

VIRGIN ISLANDS

LABOUR CODE (ARBITRATION TRIBUNAL) (PROCEDURE) RULES, 2020

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2020 NO. 98

**LABOUR CODE, 2010
(No. 4 of 2010)**

Labour Code (Arbitration Tribunal) (Procedure) Rules, 2020

[Gazetted 31st August, 2020]

The Labour Arbitration Tribunal in exercise of the powers conferred by section 35 of the Labour Code, 2010 (No. 4 of 2010) and of all other powers and authorities thereunto enabling makes these Rules:

**PART I
PRELIMINARY**

Citation and commencement.

1. These Rules may be cited as the Labour Code (Arbitration Tribunal) (Procedure) Rules, 2020, but may be referred to for short as the “LPR”, and shall come into force on the 31st day of August, 2020.

Interpretation. Cap. 136.

2. (1) In these Rules, unless the context otherwise requires, and subject to section 32 of the Interpretation Act,

Cap. 199.

“business days” means the official working days of the Office of the Tribunal and such days do not include public holidays in accordance with the Public Holidays Act or weekends, or any day that the Government of the Virgin Islands is closed to the public, save as otherwise determined by the Tribunal through a notice published in the *Gazette* and on the Internet site;

“business hours” means the period between 9:00am and 4:00pm on a business day or such other period as the Tribunal may determine through a notice published in the *Gazette* and on the Internet site;

“Chairperson” means the Chairman of the Tribunal appointed from time to time in accordance with section 29(3) of the Act;

“complainant” means a person who makes a complaint;

“complaint”, notwithstanding the definition in section 2 of the Act, for the purpose of these Rules means any dispute or complaint referred to the Commissioner in accordance with section 26(1) of the Act and referred to the Tribunal by the Minister in accordance with section 28(1) of the Act,

or anything that is referred to as a claim, complaint, reference, application or appeal in any enactment which confers jurisdiction on the Tribunal, including an application under sections 5 or 14(3) of the Act;

No. 5 of 2001.

“electronic record” has the meaning assigned to it by section 2 of the Electronic Transactions Act, 2001;

No. 5 of 2001.

“electronic signature” has the meaning assigned to it by section 8 of the Electronic Transactions Act, 2001;

“enforcement agent” means any person who has been assigned by the Minister to the Tribunal in exercise of his or her duty under section 29(7) of the Act, and issued a certificate by the Chairperson to serve or execute such process or processes of the Tribunal in accordance with these Rules, serve as Crier of the Tribunal and perform such other duties as the Tribunal may determine;

“Form of Consent” means the form referred to in rule 14(1)(b);

“full panel” means the Chairperson sitting with the two (2) other members of the Tribunal in accordance with rule 15(19);

“GDP per capita of the Virgin Islands at the date of the complaint” shall be deemed to be \$35,000.00 unless a difference of \$2,500.00 or more is proven on evidence accepted by the Tribunal;

No. 5 of 2001.

“information system” has the meaning assigned to it by section 2 of the Electronic Transactions Act, 2001;

“interlocutory application” means any application or request for an order of the Tribunal to be made at any time after the complaint and before the final award, and also includes any application in respect of costs before or after the final order or award or any application to vary, suspend or set aside any final order or award;

“Internet site” means the principal public access Internet site for the time being maintained by, or on behalf of, the Government of the Virgin Islands, and in particular any such page dedicated for the purpose of the Tribunal by the Minister;

No. 13 of 2015.

“legal practitioner” means a person whose name is entered on the register of legal practitioners kept by the Registrar of the High Court pursuant to section 8 of the Legal Profession Act, 2015;

“lodge” means deliver (by any means permitted under these Rules) to the Secretary to the Tribunal;

“Notice of Case Management Hearing” means the form referred to in rule 14(1)(e);

“Office of the Tribunal” means any building, part of a building, or office space assigned by the Minister in exercise of his or her duty under section 29(7) of the Act where the Tribunal may carry out its administrative and judicial functions from time to time and in respect of any proceedings before the Tribunal, it is the place notified where the Tribunal shall hear the proceedings from time to time, but as a minimum it must have

- (a) a clean and working restroom with soap, running water and hand towels or a hand dryer, and if unisex, must be lockable from the inside,
- (b) a safe supply of drinking water,
- (c) a regulated ventilation system that maintains a temperature of 25 degrees Celsius or 77 degrees Fahrenheit at the warmest,
- (d) a lighting level of at least 100 lumens per square meter;
- (e) a suitably stocked first aid kit, and
- (f) a fire extinguisher in an appropriate location in accordance with a fire risk assessment conducted by the Fire and Rescue Department;

“parties” means any complainant and respondent to any proceedings before the Tribunal in accordance with rule 16(1)(a), and any other person ordered to be added as a party by the Tribunal, but includes any legal practitioner in accordance with rule 16(1)(b), or any authorized representative in accordance with rule 16(1)(c), of any or those persons;

“personal data” means data relating to a living individual who can be identified and includes data such as

- (a) the living individual’s location data, online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the living individual,
- (b) an expression of opinion about the living individual, or
- (c) any indication of the intentions of the Tribunal or any other person in respect of the living individual;

“resident”, in relation to the Virgin Islands or a sister island, means

lawfully, habitually and normally, residing or having a declared interest to lawfully, habitually and normally reside, in the Virgin Islands or a sister island as the case may be, apart from temporary and occasional absences, from choice and for a settled purpose such as, but not limited to, the purpose of business, profession, employment, education, health, family or pleasure;

“respondent” means the person or persons against whom the complaint is made;

“Roster of Accredited Labour Arbitrators” means the roster established and maintained by the Tribunal under rule 15(2); and

“Secretary to the Tribunal” means any person assigned by the Minister to the Tribunal in exercise of his or her duty under section 29(7) of the Act, and issued a certificate by the Chairperson, to provide administrative support of the Tribunal; and

“sensitive personal data” means personal data consisting of

- (a) the racial or ethnic origin of a living individual,
- (b) the political opinions of a living individual,
- (c) a living individual’s religious beliefs or other beliefs of a similar nature,
- (d) whether a living individual is a member of a trade union,
- (e) genetic data of a living individual,
- (f) a living individual’s physical or mental health or condition,
- (g) medical data,
- (h) a living individual’s sex life,
- (i) a living individual’s commission, or alleged commission, of an offence, or
- (j) any proceedings for any offence committed, or alleged, to have been committed, by a living individual, the disposal of any such proceedings or any sentence of a court in the Virgin Islands or elsewhere.

- (2) Any reference in these Rules to the Tribunal applies to both a full panel

acting by a majority and to the Chairperson acting alone.

- (3) An order or award of the Tribunal is either
 - (a) a “case management order”, being an order, direction or decision of any kind in relation to the conduct of proceedings made at a case management hearing under rule 25 or any other hearing, other than a trial, during which the Tribunal has all the powers of a case management hearing under rule 25 unless otherwise provided, not including the final determination of any issue which would be the subject of an award;
 - (b) a “preliminary order”, being an order, direction or decision of any kind in accordance with rule 13;
 - (c) a “costs order”, being an order, direction or decision of any kind in accordance with Part IX;
 - (d) an “enforcement order”, being an order, direction or decision of any kind in accordance with rule 42; or
 - (e) an “award”, being a decision, made at any stage of the proceedings (but not including a decision under rules 5 or 6 or a case management order), which finally determines
 - (i) a complaint, or part of a complaint, as regards liability, remedy or costs (including preparation time and wasted costs); or
 - (ii) any issue which is capable of finally disposing of any complaint, or part of a complaint.
- (4) A hearing before the Tribunal is either
 - (a) a “case management hearing” in accordance with rule 25;
 - (b) a “preliminary hearing” in accordance with rule 13;
 - (c) a “pre-trial hearing” in accordance with rule 27(1)(b);
 - (d) a “costs hearing” in accordance with Part IX;
 - (e) a “status hearing” in accordance with rule 55;
 - (f) an “enforcement hearing” in accordance with rule 42; or

(g) a “trial” in accordance with rule 34, but for the purposes of these Rules, any reference to a hearing shall not include a trial unless these Rules expressly provide otherwise and vice versa.

