



GOVERNMENT OF THE
VIRGIN ISLANDS

PROTOCOL

for the Appointment and Removal of
Statutory Board Members
MARCH 2023



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Recruitment Checklist

The following is a list of steps to be followed in recruiting members for Statutory Boards.

1. Vacancy Anticipated (Resignation/Revocation/End of Appointment)
2. Criteria Developed/Signed Off
3. Advertisement for Applicants
4. Shortlist Process
5. Background Checks
6. Interview Process
7. Recommendations to Minister
8. Ministerial Approval
9. Cabinet Ratification
10. Appointment of New Members (letters to successful and unsuccessful applicants)
11. Public Announcement of Board Membership Changes
12. Induction and Training of New Board Members
13. Updating of Database of Statutory Boards
14. Annual Chairman Reviews/ Board Member Surveys

An Appointment Flowchart is attached as **Appendix A**.

Preliminary Guidelines on Appointments to Statutory Boards

Introduction

Statutory Board, as defined in the Interpretation Act (Cap 136) means “any board, commission, committee, council or other like body established by, or under an enactment.” Appointments to Statutory Boards, Trusts, Councils and Committees are made by the Governor or Cabinet Ministers in accordance with their portfolio responsibilities, guided by the provisions of relevant legislation.

Background

The BVI Commission of Inquiry (COI) Report, published in April 2022, concluded that there are huge untapped resources for public service in the form of potential membership of Statutory Boards. It therefore indicated that there should be an overarching Protocol which must allow and encourage such persons to come forward and be given an equal opportunity for appointment. “The Protocol should, therefore, be based on the principles of good governance and should include provision for (e.g.) advertisement of posts, appropriate application forms, appropriate checks, interviews before a panel including independent members, restricted circumstances in which the executive cannot proceed with the panel’s recommendation, and the rights to an independent appeal in appropriate cases. The protocol should have, as a default, rolling periods of appointment, so that retirements are also on a rolling basis (even if reappointments are allowed). There should not, of course, be periods of appointment linked to the periods of a particular administration.”

A protocol for the appointment and removal of Statutory Board Members would apply to all Statutory Board Appointments unless Statute dictates the necessity of another process. This protocol would ensure a system that is open, accessible, rigorous, and transparent.

Key Objectives

The main objectives underlying the reform of the appointments system for Statutory Boards are:

- to increase access and widen the pool from which potential appointees to Statutory Boards are drawn;

- to strengthen Statutory Boards by enhancing the calibre and quality of persons appointed;
- to secure a high degree of transparency in the selection of candidates for appointment by the relevant Minister or the Governor as required by Statute.

The delivery of these objectives can clearly make a major contribution over time to improving the performance of Statutory Boards.

Roles and Responsibilities

Ministers have ultimate responsibility for the appointments to statutory boards. The Ministry supports the Minister in the process by giving the Minister briefings and/or advice on board vacancies, the status of board membership, expiring appointments, eligibility requirements for reappointment, appropriate skill sets for membership, and other matters of relevance in accordance with the Minister's role according to statute.

The Make-up of an Effective Board

Members of Statutory Boards must be competent and possess a balance of skills, knowledge, personal attributes, and experience that match the strategic direction and needs of the entity and of the Territory. The emphasis is on appointing the persons best suited to the task, while ensuring that everyone is given a fair opportunity to serve despite social differences, such as race, class, gender, age, and other demographical information. The recruitment should be extensive enough to encourage broad response from across the Territory. Membership must also adhere to the requirements of legislation for appointments to specific Boards.

There are various roles to be fulfilled by prospective candidates for Board membership:

- **Technical membership on boards or individuals who have specific competencies on boards as mandated by Statute** – these prospective members should have training or work experience within a field deemed to be relevant or important to the needs of the Board. They should possess thematic or subject area expertise, which is integral to furthering the purposes of the governing Act. Board candidates are typically professionals practicing in the field and are expected to use their knowledge and skills to assist in ways which are helpful in achieving the Board's objectives.

- **Geographic/Island Representation** – is sometimes called for in Statute. This is desirable and will comprise part of the criteria and therefore, pre-selection of individuals who may be considered.
- **Sector based representation** – which may also be a requirement to ensure that the views and needs are informing policy and strategy.

