ☐ NO, if YES, is the insurance coverage subject to approval, review or directions (general or otherwise) from the Central Government? ☐ YES ☐ NO

34. Does the Statutory Board have insurance coverage for its assets and facilities (in particular, Property Insurance)? ☐ YES ☐ NO, if YES, is the insurance coverage subject to approval, review or directions (general or otherwise) from the Central Government? ☐ YES ☐ NO

35. Does the Statutory Board have insurance coverage for its operations? ☐ YES ☐ NO, if YES, is the insurance subject to approval, review or directions (general or otherwise) from the Central Government? ☐ YES ☐ NO

36. Does the Statutory Board have an internal audit function? ☐ YES ☐ NO, if YES, is the internal audit function subject to approval, review or directions (general or otherwise) from the Central Government? ☐ YES ☐ NO

37. Does the Statutory Board have a data protection, privacy and data security (including cyber security) system? ☐ YES ☐ NO, if YES, is the data protection system subject to approval, review or directions (general or otherwise) from the Central Government? ☐ YES ☐ NO

38. Does the Statutory Board have a disaster recovery plan? ☐ YES ☐ NO, if YES, is the disaster recovery plan subject to approval, review or directions (general or otherwise) from the Central Government? ☐ YES ☐ NO

39. Does the Statutory Board have a communications plan (including a website) separate from the Central Government's communications systems for ensuring all stakeholders, including the public, the staff and the Central Government have information about changes to operations, including operating hours in the event of an emergency or unforeseen circumstances? ☐ YES ☐ NO, if YES, is the communication plan subject to approval, review or directions (general or otherwise) from the Central Government, this includes any need for statutory changes? ☐ YES ☐ NO

## COMPLAINTS MECHANISM

40. Does the Statutory Body have a complaint mechanism by its other stakeholders that is separate from the Central Government? ☐ YES ☐ NO, if YES, [please provide a copy of that complaint mechanism](#).

SIGNED


DATE

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PRINT NAME

TITLE/OFFICE