(5) Judicial notice may be taken of the signatures of the Tribunal.

(6) A reference to a rule as LPR 2(6) or rule 2(6) is a reference to a rule so numbered in these Rules.

Overriding
Objective.

3. (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly having regard to the interests of the persons concerned and the community as a whole. In doing so the Tribunal shall act in accordance with equity, good conscience and the substantial merits of the case before it having regard to the principles and practices of good industrial relations.

(2) Dealing with a case fairly and justly includes, in accordance with section 7(f) of the Act, so far as practicable

- (a) ensuring that the parties to any proceedings are on an equal footing, and that members of the Tribunal are independent, known as the “arms length principle”;
- (b) dealing with cases in ways which are proportionate to the complexity and importance of the issues, and for this purpose shall adopt a four-stage test as follows
 - (i) there must be a legitimate aim for the decision,
 - (ii) the decision must be suitable to achieve the aim based on available evidence,
 - (iii) the decision must be necessary to achieve the aim so that there cannot be any less onerous means of achieving that aim, and
 - (iv) the decision must be reasonable considering the competing interests of the parties;
- (c) avoiding unnecessary formality and seeking flexibility in the proceedings;
- (d) avoiding delay, so far as compatible with proper consideration of the issues; and
- (e) saving expense.

(3) The Tribunal shall seek to give effect to the overriding objective in interpreting, or exercising any power given to it by, any enactment. For this purpose, international labour standards developed by the International Labour Organization and the Oxford English Dictionary, or any of its lexicographical heirs, are declared to be relevant documents for the purpose of section 42(3)(f) of the Interpretation Act. The parties and their legal practitioners shall assist the Tribunal to further the overriding objective and in particular shall co-operate generally with each other and with the Tribunal.

(4) For the purpose of sub-rule (1), “equity” shall include

- (a) the law relating to express, resulting and constructive trusts;
- (b) the law of fiduciary duties;
- (c) the law of estoppel and laches;
- (d) the law of contract as it relates to duress, undue influence and exploitation;
- (e) the law of subrogation; and
- (f) equitable remedies, including injunctive relief, specific performance, account of profits, rescission, rectification, equitable compensation, appointment or removal of a person in a fiduciary capacity and equitable tracing.

(5) For the purpose of sub-rule (1), “good conscience” shall include considerations of

- (a) the bargaining power, age and mental capacity of any party;
- (b) fraud, misrepresentation, and deceit by any party;
- (c) the unconscionable advantage of another; and
- (d) bad faith in general.

(6) For the purpose of sub-rule (1), “substantial merits of the case” shall be a decision on the evidence in accordance with Part VI of these Rules after determining any and all jurisdictional and procedural issues, but the Tribunal shall not dismiss any complaint merely on a procedural issue.

(7) For the purpose of sub-rule (1), “good industrial relations” shall include the national policy under section 2 of the Act.

(8) For the purpose of sub-rule (2)(b)(iv), a decision shall be reasonable if, in accordance with section 7(b) of the Act, it is based on the following principles

- (a) similar facts should yield similar and predictable outcomes and for this purpose a decision by a superior court of record in the Virgin Islands, or by the Tribunal in an earlier decision on similar facts, is binding on the Tribunal;
- (b) the Tribunal may disregard its earlier decision on similar facts if the earlier decision was made through lack of due regard to the law or the facts and therefore the relevant part of the earlier decision was demonstrably wrong, known as a decision made *per incuriam*;
- (c) the Tribunal shall preclude the same complainant from commencing proceedings against the same respondent on the same facts where the Tribunal on its own initiative or a respondent raises the issue of *res judicata*; and
- (d) the Tribunal shall preclude any respondent from disputing a fact that has already been determined against one complainant in proceedings brought by another complainant where the Tribunal on its own initiative or a complainant raises the issue of *collateral estoppel*.

Filing
Documents.

4. (1) Any reference in these Rules to the filing of any document with the Tribunal shall include the following procedure

- (a) a document to be filed with the Tribunal must be delivered by hand to the Office of the Tribunal during business hours with the appropriate copies, including three (3) copies for the Tribunal, one (1) additional copy for the filing party and one (1) additional copy for any other person who may be entitled to a copy in accordance with these Rules;
- (b) the recording of receipt of the document by the Tribunal, and there shall be a presumption that the date and time stamped or written on such document shall be the date and time the document was received by the Tribunal;
- (c) the document duly filed shall form part of the case file; and
- (d) unless the Tribunal directs otherwise or it is otherwise provided by these Rules, a copy of the document duly filed shall be sent by the Tribunal to each other party to the proceedings within three (3) business days of receipt.

(2) Any reference in these Rules to any document to be lodged shall only apply the procedure outlined in sub-rule (1)(a) and (b).

(3) Subject to sub-rule (4), where the required copies in accordance with sub-rule (1)(a) were not provided by a party to the proceedings, or in any other case where the Tribunal is asked to make a copy of any document, the Tribunal shall make the appropriate copies.

(4) Notwithstanding sub-rule (1)(a), the Tribunal may require that any document that is to be filed with the Tribunal or lodged or sent to any party shall be filed, lodged or sent in electronic form.

(5) The Tribunal may, as an alternative to

(a) the filing or lodging of a document or other thing in a paper or physical form, permit the filing or lodging of an electronic record of the document or other thing by electronic means to an electronic mail box designated or approved by the Tribunal; and

(b) sending a document or other thing, permit the sending of an electronic record of the document or other thing.

(6) The filing, lodging or sending of an electronic record by electronic means shall be subject to such terms and conditions as the Tribunal may specify by guidelines, if any, issued in accordance with rule 7, or in any particular case by order of the Tribunal.

(7) Where a document or other thing in the form of an electronic record is filed or lodged by electronic means at the electronic mail box designated or approved under sub-rule (5)(a), the filing of the document or other thing shall be deemed to be effected at such time as the electronic record is accepted by the designated or approved electronic mail box.

(8) Any person may designate an electronic mail box for use by that person to communicate with the Tribunal in relation to matters concerning the Act or these Rules, subject to such terms and conditions as the Tribunal may specify by guidelines, if any, issued in accordance with rule 7, or in any particular case by order of the Tribunal.

(9) Where a person designates an electronic mail box under sub-rule (8) for the purpose of any proceeding before the Tribunal, any document or other thing required or authorised by the Act or these Rules to be sent by the Tribunal or the Secretary to the Tribunal to that person shall be deemed to be properly sent if it is sent in the form of an electronic record to that person's designated electronic mail box.

(10) Where an electronic record is sent to a designated electronic mail box under sub-rule (8), the electronic record shall be deemed to be received by the person to

whom it is addressed at the time the electronic record is accepted by the electronic mail box.

(11) Unless otherwise provided by these Rules or any order of the Tribunal, anything which is required to be sent to any person by the Tribunal or the Secretary to the Tribunal in accordance with these Rules shall be served by an enforcement agent, and a certificate of service endorsed by the enforcement agent on the reverse side of a copy of the document shall be sufficient evidence of service.

(12) Unless otherwise provided by these Rules, any guidelines, if any, issued in accordance with rule 7, or any order of the Tribunal, any electronic record must be in portable document format (PDF) and no more than 20 megabytes (MB).

(13) Where the Tribunal is of the opinion that any person obstructs or in any way interferes with or knowingly prevents any service by an enforcement agent, it shall refer any information it may have concerning any offence under section 107(c) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

No. 1 of 1997.

Time.

5. (1) Unless otherwise ordered by the Tribunal, an act required by these Rules or an order of the Tribunal to be done on or by a particular day may be done at any time during business hours on that day. If there is an issue as to whether the act has been done by that time, the party claiming to have done it shall provide evidence of compliance.

(2) If the time specified by these Rules or an order of the Tribunal for doing any act ends on a day other than a business day, the act is done in time if it is done on the next business day.

(3) Where any act is required to be, or may be, done within a certain number of days of or from an event, the date of that event shall not be included in the calculation. (For example, a Form of Consent shall be filed within fourteen (14) days of the date on which the Notice of Case Management Hearing was issued: if the Notice of Case Management Hearing was issued on 1st October the last day for filing the Form of Consent is 15th October).

