OFFICE OF THE PREMIER
GOVERNMENT OF THE VIRGIN ISLANDS

6th May, 2020

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

The Rt. Hon. Dominic Raab MP
Secretary of State for Foreign and Commonwealth Affairs
King Charles Street
London SW1A 2AH
United Kingdom

His Excellency the Governor
Mr. Augustus Jaspert
Governor's Office
Lower Main Street
Tortola
British Virgin Islands

Dear Minister and Messrs.

RE: PETITION TO THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

As you are aware, the British Virgin Islands continues to construct methods and financial plans for our recovery from the catastrophic damages occasioned by:

- ✓ Tropical Storm Otto in 2010;
- ✓ The Territory wide flood in August 2017;
- ✓ Hurricanes Irma and Maria in September 2017; and
- ✓ COVID-19 that was declared a Global Health Pandemic on 11th March, 2020, by the World Health Organization (WHO). By all world reports, the containment of this virus is yet to be realized and thus the social and economic impacts continue to reap havoc on our Territory and throughout the world.

In this regard, through the Governor of the Virgin Islands, it is with respect that a "PETITION FOR **THE TOTAL SUSPENSION OR RESTRUCTURE OF SECTIONS 20,25,26,27 and 28 OF THE PROTOCOLS FOR EFFECTIVE FINANCIAL MANAGEMENT SIGNED ON 23RD APRIL 2012"**, has been constructed and is presented to THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS for review and consideration.

We crave your indulgence.

Yours truly

Hon. Andrew A. Fahie,
Premier, Virgin Islands
Minister of Finance

Hon. Carvin Malone,
Deputy Premier, Virgin Islands
Minister of Health & Social Development

Hon. Kye M. Rymer,
Minister of Transport, works and Utilities

Hon. Vincent O. Wheatley,
Minister of Natural Resources, Immigration & Labour

Hon. Dr. Natalio D. Wheatley
Minister of Education, Culture, Youth Affairs, Sports,
Agriculture and Fisheries

PETITION OF THE GOVERNMENT AND PEOPLE OF THE VIRGIN ISLANDS

TO

THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

A CASE FOR

THE TOTAL SUSPENSION OR RESTRUCTURE OF SECTIONS 20,25,26,27 and 28 OF THE PROTOCOLS FOR EFFECTIVE FINANCIAL MANAGEMENT MADE ON 23RD APRIL 2012

BETWEEN THE UNITED KINGDOM GOVERNMENT

AND

THE GOVERNMENT OF THE VIRGIN ISLANDS

1. The petition of the Government of the Virgin Islands respectfully prays that Her Majesty's Government of the United Kingdom gives sympathetic consideration to the complete suspension or restructuring of the following sections of the Protocols for Effective Financial Management (Protocol Agreement) entered on 23rd April 2012 between Her Majesty's Government of the United Kingdom and the Government of the Virgin Islands in the light of the crisis preceding and of the Corona virus (Covid-19) pandemic:

"section 20. To ensure that the level of debt affordable and consistent with the delivery of macroeconomic and fiscal sustainability and financial stability in the short, medium and long term as outlined in the MTFP, the Government of the Virgin Islands will comply with the borrowing limits defined in Annex B not later than the date specified in paragraph 2 of Annex D;

section 25. The Government of the Virgin Islands will not proceed with any capital project on which the Secretary of State has made representations until fifteen (15)working days after a full written response has been received by the Secretary of State to those representations.

section 26. Without prejudice to the transitional provision in Annex D, where the Government of the Virgin Islands is not in compliance with the Protocols, the Government of the Virgin Islands will present, for the approval of the Secretary of State, a plan and modified MTFP(if necessary) to remedy the breach. The Secretary of State may require modifications to this plan which the Government of the Virgin Islands must consider, and if disagreement exists, present for consideration to the Secretary of State alternatives to remedy the breach in full and visible consideration of representations made by the Secretary of State. The Government of the Virgin Islands shall remedy a breach in these protocols within three fiscal years from the point at which the breach occurred, unless the Secretary of State gives express written permission for a longer period.