Summary of Proposed Reform of the System of Appointments to Statutory Boards

The main elements of the new appointment system being proposed are as follows:

A. All requests to fill Board Vacancies should:

- i. be advertised openly on the Government’s website www.bvi.gov.vg and governmental social media platforms, statutory agency communication platforms and a combination of other media platforms, except where otherwise determined by Cabinet;
- ii. meet specific criteria determined by the relevant Statute or Act to be necessary for the effective performance of the relevant role(s); and
- iii. be processed by way of a transparent assessment system to support the relevant Minister in making appointments to Statutory Boards under his/her remit.

B. Persons being considered for chairmanship of a Board should make themselves available to the relevant Ministry for interviews on matters relevant to their potential leadership role.

1 Application of these Guidelines

1.1 The new appointment system applies to Statutory Boards and State-Owned Enterprises and encompasses:

- Boards established by specific Statute and under the portfolio of a particular Ministry to which the Minister makes appointments;

- Statutory Boards not under the portfolio of a Ministry, but to which the Minister makes appointments; and
- Boards of wholly Government-owned companies to which the Minister makes appointments.

1.2 The new appointments system does not apply to:

- bodies that oversee national security-related matters;
- non-statutory entities such as advisory groups and expert committees that do not have formal conditions of appointment and fixed terms.

2 Exceptions

2.1 In specific circumstances, Ministers may appoint suitably qualified candidates in line with the specified recruitment criteria as Board Members, as follows:

- A specific mechanism for the filling of a vacancy on a Statutory Board is laid down in legislation requiring, for example:
 - where the appointment of a member is on an *ex officio* basis; or
 - where the appointment requires a nomination by a third party, (such as the Leader of the Opposition or the Governor, or organisations like the Civil Service Association or an organization representing an industry);
- Where, following re-advertisement as necessary, the application process has not attracted suitably qualified candidates, a suitable number of candidates, or candidates meeting specific statutory requirements;
- When reappointing existing board members who have performed well in their roles;
- Where urgent appointments must be made in an emergency situation.

3 The Appointment Process

- 3.1 This section sets out a framework for the proposed operation by Ministries of the appointment process, including the development of the role profile for a Statutory Board membership, its publication requesting expressions of interest and the assessment of applications received.

4 Timetable for Filling a Vacancy

- 4.1 Adequate time must be given to the process of filling board vacancies.
- 4.2 The timetable for filling a board member vacancy should take the following into account:
- when the incumbent's term ends;
 - review of the position description, considering the Board's current mix of knowledge, skills and experience alongside the diversity mix;
 - advertising through appropriate channels, and the closing date;
 - the need for consultation with stakeholders including provisions in relevant legislation;
 - advising nominating agencies of the skill and diversity requirements for the vacancy, so they can suggest suitable candidates; and
 - whether legislation requires a Board to include members with specific qualifications or consult sector/interest group representatives.

5 Responsible Ministers and Current Chairs

- 5.1 Ministers must be briefed on all vacancies on their respective Boards. This includes consultation with the current chair of the Board in regard to the following:
- the functioning and skills of the current Board;

- the extent to which diversity of membership needs to be addressed;
- the findings of recent Board evaluations;
- any board capability gaps or future needs;
- resulting position descriptions and competencies required; and
- any other relevant matter.

5.2 The draft specification prepared by the Ministry may draw from the consultation with the current Chair of the Board. The Chair's annual review of the Board's effectiveness should be included in the Board's annual report, which can assist the Ministry in recognizing the Board's needs.

6 Development of a Specification for Board Role

6.1 Where a new appointment will be necessary, Ministries should formally initiate the appointment process at least six months before any membership expires by developing a detailed and comprehensive draft specification of the proposed Board role. The specification must set out key requirements for the Board role(s) including:

- necessary skills, knowledge and expertise;
- breadth of experience and required sectoral / stakeholder expertise;
- other desirable qualifications;
- range of skills of existing Board members(s);
- diversity and other matters for consideration;
- personal attributes.