(4) Where any act is required to be, or may be, done not less than a certain number of days before or after an event, the date of that event shall not be included in the calculation. (For example, if a party wishes to file additional evidence it must be filed not less than fourteen (14) days before the case management hearing: if the case management hearing is fixed for 15th October, the additional evidence shall be filed no later than 1st October).

(5) Where the Tribunal or these Rules imposes a time limit for doing any act, the last date for compliance shall, wherever practicable, be expressed as a calendar date.

(6) Where time is specified by reference to the date when a document is sent

to a person by the Tribunal, the date when the document was sent shall, unless the contrary is proved, be regarded as the date endorsed on the document as the date of sending or, if there is no such endorsement, the date shown on the letter accompanying the document. However, for the avoidance of doubt the Secretary to the Tribunal may cause it to be sent by publishing it in three (3) consecutive ordinary issues of the *Gazette* and it shall be deemed to have been duly sent on the date of the last such publication.

(7) The Tribunal may, on its own initiative or on the interlocutory application of a party, extend or shorten any time limit specified in these Rules or in any order, whether or not (in the case of an extension) the time limit has expired and in so doing shall act in accordance with the overriding objective under rule 3.

Irregularities
and Non-
Compliance.

6. (1) A failure to comply with any provision of these Rules or any order of the Tribunal does not of itself invalidate the proceedings or any step taken in the proceedings, unless the Tribunal so orders. In the case of such non-compliance, except in respect of a time limit, the Tribunal may, in accordance with the overriding objective under rule 3, make an order to put matters right either with or without an interlocutory application by a party.

(2) Subject to the approval of the Tribunal, the parties may by consent, which must be filed at least fourteen (14) days before the case management hearing or on any other deadline directed by the Tribunal in accordance with rule 27(1)(b), agree to dispense with compliance with any of these Rules or any case management order except rule 26 or any directions given under rule 27, and may accordingly include with their consent any written agreement to vary, suspend or replace any of these Rules.

Guidelines.

7. (1) Subject to these Rules and for the purpose of section 35 of the Act, the Chairperson of the Tribunal may issue guidelines to assist parties in the conduct of complaints before the Tribunal and as well as to regulate the practice, etiquette, conduct and discipline of individuals entered on the Roster of Accredited Labour Arbitrators and persons appearing before the Tribunal.

(2) Where there is no express provision in these Rules on any matter that may arise during any complaint, the Chairperson may give guidance as to the practice and procedure to be followed before the Tribunal in respect of that particular complaint, and the guidance given by the Chairperson shall be definitive and final.

(3) Any guidelines issued under sub-rule (1) must forthwith be published in the *Gazette* and made available to the parties to any complaint before the Tribunal and on the Internet site.

(4) A party, a member of the Tribunal or any other person with any business before the Tribunal must comply with any relevant guidelines unless there are good reasons for not doing so.

(5) Any guidelines shall take effect from the date of the guidelines unless

otherwise provided by the guidelines.

Forms.

8. (1) Unless otherwise provided by these Rules, the Tribunal may require the use of such forms as it may consider necessary for the conduct of any proceedings before it.

(2) Where the Tribunal requires the use of a form under sub-rule (1), it may issue guidelines in accordance with rule 7.

(3) Where under these Rules any

- (a) authorisation, undertaking, consent or notice is required to be given, or
- (b) application or request is required to be made,

the authorisation, undertaking, consent, notice, application or request (as the case may be) shall, unless the context requires otherwise, be given or made in writing, including by letter addressed to the Secretary to the Tribunal. For this purpose, in writing does not mean a message contained in the body of any mail sent from a designated electronic mail box but would include an electronic record of a letter attached to any mail sent from a designated electronic mail box.

(4) Unless the Tribunal directs otherwise, and subject to any guidelines, if any, issued in accordance with rule 7, every document prepared for use before the Tribunal must

- (a) be on “letter size” paper approximately 11 inches (28 cm) long by 8.5 inches (21.5 cm) wide;
- (b) be typewritten (not handwritten);
- (c) be double sided wherever possible and practical;
- (d) be no more than one and a half space between lines; and
- (e) use a font size of 12 pt. in Times New Roman, although any serif, sans serif, or semi-serif font typeface of equivalent size may be used.

(5) In the absence of any form issued in accordance with these Rules or any other enactment, the Secretary to the Tribunal may provide any unrepresented party a sample of any document approved by the Tribunal for this purpose upon the request by that party and the Secretary to the Tribunal shall not breach any prohibition under these Rules by simply providing a sample document.

PART II
COMMENCEMENT OF PROCEEDINGS

Applications by
Aggrieved
Persons.

- 9.** (1) A complainant who is
- (a) an aggrieved employee of the Crown under section 5 of the Act; or
 - (b) an aggrieved person under section 14 of the Act who is dissatisfied with the decision of the Commissioner,

may file an application with the Tribunal.

- (2) The application to the Tribunal under sub-rule (1)(a) shall include:
- (a) the name, address and description of the complainant;
 - (b) the relief, including the details of any interim relief sought against the Attorney General as the respondent on behalf of the Crown;
 - (c) the grounds on which such relief is sought; and
 - (d) the complainant's address for service, including an electronic mail box for this purpose, which shall be deemed to have been designated for the purpose of rule 4(8) unless otherwise determined by the Tribunal.

(3) The application to the Tribunal under sub-rule 1(a) must be accompanied by evidence which must include

- (a) the name, address and description of the complainant, and must be made by the complainant, but if the complainant is unable to give the evidence it may be made by some other person on the complainant's behalf but must state why the complainant is unable to do so;
- (b) the provision of the Act, any Rules or Orders made under the Act, which the complainant alleges has been contravened, and that contravention constitutes an offence; and
- (c) the facts on which the complaint is based.

(4) The application to the Tribunal under sub-rule (1)(b) shall include:

- (a) the name, address and description of the complainant;

- (b) the relief, including the details of any interim relief sought against the Commissioner as the respondent;
- (c) the grounds on which such relief is sought;
- (d) the complainant's address for service, including an electronic mail box for this purpose, which shall be deemed to have been designated for the purpose of rule 4(8) unless otherwise determined by the Tribunal;
- (e) whether an alternative form of redress exists and, if so, why an application to the Tribunal is more appropriate or why the alternative has not been pursued;
- (f) details of any consideration which the complainant knows the Commissioner has given to the matter in question in response to a complaint made by or on behalf of the complainant against an inspector in the exercise of a power under section 14(1) of the Act;
- (g) whether the application has been made within six (6) months and, if not, the reason or reasons for the delay; and
- (h) whether the complainant is personally or directly affected by the decision of the Commissioner, and if the complainant is not personally or directly affected, what public or other interest the complainant has in the matter.

(5) The application to the Tribunal under sub-rule 1(b) must be accompanied by evidence which must include

- (a) the name, address and description of the complainant, and must be made by the complainant, or if the complainant is not an individual, by an appropriate officer of the body making the complaint, but if the complainant is unable to make the affidavit it may be made by some other person on the complainant's behalf but must state why the complainant is unable to do so;
- (b) the decision of the Commissioner with which the complainant is dissatisfied; and
- (c) the facts on which the complaint is based.

(6) An appropriate remedy that the Tribunal may award in accordance with section 14(3) of the Act, include any one or more of

- (a) a quashing order, where the Tribunal may set aside the decision of the Commissioner or declare the decision of the Commissioner void or illegal;
- (b) a mandatory order, where the Tribunal may require performance of a duty by the Commissioner, including a duty to make a decision or determination or to hear and determine any redress under section 14(2) of the Act;
- (c) a prohibition order, where the Tribunal may prohibit unlawful acts by the Commissioner in exercise of any power under section 14(1) of the Act;
- (d) an order for any equitable remedy in accordance with rule 3(4)(f), except injunctive relief or specific performance against the Commissioner;
- (e) restitution or damages; and
- (f) costs in accordance with Part IX.

(7) For the purpose of a decision of the Commissioner in accordance with section 14(3) of the Act, the Commissioner must indicate to the aggrieved person that if he or she is dissatisfied with his or her decision that the aggrieved person may apply to the Tribunal within six (6) months of the Commissioner's decision, and failure by the Commissioner to give this indication shall be considered in favour of the complainant when considering any delay and costs.