section 27. In the event of any substantive non-compliance by the Government of the Virgin Islands in respect of the Protocols and until the breach has been rectified, the Government of the Virgin Islands will obtain, on an annual basis, written approval from the Secretary of State before

(a) The MTFP is finalised; or
(b) Any new public borrowing is undertaken
(c) Proceeding with any new project with a lifetime value of more than five(5%) of forecast recurrent revenue
(d) using public assets as collateral as part of new agreement with a party external to Government of the Virgin Islands
(e) the hypothecation of any revenue stream; or
(f) the divestment of public assets

section 28. For the avoidance of doubt, a breach of the borrowing limits in Annex B will constitute a breach of this protocol agreement."

Factual foundation

2. The paragraphs (2-5) which follow provide the factual foundation for the Request in paragraph1.

(a) GLOBAL ISSUES AFFECTING ECONOMIC FORECASTS IN THE BVI

(i) Natural Disasters:

Changes in the global climate exacerbate climate hazards and amplify the risk of extreme weather disasters. Increases of air and water temperatures lead to rising sea levels, supercharged storms and higher wind speeds, more intense and prolonged droughts and wildfire seasons, heavier precipitation and flooding. The evidence is overwhelming and the results devasting.

- The number of climate-related disasters **has tripled in the last 30 years.**
- Between 2006 and 2016, the rate of global sea-level rise was **2.5 times faster** than it was for almost all of the 20th century.
- More than **20 million people** a year are forced from their homes by climate change.
- The United Nations Environment Programme estimates that adapting to climate change and coping with damages will cost developing countries **$140-300 billion per year by 2030.**

(ii) Beneficial Ownership – Open Registry Requirements

Worldwide, there is increasing momentum on beneficial ownership reform. The G8,26 G20,27 and EU28 member states agreed to establish registries in 2013, 2014, and 2015, respectively. In 2016, various countries at the Anti-Corruption Summit in London came forward to pledge to establish public registries of beneficial ownership (e.g., Britain, Afghanistan, Kenya, France, the

Netherlands, and Nigeria).29 In addition to these commitments, other global initiatives have developed recommendations and issued guidance regarding beneficial ownership, such as the 154 members of the OECD's Global Forum30 and the 37 members of the Financial Action Task Force (FATF),31 though neither the Global Forum's Standard nor the FATF Standard require publishing registers. It is worth noting that 22 FATF members and 13 of the G20 members are also part of Open Government Partnership (OGP).

(iii) Economic Substance:

The British Virgin Islands ("the BVI"), together with other major offshore jurisdictions, introduced economic substance laws. The BVI Economic Substance (Companies and Limited Partnerships) Act, 2018 ("the Act") became effective from 1 January 2019. Companies incorporated on or after 1 January 2019 have to comply with the Act immediately, while a transition period to 30 June 2019 was provided for entities established before 1 January 2019. This is in response to the European Union ("EU") and the Organisation for Economic Cooperation and Developments' ("OECD") various efforts to enhance tax transparency.

In simple terms, a relevant BVI entity (including locally incorporated companies, foreign entities registered in the BVI and limited partnerships having legal personality, that engages in one or more of the Relevant Activities would be required to comply with the Act by maintaining an appropriate level of economic substance in the BVI, unless exceptions apply.

(iv) COVID-19:

The COVID-19 pandemic and the associated economic crisis are posing huge challenges, raising many unknowns and imposing wrenching trade-offs. Both crises are global, but their impacts are deeply local. The policy response to both crises needs to be rapid, even if it is rough around the edges; however countries cannot pull this off on their own—the global crises require global solidarity and coordination.

Governments must dramatically overhaul policies and invest in public health, economic stimulus, and social safety nets, to help countries recover faster from the COVID-19 pandemic. The economic report warns that a patchwork of preexisting solutions won't work and points out that governments must coordinate with each other to hasten the recovery. This is a global crisis and working in silos is not an option, it says.

(v) BREXIT:

Although the Overseas Countries and Territories are linked to the EU through the member state to which they belong, as well as by their membership of the Association of Overseas Countries and Territories of the European Union (OCTA) and the EU's 2013 Overseas Association Council Decision, they are not part of the European Union. Instead, given their special relationship to a

specific EU member state, they are regarded as being associated with the EU as a result of the accession by the EU nation concerned, to the Treaty of Rome which established the European Economic Community.