6.2 The specification must also set out the number of vacancies, which are to be filled from the process.

- 6.3 All applicants should complete the application form and submit their expressions of interest with a cover letter and resume /curriculum vitae to the address provided on the vacancy notice.
- 6.4 The responsible Ministry should acknowledge receipt of applications as soon as they are received.

7 Publication of Roles

- 7.1 Once the final specification is agreed by the relevant Minister, it will be published on the government website (www.bvi.gov.vg), governmental social media platforms, statutory agency communication platforms, and a combination of other media platforms seeking expressions of interest for the role.
- 7.2 In order to maximise the size of the potential pool of applicants, the Ministry may do the following:
- draw on expressions of interest received for other Statutory Board vacancies where applicants have indicated an interest in being considered for roles on other Statutory Boards;
 - engage with appropriate bodies, organisations, groups etc. to increase awareness of the Board role and encourage the submission of expressions of interest; and
 - where necessary and appropriate in seeking to ensure there are sufficient applicants to meet the criteria laid down for particular roles, make efforts to identify suitably qualified individuals who may be interested in participating in the process.
- 7.3 A minimum of two weeks shall be given by the Ministry for the receipt of expressions of interest following the announcement of the Board vacancy
- 7.4 Ministries should encourage interest from as diverse a pool of applicants as possible.

8 Assessment Process

- 8.1 The relevant Permanent Secretary will present to the Minister for approval a list of candidates as suitable for appointment as members of Statutory Boards following an assessment process against agreed standard criteria for the Board position.
- 8.2 The assessment process put in place may draw on external expert advisory support to assist in accessing the applications received. It may include all the usual and standard elements of assessment processes including formal interviews.

Shortlisting of Candidates

- 8.3 When candidates are short-listed, there is a further opportunity for checking curriculum vitae and disclosures of interest, to seek any additional information, (e.g. referee, probity or security checks, and to ensure that an eventual appointment cannot be criticised on procedural grounds). The potential for conflicts of interest should be analysed at this stage. Attention should also be paid to relevant skills that have been gained through non-traditional career streams, (e.g. communication and negotiation skills, political sensitivity, demonstrated ability to think strategically).
- 8.4 Shortlisting of candidates should be done by a minimum of two persons in the interest of objectivity and fairness. At least one of the persons participating in the shortlisting process should be an employee (preferably the Desk Officer assigned to assist the Permanent Secretary with providing oversight for the statutory board) of the Ministry under which the relevant Board falls. A shortlist of candidates will be compiled using a uniform methodology consisting of shortlisting matrix of the requirements advertised. The proposed shortlist will be presented to the Minister for approval.

Interviews

- 8.6 Interviews should be handled in a consistent way and against clear criteria, so that fair comparisons can be made of all short-listed candidates. Where possible, the Chair should be involved. Ministries should assemble an interview panel that matches the requirements of the Board and the Board vacancy, ensuring diversity as much as is practicable. The membership of the panel for an appointment should

remain the same unless exceptional circumstances arise. An objective record needs to be kept of all interviews. Interviews also are a good way to share information on the complexities of working in the public sector and to gauge the depth of the candidate's understanding of the duties of a Board member, including the importance of good governance. The panel also must give a candidate the chance to respond to any concerns raised by their declaration of interests or by any external checks.

9 Identify and Select the Interview Panel

9.1 The proposed interview panel should be presented to the Minister for approval. The selection panel should be structured to ensure balance and objectivity in the selection process. It should comprise of at least three and no more than five members. The members of the panel, collectively, should possess the knowledge and competence to assess candidates against the selection criteria for the position. Up to two members can be invited from the private sector. Every effort should be made to ensure that the most suitable committee members are identified to facilitate the recruitment and selection process. There must be at least one independent panel member. This person may be from any of the following:

- i. another public sector organisation;
- ii. outside the public sector in a specialised position and such prospective members being informed beforehand that they will not be paid for their participation.
- iii. Where prospective panel members are likely to have personal or professional knowledge of applicants, care should be taken to ensure that his/her knowledge is not shared and does not influence the selection panel/process in any way.
- iv. If there is any conflict, panel members are to voluntarily recuse themselves or be asked to do so.

9.2 A confidentiality statement should be signed about the proceedings and a declaration that the individuals who may be interviewed do not pose any conflicts to the interviewer.