(8) Notwithstanding sub-rule (7), where the aggrieved person is dissatisfied because the Commissioner has failed to respond to the aggrieved person under section 14(2) of the Act within a reasonable time, the Tribunal may consider the failure to respond as the decision of the Commissioner for the purpose of section 14(3) of the Act.

(9) The Tribunal may refuse the application under sub-rule (1)(b) if it is not submitted within six (6) months, in addition to any time limit imposed by any enactment, unless the Tribunal exercises its powers under rule 5(7) and for this purpose also considers that refusing the application would be likely to

- (a) be detrimental to good administration; or
- (b) cause substantial hardship to or substantially prejudice the rights of any person.

(10) If the complainant seeks a quashing order in accordance with sub-rule (6)(a) the complainant may not question the validity of the decision of the Commissioner unless before the trial the complainant has filed with the Secretary to the Tribunal

evidence of a copy of the decision of the Commissioner or the complainant files evidence which accounts for the failure to do so to the satisfaction of the Tribunal.

(11) If the complaint is for a quashing order in accordance with sub-rule (6)(a), the Tribunal may, if satisfied that there are reasons for quashing the decision to which the complaint relates

- (a) direct that the decision of the Commissioner be quashed on its removal to the Tribunal; and
- (b) may in addition remit the matter to the Commissioner with a direction to reconsider it in accordance with the findings of the Tribunal.

(12) An appropriate remedy that the Tribunal may award in accordance with section 5 of the Act, include any one or more of

- (a) restitution or damages, including any sum owing to the complainant by way of wages, vacation leave pay or other sum owing to the complainant arising out of his or her employment, as well as punitive damages and liquidated damages;
- (b) an order for any equitable remedy in accordance with rule 3(4)(f), except injunctive relief or specific performance against the Crown;
- (c) a declaration; and
- (d) costs only where the Tribunal finds in favour of the aggrieved employee of the Crown.

Referral of a
Public Issue
Complaint.

10. The Minister may refer a complaint under section 28(1)(a)(i) or (ii) of the Act to the Tribunal for hearing and consideration, and the reference shall include

- (a) the name, address and contact information of the complainant or each complainant, including an electronic mail box for this purpose, which shall be deemed to have been designated for the purpose of rule 4(8) unless otherwise determined by the Tribunal;
- (b) the name, address and contact information of the respondent, including an electronic mail box for this purpose, which shall be deemed to have been designated for the purpose of rule 4(8) unless otherwise determined by the Tribunal;
- (c) where it is a complaint under section 28(1)(a)(i), a statement of the nature of the complaint or a copy of the written complaint to the Commissioner or both;

- (d) where it is a complaint under section 28(1)(a)(ii), a statement of the nature of the health and safety issue that, in the opinion of the Minister, is a concern to any complainant or the public;
- (e) the date the complaint was received by the Commissioner, not being more than six (6) months from the date the complaint came to the knowledge of the complainant in accordance with section 181 of the Act;
- (f) the date the complaint was transmitted to the Minister, along with any agreement between the parties for an extension of time to transfer the complaint to the Minister, but the Commissioner's report to the Minister shall not be included; and
- (g) a copy of any report upon which the Minister relied to form his or her opinion, if any.

Referral of an Employment Complaint.

11. The Minister may refer a complaint under section 28(1)(a)(iii) of the Act to the Tribunal for hearing and consideration, and the reference shall only include

- (a) the name, address and contact information of the complainant or each complainant, including an electronic mail box for this purpose, which shall be deemed to have been designated for the purpose of rule 4(8) unless otherwise determined by the Tribunal;
- (b) the name, address and contact information of the respondent, including an electronic mail box for this purpose, which shall be deemed to have been designated for the purpose of rule 4(8) unless otherwise determined by the Tribunal;
- (c) a statement of the nature of the complaint along with a copy of the written complaint made to the Commissioner;
- (d) the date the complaint was received by the Commissioner, not being more than six (6) months from the date the complaint came to the knowledge of the complainant in accordance with section 181 of the Act;
- (e) the date the complaint was transmitted to the Minister, along with any agreement between the parties for an extension of time to transfer the complaint to the Minister, but the Commissioner's report to the Minister shall not be included; and
- (f) specify any remedy that the complainant seeks, if not included in the written complaint to the Commissioner, but where it is a complaint

under Part VII of the Act, the remedies shall include any one or more of the remedies outlined in section 127 of the Act.

Referral of any
Other
Complaint.

12. The Minister may refer a complaint under section 28(1)(c) of the Act, including any inquiry as a result of section 49(5) of the Act, to the Tribunal for hearing and consideration and the reference shall only include

- (a) the name, address and contact information of the complainant or each complainant, including an electronic mail box for this purpose, which shall be deemed to have been designated for the purpose of rule 4(8) unless otherwise determined by the Tribunal;
- (b) the name, address and contact information of the respondent, including an electronic mail box for this purpose, which shall be deemed to have been designated for the purpose of rule 4(8) unless otherwise determined by the Tribunal;
- (c) a statement of the nature of the complaint along with a copy of the written complaint made to the Commissioner or the nature of the inquiry;
- (d) the date the complaint was received by the Commissioner, not being more than six (6) months from the date the complaint came to the knowledge of the complainant in accordance with section 181 of the Act;
- (e) the date the complaint was transmitted to the Minister, along with any agreement between the parties for an extension of time to transfer the complaint to the Minister, but the Commissioner's report to the Minister shall not be included; and
- (f) a copy of the written notice to the parties and confirmation that there were no objections received from any complainant within fourteen (14) days of the written notice.

Jurisdiction.

13. (1) Notwithstanding rule 28(1), any party may file an interlocutory application for a determination of the jurisdiction of the Tribunal or to the arbitrability of a complaint within the period for filing a response under rule 19. The Tribunal shall rule on such an interlocutory application as a preliminary matter.

(2) The Tribunal shall have the power to determine a cause, to adjudicate and exercise any judicial power in relation to a cause in accordance with any enactment where the cause falls within its jurisdiction in accordance with section 90 of the Virgin Islands Constitution Order, 2007, which includes

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No. 1678.

- (a) a subject matter jurisdiction, whereby the jurisdiction of the

Tribunal shall be limited to the subject matters prescribed under the Act or any other enactment which confers jurisdiction on the Tribunal, and in particular under sections 5, 14, 28, 49 and 127 of the Act;

- (b) a territorial jurisdiction, whereby the subject matter jurisdiction of the Tribunal shall be limited to persons operating or doing business in the Virgin Islands or individuals employed by persons operating or doing business in the Virgin Islands;
- (c) an unlimited pecuniary jurisdiction, whereby the jurisdiction of the Tribunal in respect of its subject matter jurisdiction shall not be limited to any amount unless otherwise prescribed by the Act or any other enactment which confers jurisdiction on the Tribunal;
- (d) an original and exclusive jurisdiction to hear and determine any complaint within its subject matter jurisdiction prescribed under sections 14 and 28 of the Act; and
- (e) a concurrent jurisdiction with the High Court to hear and determine any complaint within its subject matter jurisdiction prescribed under sections 5 and 127 of the Act.

(3) Any decision by the Tribunal on an interlocutory application filed pursuant to sub-rule (1) shall take into consideration the nature of the jurisdiction it has under sub-rule (2) and any statutory time limit within which a person may commence proceedings before the Tribunal.

(4) Unless the Tribunal otherwise determines in accordance with rules 5(7), any party who does not make an interlocutory application pursuant to sub-rule (1) or rule 15(16) shall be deemed to accept the jurisdiction of the Tribunal and the arbitrability of the complaint.

(5) Where an interlocutory application is filed pursuant to sub-rule (1) the period for filing a response under rule 19, for filing a reply under rule 22, any other date set or action required to be taken in accordance with the Notice of Case Management Hearing is suspended until the determination of the interlocutory application by the Tribunal.