This means that the five Caribbean Overseas Territories' primary relationship with the EU comes through their political, legal and constitutional ties with their 'parent' state, in this case the UK's, which acceded to the Treaty in 1973. As a consequence, for most issues the Overseas Territories are regarded as 'third countries' in their dealings with the European Commission, the EU and its many institutions. This means there is no automatic process that causes EU decisions to apply to them.

For the UK's Caribbean Overseas Territories, perhaps the most significant challenge would relate to finding a way to ensure future funding from the European Development Fund (EDF), and continuing access to its Investment Facility and to the European Investment Bank, as well as retaining access to other European programmes of benefit relating to the environment, education and training.

As matters stand, the present EDF programme runs up to 2020, but it is far from clear what would happen when negotiations begin for its successor. Also uncertain is how the Overseas Territories would address in Britain's absence the complex issues arising from changing EU development priorities, or the new approaches being developed in light of the UN sustainable development global goals agreed last year.

(b) High Level Framework For UK Support TO BVI Hurricane Recovery

The Caribbean Development Bank valued the BVI as a preferred customer and was pleased to extend credit facilities and favourable loan terms as requested immediately following the 2017 disasters. The Government of the Virgin Islands determined that additional loan funds would be required to underwrite the recovery process. In response to appeals to the UK's Lord Ahmad of Wimbledon by Premier Smith in correspondence of November 10 and 14 of 2017 it was concluded that the UK Government will need to set conditions around such support to ensure that all recovery measures represent value for money and that the additional borrowing is sustainable for the BVI. As a precondition to UK's support it was recommended that a Partnership Agreement between the UK and BVI Governments be developed to establish the necessary structure that will drive recovery and thereby attract private investments. The core of the High Level Framework was centered on the five (5) principles of; Good Governance; Fiscal Sustainability; Building in Resilience; Public Administration Reform and; UK-BVI Partnership.

(c) Financial Allocations And Requirements Resulting From Catastrophic Events

Within the last ten years the Government of the Virgin Islands, in addition to capital expenditure from local funds and contributions from international public and private enterprises and individuals, loan funding secured or envisaged to underwrite recovery from catastrophic events are recorded as follows:

(i) Tropical Storm OTTO (2010) -- $15,000.000.00 CDB Loan Funds (Open)
(ii) Floods of August 6, 2017 -- $15,000,000.00 CDB Loan Funds (Open)
(iii) Hurricanes Irma & Maria (September 2017) -- $65,000,000.00 CDB Loan Funds (Open)

(iv) Hurricanes Irma & Maria (September 2017) – US$400,000,000.00 UK Guarantee (Pending)

(iv) COVID-19 – March 11, 2020 and Ongoing – Infrastructural development , Equipment and Medical Supplies Procurement AND Territory Provisioning Program -- $15,000,000.00 local investment
(v) COVID-19 – March 11, 2020 and Ongoing – BVI Government Economic Stimulus – Phase #1 - $39.3 million.
(vi) COVID-19 – March 11, 2020 and Ongoing – BVI Government Economic Stimulus – Phase #2 – Total amount to be assessed based duration of the pandemic and based on access to unrestricted capital.

3. In a 2014 December Final Report entitled **"Building on a thriving & Sustainable Financial Services Sector in the British Virgin Islands"** generated by global consultants Mckinsey who were commissioned to do so by the Government of the Virgin Islands, they highlighted in paragraphs 8-11 the following challenges facing the BVI despite strong past performances in paragraphs 8-11 of their report:

A. Recent Challenges Facing the BVI

(i) In recent years, however, our strong foundation has been challenged. Most critically, the new company incorporations have been declining since 2011 due to increased international pressure around compliance and transparency and the entry of new competitors (Figure 3). At the same time the BVI has not been able to materially expand its product offerings and as such the industry has also from time to time reported that it has struggled to keep up with evolving customer needs.