9.3 Interviews can be conducted in-person or via a virtual platform.

Interests and Conflicts

- 9.4 To maintain the confidence of the government and the public, Boards and other bodies must conduct their affairs impartially and be seen to be doing so. It is essential that any interests are made known, so that the potential for a conflict of interest can be assessed in advance of an appointment being made. Public and political trust in the soundness of a Board's decision making or advice may be severely compromised if appointments are found not to have been made on appropriate grounds, or if the necessary checks have not been made.
- 9.5 An interest arises where a person has a financial, familial or other personal interest in a matter that could give rise to bias or the appearance of bias in the work of an agency or where privileged information gained through membership of the Board could be used for personal gain. There are many aspects to be considered, including:
- what is an 'interest';
 - the obligation under legislation; (e.g. the Register of Interests Act requires appointees to register details of interests in respect of the individual and of family members);
 - reviewing and checking of disclosure statements;
 - how a conflict of interest can impact on the quality of a Board's decision making, and on its integrity and reputation;
 - providing assurance to Ministers that those conflicts can be managed if an appointment proceeds; and
 - the need to protect personal information provided.
- 9.6 The Virgin Islands' comparatively small population and the limited number of people who possess combinations of skills and experience mean it is always possible that the question of interests will arise. This will tend to put a focus on identifying and managing interests, rather than necessarily disqualifying all those who have interests.

Background Checks

- 9.7 Board members are responsible for an entity's strategy and organisational performance. Their reputation is often on public display and, through their appointment, they are directly linked to the appointing minister. Due diligence background checks (through police records, contact with references and previous employment, service opportunities) represent an investment in effective appointment outcomes. They provide an opportunity to build a clearer picture of the candidate that informs the shortlisting and final appointment processes. Background checks also aim to ensure the integrity of appointments to public sector Boards. They help ensure the suitability of appointment and to maintain high standards of integrity and honesty. Comprehensive background checks on potential board appointees take time and effort, but are essential for all preferred candidates who have not been previously vetted and may be needed for a reappointment. Checks may also be necessary to assist in the development of a shortlist or identifying a preferred candidate.
- 9.8 Timely completion of appointments is important, and planning an appointment process should commence early enough to build in robust background checks. Timing pressures such as a Minister's need to appoint by a set date or at short notice can make completion of appropriate vetting difficult. When exceptional circumstances preclude a full and timely process, the department should document its approach including reasons for the expedited process. Ideally, checks should be completed before interviewing shortlisted and preferred candidates so the interview panel can explore relevant issues that emerge from the checking process.
- 9.9 In order to underpin the performance of the statutory functions of Ministers in making appointments to Statutory Boards, Permanent Secretaries, in implementing these Guidelines, should seek to ensure that the lists provided to Ministers contain a sufficient number of suitable candidates to allow the Minister to exercise appropriate choice in his or her decision-making.
- 9.10 The list submitted to the Minister for consideration shall include a report from the Permanent Secretary on the reasons the candidates have been assessed as meeting the criteria agreed for the Board role.

10 Appointment of Board Members/Chairman

- 10.1 The selection of the candidates to appoint from the list is solely and exclusively a matter for the relevant Minister in light of the objectives of the revised appointment system to ensure that Statutory Boards have an appropriate mix of the experience, knowledge and skills to successfully oversee the performance of the Board's functions.
- 10.2 Consistent with best practice, it is advisable that no member of a Statutory Board should serve more than two full terms of appointment or should hold appointments to more than two Statutory Boards.
- 10.3 Where the Ministry's list does not contain a sufficient number of candidates for consideration for appointment by the relevant Minister, the Minister may advise the Permanent Secretary in writing of further candidates who should be assessed through the same process as the initial list for inclusion in a revised list.
- 10.4 Once the relevant Minister has decided on the appointments, the decision must be ratified by the Cabinet. Where the relevant statute does not require Cabinet's approval, the Minister should seek Cabinet's approval as a matter of good governance. The relevant Ministry shall be responsible for notifying successful and unsuccessful candidates. Such notification should occur prior to the publicising of information on appointments to the Board Members who are not being reappointed shall be sent a formal acknowledgement and appreciation of their services, worded according to the circumstances.
- 10.5 It is expected that, following the completion of the process, the decision on appointments shall, in normal circumstances, be made in advance of the vacancy arising unless there are compelling reasons why this is not possible.
- 10.6 At the time of the appointment of new members of Statutory Boards, the information shall be published by the relevant Ministry, for example in a press release and the Gazette announcing the new member(s). Board Member reappointments should also be announced.
- 10.7 The Minister, in consultation with the interview panel, shall make a decision on the appointment of the Chairman and Deputy Chairman from the qualified