(6) The Tribunal shall give notice of a hearing, to be known as a “preliminary hearing”, in a similar manner and form, and subject to the same limitations and effects, as the Notice of Case Management Hearing with such modifications as may be appropriate, not later than the date originally scheduled for the case management hearing, during which the Tribunal shall have all the powers of a case management hearing under rule 25 and

- (a) may strike out the complaint if it determines that it has no jurisdiction; or
 - (b) may give an “unless order” identifying a particular breach which must be remedied by a particular date and failure to comply with the unless order will render the complaint struck out.
- (7) If the Tribunal determines that it has jurisdiction it
- (a) may
 - (i) fix a date for the case management hearing which shall not exceed sixty (60) days from the date of the preliminary hearing; or
 - (ii) treat the preliminary hearing as a case management hearing; and
 - (b) shall make an order fixing the dates by which the response under rule 19 and the reply under rule 22 shall be filed.

The Secretary to the Tribunal.

14. (1) The Secretary to the Tribunal shall send to all the parties within seven (7) days of the receipt of the application under rule 9(1) or the referral by the Minister under rules 10, 11 or 12

Form 1.
Schedule.

- (a) a copy of the application under rule 9(1) or the referral by the Minister under rules 10, 11 or 12;
- (b) a Form of Consent in Form 1 of the Schedule;
- (c) an extract of active entries on the Roster of Accredited Labour Arbitrators;
- (d) such other information, document or matter as the Chairperson may direct; and

Form 2.
Schedule.

- (e) a Notice of Case Management Hearing in Form 2 of the Schedule which must fix a date for the case management hearing within forty-five (45) to sixty (60) days of the date of issue of this Notice and inform the parties of the venue, which shall be the Office of the Tribunal, or where it is practical to do so, taking into consideration the number and complexity of complaints from a sister island currently before the Tribunal, at a venue on a sister island approved for this purpose by the Minister, subject to the limitation that in calculating the time to fix a date for the case management hearing the month of August, the seven (7) days following Boxing Day and

the seven (7) days following Easter Monday shall be excluded and with the effect of a summons in accordance with section 32 of the Act when served personally or by registered post.

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(2) In accordance with section 23(3)(b) of the Virgin Islands Constitution Order 2007 any referral by the Minister and any correspondence between the Secretary to the Tribunal and the parties to any proceeding before the Tribunal shall only be used for the purpose of the proceedings and shall not be available to the public or subject to any access to information request by any person not a party to the proceedings even where it has been made public by either party.

(3) The Notice of Case Management Hearing sent by the Secretary to the Tribunal shall include the case reference which shall include

- (a) the case number and year, for example, BVILAT 2020/001; and
- (b) the name of the parties,

and the case reference must be included in any correspondence between the Secretary to the Tribunal and the parties to any proceedings before the Tribunal, including any authorization, consent, notice, application or request. In addition to the items required in this sub-rule, the date of issue of the notice shall be included on the notice and signed by the Secretary to the Tribunal.

(4) The Secretary to the Tribunal, or any other person appointed by the Minister for any purpose connected with the work of the Tribunal, shall not act as attorney, agent or adviser of any party in or to any proceedings before the Tribunal, or give advice in any matter before the Tribunal, or act as notary public, or accept any gratuity for the performance of any duty in connection with his or her office.

(5) Any complaint against the Secretary to the Tribunal, or any other person appointed by the Minister for any purpose connected with the work of the Tribunal, for extortion, or not duly paying any money received by him or her in the execution of his or her duty, or with any fraud, wrongful act, or neglect in the discharge of the duties of his or her office, shall be referred to the Minister by the Tribunal.

(6) For the purposes of these Rules, the Secretary to the Tribunal shall have such power and authority and perform such duties as shall be necessary for the due conduct and discharge of the business of the Tribunal as the Tribunal shall direct, and shall be *ex officio* an enforcement agent. The Secretary to the Tribunal shall be subject to the general and special directions of the Tribunal and shall assist the Tribunal in the performance of its duties.

No. 15 of 2006.
No. 7 of 2007.

(7) In accordance with section 165 of the Evidence Act, 2006, where the Secretary to the Tribunal is not an *ex officio* Commissioner for Oaths by virtue of section 5(1) of the Commissioners for Oaths and Notaries Public Act, 2007, or a Commissioner

No. 7 of 2007. for Oaths in his or her own right, then for the purpose of section 14(3)(a) of the Commissioners for Oaths and Notaries Public Act, 2007, the Secretary to the Tribunal is empowered by these Rules, and only for the purpose of these Rules, to administer any oath, or take and receive statutory declarations or affidavits, only for the purposes of proceedings before the Tribunal, and in doing so shall act in accordance with the provisions of the Commissioners for Oaths and Notaries Public Act, 2007, except where the Tribunal allows evidence to be given through video link or by any other method of direct oral communication the Secretary to the Tribunal may administer any oath through video link or by any other method of direct oral communication subject to such conditions and in accordance with such directions as the Tribunal may determine.

No. 1 of 1997. (8) Where the Tribunal is of the opinion that any person swears falsely or makes a false affirmation or declaration before the Secretary to the Tribunal, it shall refer any information it may have concerning any offence under section 106 of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

No. 1 of 1997. (9) Where the Tribunal is of the opinion that any person publishes a report of anything contrary to sub-rule (2), it shall refer any information it may have concerning any offence under section 109(1)(h) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

Composition of the Tribunal. **15.** (1) The Form of Consent must be filed with the Tribunal by each party to the complaint within seven (7) days of the date of issue of the Notice of Case Management Hearing, and, unless it is accompanied by an application under sub-rules (3) and (6), must be signed by an individual entered on the Roster of Accredited Labour Arbitrators.

(2) For the purpose of section 29(4) of the Act, the Tribunal shall establish and maintain in such form, including documentary or electronic form, or both, and divided into such parts as the Tribunal considers appropriate, a Roster of Accredited Labour Arbitrators from which the parties may make their recommendation for appointment by the Minister, and a copy of the Roster of Accredited Labour Arbitrators shall be available for inspection at the Office of the Tribunal during any business hours.

(3) An individual who wishes to be entered on the Roster of Accredited Labour Arbitrators shall lodge an application supported by evidence as follows

- (a) a curriculum vitae along with a copy of a birth certificate, passport, belonging's card, resident's card, work permit exemption card or work permit card issued in the Virgin Islands and any certifications, degrees, awards or decorations;
- (b) a police certificate from each jurisdiction where the applicant resided over the past ten (10) years;
- (c) a bank reference letter from each financial institution for which the

applicant has had a financial relationship within the past twelve (12) months; and

- (d) a professional reference letter from an individual who has a professional relationship with the applicant,

except that an individual who

No. 12 of 2001.

- (i) provides evidence of up-to-date approval in accordance with any financial services legislation listed under Schedule 2 of the Financial Services Commission Act, 2001;
- (ii) is a retired director or senior manager of a bank, trust company, company management company or insurance company regulated under any financial services legislation referred to in paragraph (i); or
- (iii) is a member or fellow of the Chartered Institute of Arbitrators,

shall not be required to produce the items in paragraphs (b), (c) and (d).

(4) Where an individual applies under sub-rule (3) to be on the Roster of Accredited Labour Arbitrators the Tribunal shall satisfy itself that the individual

- (a) is a fit and proper person;
- (b) has attained the age of majority;
- (c) is a Belonger or is resident in the Virgin Islands for at least ten (10) years on the date of the application;
- (d) has an appreciable knowledge of labour relations, human resources management or particular areas of industry;
- (e) is competent to perform the duties of an Accredited Labour Arbitrator.

(5) Subject to sub-rule (6), the Tribunal shall approve or refuse to approve an individual to be on the Roster of Accredited Labour Arbitrators within sixty (60) days of the lodging of the application, and for this purpose the Secretary to the Tribunal shall on the first business day of each month send to the Chairperson all applications under sub-rule (3) received within the last month.

(6) The Tribunal may, on such terms as it considers appropriate, approve or refuse to approve an individual to be on the Roster of Accredited Labour Arbitrators within seven (7) days of the application where it is satisfied on the evidence that it is a

proper case for an expedited application, and for this purpose the Secretary to the Tribunal shall send to the Chairperson an application under this sub-rule immediately.