(ii) International pressure: Three factors around international pressure on compliance and transparency together with questions of security of data have had significant implications for the incorporation business:

(iii) Increased pressure from international regulators. A poor compliance rating from the OECD and blacklisting by the French government affected the reputation of the BVI and may have driven down customer demand.

(iv) Changes in policy of major financial institutions. Several banks in Asia (notably HSBC and Standard Chartered) possibly in reaction to international pressures or due to their own new internal policies, are making it markedly more difficult for BVI BCs to open bank accounts –

(v) Customer confidentiality concerns. A recent massive data leak to the ICIJ has raised concerns about the ability of BVI to protect the confidentiality of clients.

(vi) Increased competition. Seeing these pressures on the BVI, smaller jurisdictions also began to capitalise by growing their company incorporation business, with a cost effective offering modeled after the BVI's company incorporation product. Seychelles and Samoa, for example, grew company incorporations by over 10 percent from 2011 to 2013, while new incorporations in the BVI declined 9 percent over the same period.

(vii) Value added services. Basic company incorporations contribute the vast majority of government revenue derived from Financial Services. Some post-incorporation transactions and legal services, as well as insolvency and restructuring accounting services, are offered, but it is clear that there is need for more substantive offerings in areas such as administration, accounting, corporate restructuring or in investment management. This 'value-added'/substance is crucial for our industry, not only to build the sustainability and profitability of the industry, but also to provide the jurisdiction with additional evidence of its existence as a domicile of substantive work rather than a destination for profit-shifting. A number of factors were identified as the constraints on further expansion of the value-added services:

(viii) Limited base of capable BVIslander talent. The BVI has a very limited population base from which to supply talent to the Financial Services industry -- with a community of approximately 10,000 BVIslanders only a small proportion are of working age. Moreover, while there are certainly growing numbers of exceptional BVIslanders who have helped transform and drive the jurisdiction, there are not enough persons within that subset of workers with the expertise and training to meet the current skills demands that a greater value-added offering requires.

(ix) Difficulty in attracting and retaining talent. Expanding into value added services require a good mix of BVIslander and external talent. However, current immigration and labour policies and processes could inhibit our ability to attract and retain world-class talent. Challenges include variability in service quality and overly onerous restrictions (for example, requirements to leave the Territory if changing work permit status, or a lack of parallel processing of families, leading to separation from spouses and children). For private-sector companies in the industry, it is a substantial disincentive to building more substance if skilled labour cannot be hired to fill gaps in the industry that BVIslanders currently cannot fill. It is expected that outside talent will help to develop and train BVIslander staff, as well as bring critically important contacts and connections to new clientele.

(x) Strong incorporations focus of regulatory body. The FSC is considered among the best regulators in the world and is the envy of many other international financial centres. A perception exists, however, that there is insufficient focus on other subsectors beyond incorporations. Industry members involved in value-added services (such as funds, trusts, insurance, and banking) have indicated that the quality of FSC service to these product lines is less consistent than the regulation of registered agents. In addition, industry has expressed concern at the perception that the FSC operates under a compliancefocused regulatory approach for non-BVIBC products, adopting regulation that is sufficiently conservative as to drive demand out of the jurisdiction (cited examples include the captive insurance market and initial resistance to funds products with regulatory exemptions). Validity of the perceptions aside, a clear disconnect exists between government, the regulator, and industry, and the roles of each are unclear, especially with respect to product updates and iteration

(xi) Lagging infrastructure. We face infrastructure challenges as a result of our relative inaccessibility which inhibits growth of value-added services, through lowering accessibility and convenience for business leaders. For example, other jurisdictions enjoy nonstop flights, while flights to the BVI require connections from nearby islands. The BVI has embarked on plans to improve access to the islands, but these plans are reactive to current challenges, and will take several years to alleviate the access difficulties. In addition, connectivity in the BVI is a challenge for businesses. World-class jurisdictions such as Hong Kong and Singapore are exceptionally technology-enabled, underpinned by a backbone of fast and cost-effective Internet and broad band coverage (Hong Kong tops the Net Index download speed rankings at 96.98Mbps, with Singapore at No. 3 with 88.16Mbps). In contrast, the BVI cannot pursue a high level of technological

capability without stronger Internet infrastructure (BVI average download speeds are 4.74Mbps).