10.8 Board members being recommended, unless otherwise dictated by the respective statute or legislation.

11 Public Officers on Boards

11.1 Public officers, by virtue of their positions, may be appointed as ex officio members of Statutory Boards as stipulated in relevant legislation. The appointment of ex officio officers supports improved Board performance, build capacity especially in respect to increasing diversity, and to capitalise on governmental experience that a public officer can bring. Public officers can add value to Boards by offering professional or technical skills in addition to their understanding of Government. In accordance with the Statutory Boards (Remuneration of Public Officers) Act, 2004 public officers may not be remunerated for serving on Boards.

12 Removal of Board Members

12.1 The grounds by which a member may be removed are outlined in the relevant legislations and vary among Boards. While some legislations are silent, others include options such as the following:

- termination of appointment (anytime) by the Governor;
- removal by Minister for conduct of misbehaviour or inability;
- removal from Board with or without cause by a Resolution passed in a Board meeting;
- revocation by the Minister at any time for the following:
 - incapacity or inability to effectively perform duties;
 - misbehaviour;
 - an employment interest; or
 - incompatibility with the function of a member of the Authority.
- revocation by Cabinet if satisfied that the member:

- is incapable for any reason of discharging his or her functions as a member;
 - has, without the consent of the chairperson, been absent from three consecutive meetings of the Board; and
 - is guilty of misconduct.
- 12.2 Ministries should abide by the provisions of the relevant legislation and seek legal advice from the Attorney General before acting on instructions to remove members from a Statutory Board.
- 12.3 Options for members to resign from Boards are also varied and include the following:
- tendering of resignation to Governor through the Chairman of the Board;
 - tendering of resignation in writing to the Minister;
 - tendering of resignation anytime by notice in writing addressed to Cabinet;
- 12.4 Additional reasons for removing Board members may include the following:
- frequently missed board meetings (e.g. three consecutive meetings without justifiable excuse) or committee meetings;
 - if it has been proven that they have created a difficult working environment for the Director and/or staff of the Statutory Board (for example, micromanagement; bullying);
 - disclosing confidential or sensitive information about the Board;
 - using the Board for his or her own personal gain;
 - following conviction of any illegal offence;
 - violating the Board's Code of Ethics or any other written agreements of the Board if such a document exists;
 - creating an unhealthy or dysfunctional Board through inappropriate behaviour or the disrespect of the other members of the Board;

- incapability of discharging his or her duties; and
- refusal to follow a Ministerial, Cabinet or government policy direction.

13 Remuneration

13.1 A consistent approach will be utilized to determine remuneration across all Statutory Boards. Remuneration of Board members of Statutory Boards should be commensurate with the level of responsibilities of the Board. Factors that should be taken into consideration when determining the level of compensation of Board members include the following:

- responsibility for the strategic direction of the organisation;
- size of the organisation (i.e. number of employees);
- size of budget to be managed;
- tasks to be performed (e.g. recruitment of staff; development of policies).

14 Inducting Appointees

14.1 Induction should start as soon as a Board member's appointment takes effect. A well-designed induction programme is essential to helping new members contribute confidently to their work on the Board. Operating within the public sector has distinct differences from a commercial or community setting. As well as understanding the specific objectives of the Board, members should have a proper appreciation of the elements and demands of public sector governance, and of the key relationships that will impact on the successful performance of their role.

15 Responsibility for Induction and Training

Ministries

15.1 Ministries are responsible for ensuring that new Board members have an adequate induction and training to understand their role and any expectations

the Government might have of them. Ministers should provide policy direction for Boards and in addition to participating in the orientation session for Board members, meet with Board chairs to ensure they are aware of the Government's expectations for the Board, and that the key responsibilities and relationships are well understood. Any induction of Board members by the monitoring Ministry should be undertaken in consultation with the Chair of the Board.