(7) The Tribunal may, on such terms as it considers appropriate, approve or refuse to approve an individual to be entered on the Roster of Accredited Labour Arbitrators notwithstanding sub-rule (4)(c) where it is satisfied that the applicant holds Her Majesty's Patent as Queen's Counsel or some special qualification or expertise not otherwise available in the Virgin Islands for the purpose of hearing a specific complaint before the Tribunal.

(8) Except where the fee agreement is disclosed to the Tribunal with the Form of Consent filed under sub-rule (1), and subject to any guidelines, if any, issued in accordance with rule 7, no fee or expense or any part of such fee or expense shall be paid to, or received by, any member of the Tribunal in respect of any proceedings before the Tribunal by or on behalf of a party to the proceedings, other than the Crown, after their appointment by the Minister.

(9) Any application filed under sub-rules (3), (6) or (7) and any decision of the Tribunal under sub-rules (5), (6) or (7), excluding personal data and sensitive personal data, shall be subject to any access to information request from the Minister, any other member of the House of Assembly, or any other person resident in the Virgin Islands in accordance with section 23(2) of the Virgin Islands Constitution Order 2007, subject to any guidelines, if any, issued in accordance with rule 7, except where the request is from the Minister or any other member of the House of Assembly no fee shall be payable for a copy of an application or decision, but in every case the Tribunal shall comply with an access to information request made under this sub-rule within thirty (30) days of the date on which the Tribunal receives both the request and any applicable fee.

UK SI 2007
No. 1678.

(10) Where the Tribunal refuses to approve an individual to be on the Roster of Accredited Labour Arbitrators in accordance with sub-rules (5), (6) or (7), the Secretary to the Tribunal shall send a notice of that fact within the time required for the decision to the applicant outlining the Tribunal's reason for its refusal and the decision of the Tribunal shall be final.

(11) An individual who is entered on the Roster of Accredited Labour Arbitrators

- (a) under sub-rule (5) may at any time apply to the Tribunal to be removed from the Roster of Accredited Labour Arbitrators or to amend any detail in respect of that individual; and
- (b) under sub-rule (7), notwithstanding sub-rule (13), shall be removed from the Roster of Accredited Labour Arbitrators at the end of the proceedings in the specific complaint for which he or she was approved.

(12) The Tribunal may on its own initiative suspend, cancel or revoke any entry on the Roster of Accredited Labour Arbitrators if it is satisfied that the person is no longer qualified under sub-rules (4), (24) or (25) and sub-rule (10) shall apply to its decision.

(13) The payment of the non-refundable application fee in sub-rule (4)(f) is valid until 31 December each year following the year of approval to be entered on the Roster of Accredited Labour Arbitrators and is subject to the payment of an annual renewal fee in the same amount for the continued validity of the approval to be entered on the Roster of Accredited Labour Arbitrators.

(14) As far as is reasonably practicable, the Tribunal shall ensure that the Roster of Accredited Labour Arbitrators is representative of the community as a whole based on gender, race, language, religion and national, ethnic or social origin.

(15) Upon receipt of the Form of Consent the Secretary to the Tribunal shall

- (a) forward it to the Minister as the recommendation of the party to be appointed by the Minister pursuant to section 29(4) of the Act for the purpose of the specific complaint; and
- (b) cause notice of the appointment by the Minister to be sent to all other members of the Tribunal and all parties within three (3) business days of its receipt from the Minister,

but a member of the Tribunal on the Roster of Accredited Labour Arbitrators recommended by a party to any proceedings before the Tribunal shall not be deemed an “associate” of that party in connection with these Rules for the purpose of section 79(1) of the Criminal Code, 1997 only as a result of such recommendation.

No. 1 of 1997.

(16) Subject to sub-rule (30), any party may object for any justifiable reason, by interlocutory application under rule 13(1), to the appointment by the Minister of any member of the Tribunal, except rule 28(1) shall apply to an interlocutory application filed under this sub-rule and the case management hearing shall have all the powers of a preliminary hearing for the purpose of this sub-rule, and where the Tribunal agrees with the objection it shall strike out the Form of Consent as being invalid from the outset and the party shall have seven (7) days from the date of that order to file a new Form of Consent.

(17) Any member of the Tribunal appointed by the Minister pursuant to section 29(4) of the Act, shall continue to act in respect of the specific complaint for which he or she was appointed by the Minister notwithstanding

- (a) any suspension, cancellation or revocation of their entry on the Roster of Accredited Labour Arbitrators in accordance with sub-rule (12); or

- (b) the invalidity of his or her approval to be entered on the Roster of Accredited Labour Arbitrators in accordance with sub-rule (13),

but a member of the Tribunal shall avoid accepting any appointment by the Minister where

No. 1 of 1997.

- (a) there is any conflict of interest in accordance with section 90 of the Criminal Code, 1997; or
- (b) he or she would be unavailable for any reason to constitute a full panel in a trial within sixty (60) days following the case management hearing.

(18) If for any reason the Chairperson appointed by the Minister pursuant to section 29(3) has any incapacity preventing him or her from performing the duties of the office in respect of a particular complaint,

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- (a) the Secretary to the Tribunal shall inform the Minister, who may appoint an alternate in accordance with section 20(1)(b)(ii) of the Interpretation Act; and
- (b) the matter shall proceed as though the alternate was appointed from the commencement of the proceedings in respect of the particular complaint.

(19) The Chairperson appointed by the Minister pursuant to section 29(3) of the Act and the other two members appointed by the Minister pursuant to section 29(4) of the Act shall constitute a full panel of the Tribunal for the purposes of any proceedings in respect of the complaint.

(20) The parties shall

- (a) not engage in any direct communication with the Chairperson or any other member of the Tribunal on substantive matters relating to the proceedings arising out of, or otherwise connected to, the complaint other than at the case management hearing, any other hearing under these Rules, or the trial; and
- (b) address any other oral or written communication intended for the Tribunal to the Secretary to the Tribunal.

(21) Any member of the Tribunal may participate in any hearing or trial through video link or by any other method of direct oral communication subject to such conditions and in accordance with such directions as the Tribunal may determine.

(22) A member of the Tribunal who is required to attend any hearing in accordance with these Rules shall be granted leave on full pay by his or her employer in accordance with section 77(2) of the Act, and the Tribunal shall refer any information it may have concerning any offence under section 78(5) of the Act to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

(23) Members of the Tribunal shall, in the absence of any guidelines issued in accordance with rule 7 in respect of their conduct, comply with the Guide to Judicial Conduct jointly authorized by the Lord Chief Justice of England and Wales and the Senior President of Tribunals in March 2020, as subsequently amended or revised, and any complaint against any member of the Tribunal in the discharge of the duties of his or her office contrary to such guidelines or the said Guide to Judicial Conduct shall be referred by the Secretary to the Tribunal to the Minister, who may remove any member on the basis of such complaint from participating in the particular proceedings and where the Minister exercises his or her power of removal under this sub-rule, the Tribunal may also exercise its power under sub-rule (12) to suspend or revoke the entry on the Roster of Accredited Labour Arbitrators.

(24) Upon lodging evidence of an up-to-date certificate issued in accordance with the Non-Profit Organisations Act, 2012, the following organisations may apply, as though the application is made under sub-rule (3), on behalf of an individual to be entered on the Roster of Accredited Labour Arbitrators

No. 10 of 2012.

- (a) the BVI Chamber of Commerce and Hotel Association;
- (b) the BVI Teacher's Union;
- (c) the Civil Service Association;
- (d) the BVI Christian Council;
- (e) the BVI Islamic Society;
- (f) the Association of Jamaican Residents in the BVI;
- (g) the Dominican Republic Association in the BVI;
- (h) the Guyanese Association of the BVI;
- (i) the St. Vincent and the Grenadines Association of the BVI;
- (j) any political party with at least two (2) seats in the House of Assembly;
- (k) any other body or organization whose demographic representation is at least 3.5% of the total population of the Virgin Islands as the

Tribunal may approve, in consultation with the Minister, by publication in the *Gazette* and on the Internet site, and any such approval shall be subject to any access to information request in accordance with sub-rule (9).