(xii) Meeting customer needs. Benchmarking our Territory against what potential customers care about (value drivers) and the competencies of peer jurisdictions provide some light into the underlying challenges facing the jurisdiction in broadening its offering. While our product offering is able to meet customer needs around cost, ease, and speed of incorporation, and legal rights, protection, and recourse – all important for the basic incorporations business – it has struggled to attract and retain the right value-added service providers and talent, and create an adequate business environment for professionals on the ground. Peers, such as the Cayman Islands, for example, have established targeted economic zones to specifically incentivise services providers to locate themselves in the jurisdiction providing customers with the full service offering they require. Furthermore, BVI financial products, particularly funds, insurance, and, to a lesser extent, trusts, have lagged behind competitors due to the difficulty in updating or modifying legislation, and inefficiencies in marketing the jurisdiction and its product competitiveness abroad.

4. The above challenges to the BVI economy were exacerbated by the floods of 2017 immediately followed by the devastating effects of the catastrophic hurricanes Irma and Maria in 2017. The Focus Magazine of the Caribbean Development and Cooperation Committee in its January –March issue of 2018 pointed to the effects and impact of Hurricane Irma and Maria in British Virgin Islands at pages 8-9 of the magazine.

" (i) The Economic Commission for Latin America and the Caribbean (ECLAC) assessment team estimated that the total cost of Hurricane Irma in the British Virgin Islands is US $2.3 billion. This cost consists of three elements: damage, revenue and other income losses, and additional costs— such as debris removal. Of this total, damages are estimated at US $1.6 billion.

(ii) The productive sectors suffered 41.9 per cent (US $691.6 million) of the total damage, followed by social sectors, 40.2 per cent, and infrastructure, 17.6 per cent. Losses are estimated at US $444 million, of which 82.2 per cent is in the productive sectors, 13.7 per cent infrastructure sectors, and 3.2 per cent social sectors. Additional costs are estimated at US $198.2 million, of which 52.1 per cent is in the infrastructure sectors, 33.7 per cent social sectors and 14.0 per cent productive sectors. Public sector assets account for 14.5 per cent of the total damage, 9.5 per cent of the total losses, and 43.9 per cent of the additional costs.

(iii) The public sector will be required to spend US $243.3 million to replace damaged assets. In a reconstruction process it is expected that this expense will be greater than damage

estimates due to improvements not only in quality but also in efforts at disaster risk reduction. Overall, the sector most affected by the hurricane is tourism, sustaining 46.6 per cent of total costs, 41.3 per cent of damage and 81.5 per cent of total losses.

(iv) The economy of the British Virgin Islands relies heavily on the tourism sector as a main source of employment for the people of the territory. Additionally, since the nature of tourism in the territory makes water proximity a highly valued amenity, many tourist facilities are very close to the seashore, which adds an extra risk due to water surge. The total cost of Hurricanes Irma and Maria in the tourism sector is US $1.06 billion.

(v) The total damage estimated for the tourism sector is US $682 million, mainly in the land-based infrastructure, which accounts for damages of US $482 million. The total damage in the sea-based tourism is US $177 million, of which US $166 million is related to damages in the vessels. A total of 205 chartered vessels were damaged, including a good number of wrecked vessels on the shore, either capsized or extensively damaged by debris. Losses are estimated at US $362 million, and land and sea based accommodations account for about US $264 million of that total. Additional costs include US $17 million for preparations to safeguard property both on land and sea, as well as costs for removal of debris, general cleaning and operating costs for electrical generators. Hotel infrastructure is severely damaged and many will not be fully operational until 2019. Tourism losses amount to US $361.8 million, of which US $121.5 million occurred in 2017, US $217.3 million in 2018, and US $22.0 million in 2019. The most affected social sector was housing and public buildings. The overall cost to the sector is estimated at US $680.2 million. Housing was one of the sectors most severely affected by Hurricanes Irma and Maria, with a total of 6,944 residential buildings affected.