Board Chairs

- 15.2 Chairs should brief new Board members on the Board's operating environment. Depending on what is already been covered, the Chair's briefing could include the nature of the entity's business (site visits may be useful), the composition of the Board and its various procedures (subcommittees, expected workload, governance, and management issues, etc.), the member's responsibilities to the Chair and other board members, and relationships with the Minister.

Induction of Chairs

- 15.3 Board Chairs have more responsibilities than members and special attention should be paid to these in a Chair's induction process. The Chair should be introduced to the following entities:

- key ministerial office staff;
- key monitoring Ministry/department staff; and
- Chairs of other relevant sector agencies.

- 15.4 The Chair's induction should also cover the key expectations for engagement and relationship management with the Minister and the monitoring Ministry/Department.

Creating an Effective Induction Programme

- 15.5 At the earliest opportunity, Ministries should provide new Board members with an introductory briefing on the Crown entity environment and the expectations of Ministers. They also should consider covering the following:

- the role of boards in the government context, and ensuring compliance with the law and with accountability documents and relevant Crown expectations;

- the strategic direction for the sector and the entity itself, and any areas of sensitivity or high risk;
- the various planning and public accountability processes;
- the ongoing management of any perceived, actual, or potential conflicts, and the Board's policies towards receiving and offering gifts and hospitality;
- the individual roles and duties of Board members;
- the collective duties of Board members;
- the need for Board members to recognise that they should not let advocacy of particular interests override or undermine their governance responsibilities or duties as members;
- the roles of and relationships between the key offices and agencies;
- maintaining appropriate relationships with Ministers, Members of the House of Assembly, the monitoring Ministry/Department, and the public; and
- liability for and protection from legal proceedings.

15.6 An effective induction programme will include the following:

- a meeting with the Minister at his/her discretion;
- meetings with the Board Chair to discuss Board protocols and the Board governance manual;
- meetings with the chief executive officer and staff for operational familiarization;
- comprehensive information on the activities of the Board or body and the organisation concerned, an outline of the sector served, the wider implications of operating within the government sector, and the nature and key points of the key legislation and policy documents;
- current budget, recent annual reports and Board minutes, all relevant legislation, planning documents, key challenges and issues, the role of central

agencies, delegated authorities, policies on disclosing interests and declaring gifts, meeting timetable and venues, staff structure;

- the key relationships affecting the successful performance of the Board; and
- a tour of relevant facilities, if appropriate.

16 Supporting Board Performance

- 16.1 All Board members should receive ongoing support and information so they can develop their understanding of the total environment within which they work. Ministries should use opportunities that arise through their engagement (and their Minister's engagement) with entities to identify areas where assistance can be provided to support Boards.

17 Annual Board Reviews

- 17.1 The Chair should conduct a review and submit a report covering the general effectiveness of the Board and flag any relevant concerns about its membership. Board members should complete a short survey covering their view of the effectiveness of the Board's running and flag any areas of concern.

18 Database of Statutory Boards

- 18.1 A comprehensive database on each Statutory Board subject to these guidelines will be published on www.bvi.gov.vg containing the following information:
- the title of the Board;
 - the legislative basis and the legislative provisions relating to the composition of the Board, appointments and the filling of vacancies on the Board;
 - the current Board membership;
 - Board Member resumes;

- the demographic profile of the board; and
- the terms of appointment of the current members.

18.2 To assist in the maintenance of this database and to ensure that it contains up-to-date information, all Ministries are required to notify the Premier's Office of all appointments to Statutory Boards (including *ex officio* positions) at the time of appointment.

19 Status of these Guidelines

19.1 Compliance with these Guidelines is mandatory for all Ministries. The Guidelines will be updated as required in light of implementation experience and any changes will be published on the Government's website – www.bvi.gov.vg. Any queries regarding these guidelines should be directed to the Permanent Secretary in the Premier's Office.

APPOINTMENT FLOWCHART

The process steps for making appointments and reappointments to Statutory Boards