(25) For the purpose of sub-rule (14), where an individual entered on the Roster of Accredited Labour Arbitrators pursuant to sub-rule (24) is

- (a) resident on the island of Tortola in the Virgin Islands, the organisations under sub-rule (24)(a) – (d) shall make an equivalent application on behalf of another individual who shall be resident on a sister island, and vice versa; and
- (b) a male person, the organisations under sub-rule (24)(a) – (d) shall, in respect of its equivalent application under paragraph (a), that equivalent application shall be on behalf of a female person, and vice versa.

(26) Where the Tribunal is of the opinion that any person has threatened or exercised any form of violence, either directly or indirectly, against any member of the Tribunal or its staff in the performance of his or her duties, it shall refer any information it may have concerning any offence under section 86 of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

No. 1 of 1997.

(27) During any hearing, or during the trial, before the Tribunal, the parties and witnesses shall address:

- (a) the Chairperson, if a male person, as “Mr. Chairperson” or, if a female person, as “Madam Chairperson”;
- (b) the other members of the Tribunal, through the Chairperson, as “Mr.”, “Ms” or “Mrs.” followed by their last names; and
- (c) the Secretary to the Tribunal, through the Chairperson, if a male person, as “Mr. Secretary” or, if a female person, as “Madam Secretary”.

(28) The Chairperson shall be responsible for the maintenance of appropriate arrangements for the welfare, training and guidance of the individuals entered on the Roster of Accredited Labour Arbitrators, the Secretary to the Tribunal or the staff of the Tribunal within the resources made available by the Minister, and upon completion of mandatory training individuals entered on the Roster of Accredited Labour Arbitrators may use the designation “Accredited Labour Arbitrator” or “ALA”.

(29) Any party who fails to file a Form of Consent in accordance with sub-rule

(1) or any order of the Tribunal shall be deemed to accept the position of the other party and the Tribunal may summarily enter an award for the other party or otherwise exercise all the powers of a preliminary hearing or a case management hearing, with or without a hearing, for the purpose of this sub-rule.

(30) For the purpose of sub-rule (16), it shall be a good defence to prove to the satisfaction of the Tribunal that

- (a) the opposing party was previously informed in writing of the intention to recommend the Member of the Tribunal; and
- (b) before the Minister made the appointment either
 - (i) the opposing party provided no response, unless the non-response can be attributed to the fact that it should have been obvious that the intention to recommend the Member of the Tribunal would raise the particular objections being made by the opposing party; or
 - (ii) the opposing party provided a response confirming no objections.

Representation
before the
Tribunal.

16. (1) In any proceedings before the Tribunal, a party may

- (a) attend, or otherwise participate, personally;
- (b) be represented by a legal practitioner of his or her choice; or
- (c) be represented by any authorized representative in the case of any trading entity or non-profit organisation.

(2) Any party who intends to be represented by a legal practitioner in accordance with sub-rule (1)(b) shall

- (a) file a notice with the Tribunal, signed by the legal practitioner, indicating the name, address, and total cumulative number of years of practical experience, of the legal practitioner;
- (b) give a similar notice under paragraph (a) and pay a similar fee under paragraph (b) to rescind or change the representation by that legal practitioner, except where the legal practitioner files an application for permission to withdraw from the proceedings in accordance with the Legal Profession Act, 2015, and no evidence filed with such an application shall be sent to any other party to the proceedings; and

No. 13 of 2015.

No. 13 of 2015.

- (c) lodge a copy of his or her up-to-date practicing certificate issued

under the Legal Profession Act, 2015.

Cap. 100.
No. 10 of 2012.

(3) Any private business, whether incorporated or unincorporated, must file a copy of its up-to-date trade license issued under the Business, Professions and Trade Licenses Act or in the case of a non-trading entity, a certificate of registration issued under the Non-Profit Organisations Act, 2012 and the person, or any one of them, appearing on the trade license or certificate of registration, or any person authorized in writing by any such person, shall be deemed an authorized representative for the purpose of sub-rule (1)(c).

(4) Where a party to any proceedings before the Tribunal is a body corporate or other entity and the body corporate or other entity has been dissolved, struck-off, merged with another body corporate or other entity or acquired by any person, any person claiming to have an interest in the proceedings may file an interlocutory application for leave to be substituted for that party, stating the nature of the interest.

(5) A person granted leave under sub-rule (4) shall, subject to any terms and conditions imposed by the Tribunal, be treated as a party to the proceedings before the Tribunal.

(6) A party must ensure that the contact information provided to the Tribunal is accurate, and if at anytime during the proceedings the contact information changes that party must immediately notify the Tribunal, but not exceeding seven (7) days after the change.

Interpreters,
Translators,
Transcripts and
Disability
Access.

17. (1) The language of any proceedings before the Tribunal shall be English.

(2) Any party requiring an interpreter for any oral hearing shall file an interlocutory application for, or the Tribunal may on its own motion give, a direction that the Tribunal provide an interpreter and the Tribunal shall bear the costs of that service.

No. 15 of 2006.

(3) An interpreter of oral evidence given before the Tribunal shall swear an oath or make an affirmation before the Tribunal in accordance with section 23 of the Evidence Act, 2006.

No. 1 of 1997.

(4) Where the Tribunal is of the opinion that any interpreter has acted contrary to his or her oath or affirmation, it shall refer any information it may have concerning any offence under section 110(1) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

(5) Any party requiring a translator for any document shall make all arrangements directly with the translator and shall bear the costs of that service unless the Tribunal orders otherwise in accordance with rule 47.

No. 4 of 1995.

(6) For the purpose of section 30(4) of the Act, the provisions of the Recording of Court Proceedings Act, 1995 shall apply to the proceedings of the Tribunal

in the same manner as it applies to the High Court for the purpose of having a record of the trial before the Tribunal taken by a court reporter.

(7) Where a document or part of a document that is not in the English language is filed with the Tribunal, the document shall be accompanied by a translation of the document or that part of the document into the English language and the translation shall be verified by a statutory declaration or an affidavit of any person or authority who has the knowledge and competence to compare the original document with the translated version to verify the accuracy of the translation, and unless the Tribunal orders otherwise, that person shall not be required to appear before the Tribunal.

(8) Any party to any proceedings, legal practitioner, interpreter or witness, who has a physical or mental disability that has been medically certified to have a substantial adverse effect on his or her ability to carry out normal day-to-day activities may file an interlocutory application that the Tribunal give directions for any hearing or the trial, subject to such terms and conditions as the Tribunal may determine, to allow

- (a) audio access and assistive listening devices;
- (b) a note-taker to be present;
- (c) alternative seating arrangements or an alternative venue be used once approved by the Minister which must maintain the equivalent standard as that of the Office of the Tribunal; or
- (d) any other device, person, service animal, or accommodation,

but every effort shall be made by the Tribunal to ensure that a person with a medically certified physical or mental disability is not treated any differently from a person without such disability.

Strike or Lock
Out after
Minister's
Referral.

18. (1) The Tribunal shall stay the proceedings before it where either party participates in a strike or lock out after the Minister refers a complaint to the Tribunal.

(2) Where the Tribunal stays the proceedings before it in accordance with sub-rule (1), it shall refer any information it may have concerning any offence under section 28(8) of the Act to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

PART III THE RESPONSE

Filing a
Response.

19. The respondent shall file a response to the complaint with the Tribunal within fourteen (14) days of the date of issue of the Notice of Case Management Hearing.

Minimum
Requirements

20. (1) The response to the complaint shall as a minimum include

of a Response.

- (a) the respondent's full name;
- (b) the respondent's address, including an electronic mail box for this purpose, which shall be deemed to have been designated by the Tribunal for the purpose of rule 4(8) unless otherwise determined by the Tribunal;
- (c) the facts alleged in the complaint that the respondent admits;
- (d) the facts alleged in the complaint that the respondent denies, including any alternative version of events that the Respondent intends to rely on;
- (e) the facts alleged in the complaint that the respondent is unable to admit or deny;
- (f) in any complaint against an employer arising out of the dismissal of an employee, the respondent must provide
 - (i) the reason for the dismissal that the respondent intends to prove at trial which demonstrates the reasonableness of the dismissal;
 - (ii) whether the remedies under section 86(1)(a) of the Act would be acceptable to the respondent and to determine any compensation in accordance with section 86(2) of the Act, but if it is not acceptable or no statement is made as to their acceptability then the respondent accepts that the Tribunal may order the respondent to pay the complainant such punitive sum as it thinks fit;
- (g) in any complaint against an employer arising out of unequal remuneration, the respondent shall provide the facts as to how equal remuneration was paid that the Respondent intends to prove at trial;
- (h) in any complaint arising out of discrimination or other form of inequality in employment under Part VII of the Act, if the respondent intends to rely on any exemption from conduct that would otherwise contravene Part VII of the Act, the respondent must provide the exemption that the respondent intends to prove at trial;
- (i) a list or categories of documents in a convenient order and manner and as concise as possible upon which the respondent intends to

rely at trial.