(vi) A significant number of public buildings such as schools, health establishments, post offices, and fire and police departments also sustained severe damages and losses. The main damages were wind damage to roofs and walls, water damage as a result of rain intrusion, and impacts caused by flying debris. Of the residential buildings affected throughout the four main islands, 14 per cent have major damages and cannot be repaired, 16 per cent have major damage but can be repaired, 22 per cent have some damages but can still be safely occupied and 47 per cent have minimal damage and can be easily repaired. The losses are calculated at US $12.3 million as a result of the interruption of accommodation services due to severe damage or destruction of the housing stock, making it temporarily or permanently uninhabitable. Additional costs are estimated at US $65.9 million, which includes costs for demolition of the most affected dwellings, the clearing of debris and use of diesel or gas generators. Electricity is not yet fully restored throughout the territory.

(vii) The most affected infrastructure sector was roads, airports and ports. The effects of the wind force and sea surge, as well as the occurrence of isolated tornados associated with the storm, created devastating levels of damage to the transportation infrastructure of Anegada, Jost Van Dyke, Virgin Gorda and Tortola. The estimated damage to this subsector is US $205.8 million for roads, bridges, sea wall, ports, marines, docks,

airports, and transportation equipment (public and private vehicles and boats). Additional costs related to debris removal, fencing and other related tasks are estimated at US $28.2 million. Losses are estimated at US $17.9 million. The environment sector of the BVI was also impacted by these events, estimated at US $2.7million. This includes damages to ecosystems (i.e. corals, mangroves, beaches and seagrass beds) and other environment-related infrastructure assets. Losses are estimated at US $3.9 million due to substantial impacts on ecosystem services. Additional costs account for US $370,000, reflecting expenditures of environmental organisations, such as Jost Van Dyke Preservation Society and the Association of Reef Keepers, to normalise their operations".

5. The above provide a panoramic view of the challenges facing the BVI economy and its people when the World Health Organisation on 11th March 2020 declared COVID-19 as a pandemic.

Current measures

" (i) There is no doubt that the pandemic is having a devastating impact on economies worldwide as governments impose policy measures to contain the spread of the virus. These measures include travel bans, border closings, cruise ship arrival suspensions, complete lockdown of cities and jurisdictions, and other policy actions. The effects on the cruise and aviation industries have been crippling, and this has implications for the tourism industry. Global tourism is forecast to lose hundreds of billions of dollars and cost 50 million tourism and travel jobs.

(ii) In the case of the Virgin Islands Fiscal Impact Preliminary revised projections indicated an approximate 23% decline in Government collections for 2020 driven by a decline in financial services revenue by a similar percentage and drops in other major revenue items such as import duties and payroll tax. Forecasts based on the estimated impact of COVID-19 on the BVI economy, in particular the key drivers, suggest a further 18.5% loss in Government revenue. This will have implications for funding of the Government's recurrent expenditure and its capital investment programme going forward. It will also place a strain on the public purse as affected employees and businesses turn to the Government for support in light of the initial lockdown period and the protraction of the economic impact of the pandemic at home and abroad.

(iii) At existing recurrent expenditure levels, the expected recurrent deficit is expected to be in the region of $32 million. The overall fiscal deficit could reach $100 million, where no adjustments are made to the Government's expenditure programme.

Impact to Tourism Sector

(iv) The total direct loss in revenue to the Territory from the initial policy decision is $7.6 million. The economic impact on the overnight tourist revenue has already proven to be substantial. The total revenue fallout from a 30-day border closure is in the region of $38 million. After 6- months, a potentially probable scenario, the BVI's direct losses could escalate to $234 million, almost a quarter of the Territory's annual Gross Domestic Product (GDP).

Mandatory Curfew Impact

(v) A mandatory curfew for all residents was put in place by Cabinet initially for the period from 27 March to 2 April, 2020, and has been further extended until 16 April, 2020. Table 2 presents the potential losses to the business community, individuals as well as Government and Statutory Bodies for the initial 5-day work period as well as the extension for 12 working days.

Immediate Relief Summary;

(vi) The goals of the Government's immediate policy response are to: 1. Provide immediate financial relief and support to laid-off workers, employees who may be required to work reduced hours and businesses that are directly impacted by the coronavirus; and 2. Provide additional funding to the health sector as required as well as statutory bodies and public corporations that may be indirectly impacted by the crisis. The value of this package to date is approximately $39.3 million"

Legal basis

6. It is clear from all of the above that the measures adopted for the safety, health and lives of the inhabitants of the Virgin Islands require the Virgin Islands to suspend the borrowing obligations under the Protocols if it is to remain viable to provide for the safety and security of its citizens.

7. In asking the United Kingdom to excuse the Virgin Islands to revise, modify or suspend the borrowing obligations under the protocol, we draw your attention to Article 73 of the United Nations Charter, under which the Government of the United Kingdom assumed responsibility for the administration of the Virgin Islands which has not yet attained a full measure of self-Government. By assuming such responsibility, the United Kingdom government recognises the principle that the interests of the inhabitants of the Virgin Islands is paramount and has accepted as a sacred trust the obligation to promote to the utmost the well- being of the inhabitants of the Territory.

8. We submit that there is no better time than now for the United Kingdom to discharge its sacred trust and obligation to promote to the utmost the well- being of the inhabitants of the Virgin Islands by way of revising, modifying or suspending the operations of the sections listed in paragraph 1 herein.

9. It is in this regard instructive to note that in April 2020 the IMF Executive Board Approved Immediate Debt Relief for 25 countries. The Statement of the Managing Director of the Fund states as follows:

> **"...I am pleased to say that our Executive Board approved immediate debt service relief to 25 of the IMF'S member countries under the IMF's revamped Catastrophe containment and Relief Trust (CCRT) as part of the Fund's response to help address the impact of the Covid-19 pandemic".**

10. It is the Contention of the Virgin Islands that there is a strong legal basis for our request. To buttress this point we draw attention to the following additional provisions of the Protocol Agreement to make a number of points:

"section 19. Unless in **exceptional circumstances** different arrangements are agreed in writing by the Government of the Virgin Islands and the Secretary of State, the Government of the Virgin Islands will borrow only to fund capital expenditure where

a. the proposed project is forecast to yield sufficient revenues to fund the additional debt service costs, or

b. the Government has sufficient surplus operating cash flows to fund the additional debt service costs which arise from borrowing to finance such capital expenditure

Annex D entitled (Transitional Provisions)

1. The **unprecedented global financial crisis** has forced the Government of the Virgin Islands to operate beyond the liquid assets ratio defined in Annex B.

2. The Government of the Virgin Islands will return to full compliance with all the borrowing limits by no later than the end of the 2015 financial year

11. The Government of the Virgin Islands will contend that the above provisions, conjointly with section 26 and 28 of the Protocol Agreement, when properly interpreted, indisputably accommodates or excuses any breach of the borrowing limits due to **exceptional circumstances** (section19) or **unprecedented global financial crisis (Annex D)** (a sort of force majeure situation)

12. The antecedent unprecedented financial crisis of 2008 provided the basis for the United Kingdom Government to excuse the Government of the Virgin Islands from what is described as **full compliance** with the newly set borrowing limits in the 23rd April 2012 Protocol Agreement for the period 2012 to the end of 2015 financial year.

13. It is important to emphasise that prior to the signing of the Protocol Agreement, the Virgin Islands was under no borrowing limits obligation. It is also important to lay stress on the fact that, having regard to the prior unprecedented financial crisis of 2008, there was a recognition in the Protocol Agreement by the United Kingdom that, at the signing of the Agreement in 2012, it was impracticable or virtually impossible for the Virgin Islands to instantaneously comply with the newly set borrowing limits. By inserting clauses 26 and 28, the Protocol Agreement contained the seed of an artificial or deemed breach by the retrospective application of both clauses to events created by the prior financial crisis. A fairer and more equitable way of dealing with the matter would have been simply to allow the borrowing limits to be prospective commencing at the beginning of the 2016 financial year without entailing any artificial or deemed breach of the no breach of the Protocol Agreement.

14. In any event, it seems to follow from the text of the Protocol Agreement that a supervening event which is exceptional or unprecedented, or of an emergency is capable of providing a strong basis for excusing performance of the obligations under the Protocol Agreement.

15. Additionally, it would appear that the United Kingdom's offer of a loan guarantee of up to three hundred million pounds to the Virgin Islands, following the devastating effects and impact of Hurricanes Irma and Maria in 2017 is evidence in support of the contention that the borrowing limit set out in the Protocol Agreement may be waived, suspended or modified during emergencies such as Covid-19.

16. The Virgin Islands has a stronger case than those Countries which are being granted debt relief by the International Monetary Fund. We are simply asking to be relieved of the conditionality of the borrowing restriction to take care of our people.

16.1. The Subject of Finance has been devolved by the United Kingdom to the Virgin Islands. In this respect Chapter 8 of the Virgin Islands Constitution Order 2007 is specifically dedicated to Finance. Additionally, the Virgin Islands Legislature enacted the Public Finance Management Act 2004. This was amended in 2014 by the Public Finance Management (Amendment) Act 2012. The Legislature also permitted the Executive to enact the Public Finance Management Regulations of 2005 a subsidiary legislation authorised by the 2014 Act.

16.2 Moreover the Legislature of the Virgin Islands enacted the Loans (Caribbean Development Bank) Act (Cap. 148) which provides in its section 3 the prior approval of the Secretary of State and the House of Assembly was a condition precedent for the Government to obtain a loan exceeding fifty thousand dollars ($50,000) from the Caribbean Development Bank.

16.3 More importantly, the Public Finance Management Act provides in section 16 that "yearly appropriations to the reserve fund shall be at least two percent of the budgeted expenditure. Finally there is a general requirement of legislative approval for the Government to borrow money or to guarantee any financial liability.(see sections 32 and 33 of the Public Finance Management Act.

16.4 In the face of the above constitutional and legislative provisions regarding Finance, the application of the limiting clauses as cited in paragraph 1of the Protocol Agreement and subsequently in the High Level Framework Document, it strikes at the heart of the constitutional grant (by way of devolution) of the subject of Finance to the Legislature, the executive arm of Government of the Virgin Islands and the Minister of Finance. It would seem that the provisions cited for suspension in the Protocol Agreement are not in consonance with the text and spirit of the authority of the Legislature (representative of the people) as well as the text and spirit of our constitution and the spirit of our constitutional arrangement. These intrusions are a retrograde step in the constitutional progress and development of the Virgin Islands. It would appear that the restrictions are made, for no reason other than that of limiting the Territory's access to the reserve fund accounts and securing loan funds for the finance of recovery from catastrophic events.

17. The Virgin Islands contend that the legal label that may be attached to the Covid-19 and the various measures adopted to contain Covid-19", whether called

frustration at common law; force majeure under the Protocol Agreement, or result in impossibility of performance of the obligation under the Vienna Convention on the law of Treaties or that the measures were a necessity in the face of a grave and imminent peril to the Virgin Islands, one thing remains clear, they provide a strong basis for the Virgin Islands to respectfully request Her Majesty's Government to suspend or restructure the specified sections under the Protocol Agreement.

18. In light of all of the above, the Virgin Islands hereby petitions the Secretary of State to agree to give sympathetic consideration to the suspension or restructuring of clauses **20,25,26,27 and 28** of the Protocol Agreement.

And we so pray that the petition be considered favourably.

6th May 2020.

Yours truly

Hon. Andrew A. Fahie,
Premier, Virgin Islands
Minister of Finance

Hon. Carvin Malone,
Deputy Premier, Virgin Islands
Minister of Health & Social Development

Hon. Kye M. Rymer,
Minister of Transportation, Works and Utilities

Hon. Vincent O. Wheatley,
Minister of Natural Resources, Immigration & Labour

Hon. Dr. Natalio D. Wheatley
Minister of Education, Culture, Youth Affairs, Sports,Agriculture and Fisheries

Cc: Mr. Ben Merrick, Director of Overseas Territories, UK Foreign and Commonwealth Office.
Financial Secretary, Ministry of Finance
Permanent Secretary, Office of the Premier
All Members of Cabinet
Junior Ministers