(2) The response filed under sub-rule (1) may be accompanied by such evidence as the respondent considers necessary.

(3) Where, for the purpose of making a determination on a complaint, the Tribunal considers it appropriate to do so, the Tribunal may grant leave to the respondent to file additional evidence in support of the response filed under sub-rule (1).

(4) The period for the filing of additional evidence under sub-rule (3) shall not be less than fourteen (14) days before the case management hearing as the Tribunal may determine unless the Tribunal gives a direction under rule 27(1)(a).

(5) Where leave is granted for the filing of additional evidence, the additional evidence shall be confined only to the matters that had been raised in the response filed under sub-rule (1).

UK SI 2007
No. 1678.

(6) In accordance with section 23(3)(b) of the Virgin Islands Constitution Order 2007 the response filed under sub-rule (1) shall only be used for the purpose of the proceedings and shall not be available to the public or subject to any access to information request by any person not a party to the proceedings even where it has been made public by the respondent.

No. 1 of 1997.

(7) Where the Tribunal is of the opinion that any person publishes a report of the response contrary to sub-rule (6), it shall refer any information it may have concerning any offence under section 109(1)(h) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

(8) At least seven (7) days before the deadline to file a reply under rule 22, the respondent may replace the original response in its entirety by filing a new response as though it is being filed under rule 19, and for this purpose there shall be no need to show the original text and the amendments made to the original response.

Striking Out of
a Response.

21. (1) The Tribunal shall not strike out a response only because it does not contain all of the information required in rule 20 or was presented late, but the Tribunal shall consider any appropriate steps or measures as may be necessary in accordance with rules 5 or 6, and shall have all the additional powers of a preliminary hearing in accordance with rule 13(6) on its own initiative or on any interlocutory application to strike out a response.

(2) Where the respondent is not represented by a legal practitioner, and in the opinion of the Tribunal the defects with the response can be adequately remedied with the advice of a legal practitioner, the Tribunal may adjourn the case management hearing to allow the respondent time to obtain advice from a legal practitioner or otherwise to remedy the defects with the response, but in adjourning the case management hearing

under this sub-rule, the Tribunal shall not exercise any power to award costs if upon the adjourned date the respondent has adequately remedied the defects with the response.

(3) Any amended response filed under sub-rule (2) shall be as though it was filed under rule 20(8), and the deadline for filing the response shall be fixed by the Tribunal as well as the date for the complainant to file a reply or, if the complainant already filed a reply, then the date to file an amended reply, and the date for the adjourned hearing shall also be fixed by the Tribunal.

PART IV THE REPLY

Filing a Reply.

22. The complainant may file a reply to the respondent's response with the Secretary to the Tribunal within fourteen (14) days from the deadline for filing a response in accordance with rule 19.

Minimum Requirements of a Reply.

- 23.** (1) The reply to the respondent's response shall as a minimum include
- (a) the complainant's full name;
 - (b) the complainant's address, including an electronic mail box for this purpose, which shall be deemed to have been designated by the Tribunal for the purpose of rule 4(8) unless otherwise determined by the Tribunal;
 - (c) whether the complainant wishes to challenge anything in the respondent's response and if so, in as short as practicable, provide a statement of the complainant's own version of events if the complainant intends to prove a different version of events or any reason for resisting anything stated by the respondent that was not contained in the written complaint to the Commissioner;
 - (d) in any complaint against an employer arising out of the constructive dismissal of an employee, the complainant must provide the reason which made the continuation of the employment contract unreasonable that the complainant intends to prove at trial;
 - (e) a list of documents or categories of documents, including those already disclosed with the complaint, in a convenient order and manner and as concisely as possible upon which the complainant intends to rely at trial; and
 - (f) if it is not already included in the complaint, a schedule of loss setting out the amount that the Tribunal should award if the

complainant is successful.

(2) A reply filed under sub-rule (1) may be accompanied by such evidence as the complainant considers necessary.

(3) Where, for the purpose of making a determination on a complaint, the Tribunal considers it appropriate to do so, the Tribunal may grant leave to the complainant to file additional evidence in support of the reply filed under sub-rule (1).

(4) The period for the filing of additional evidence under sub-rule (3) shall not be less than fourteen (14) days before the case management hearing as the Tribunal may determine without a hearing unless the Tribunal gives a direction under rule 27(1)(a).

(5) Where leave is granted for the filing of additional evidence, the additional evidence shall be confined only to the matters that had been raised in the complaint and the reply under sub-rule (1).

UK SI 2007
No. 1678.

(6) In accordance with section 23(3)(b) of the Virgin Islands Constitution Order 2007 the reply filed under sub-rule (1) shall only be used for the purpose of the proceedings and shall not be available to the public or subject to any access to information request by any person not a party to the proceedings even where it has been made public by the complainant.

(7) Where the Tribunal is of the opinion that any person publishes a report of the reply contrary to sub-rule (6), it shall refer any information it may have concerning any offence under section 109(1)(h) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

(8) At least fourteen (14) days before the case management hearing, the complainant may replace the original reply in its entirety by filing a new reply as though it is being filed under rule 22, and for this purpose there should be no need to show the original text and the amendments made to the original reply.

Striking Out of
a Reply.

24. (1) The Tribunal shall not strike out a reply only because it does not contain all of the information required in rule 23 or was presented late, but the Tribunal shall consider any appropriate steps or measures as may be necessary in accordance with rules 5(7) or 6, and shall have all the additional powers of a preliminary hearing in accordance with rule 13(6) on its own initiative or on any interlocutory application to strike out a response..

(2) Where the complainant is not represented by a legal practitioner, and in the opinion of the Tribunal any defects with the complaint or the reply can be adequately remedied with the advice of a legal practitioner, the Tribunal may adjourn the case management hearing to allow the complainant time to obtain advice from a legal practitioner or otherwise to remedy the defects with the complaint or the reply, but in adjourning the case management hearing under this sub-rule, the Tribunal shall not

exercise any power to award costs if upon the adjourned date the complainant has adequately remedied the defects with the complaint or reply.

(3) Any amended reply filed under sub-rule (2) shall be as though it was filed under rule 23(8), and the deadline for filing the amended reply shall be fixed by the Tribunal and if the complainant also amended the complaint, then the respondent may amend its response in accordance with rule 20(8), and the date for the adjourned hearing shall also be fixed by the Tribunal.

PART V CASE MANAGEMENT HEARING

Case
Management
Powers.

25. (1) Except where these Rules provide otherwise, the Tribunal may by order at any case management hearing, either on its own initiative or on an interlocutory application

- (a) adjourn or bring forward a hearing to a specific date;
- (b) adjourn the proceedings in any case where the notice of the appointment of any member of the Tribunal by the Minister has not been received by the Tribunal at least fourteen (14) days before the case management hearing;
- (c) adjourn the proceedings in any case where the venue of the hearing, or any alternative venue in accordance with rule 17(8)(c), does not meet the minimum standards for the Office of the Tribunal in accordance with these Rules, and where the Tribunal adjourns the proceedings under this paragraph the Secretary to the Tribunal shall immediately notify the Minister;
- (d) consolidate proceedings;
- (e) deal with a matter without the attendance of any of the parties;
- (f) decide the order in which issues are to be heard;
- (g) direct a separate hearing of any issue;
- (h) direct that notice of any proceedings or interlocutory application be given to any person;
- (i) direct that part of any proceedings be dealt with as separate proceedings;

- (j) dismiss or give an award on a complaint after a decision on a preliminary issue only in accordance with rule 3(6);
- (k) exclude an issue from determination if the Tribunal can do substantive justice between the parties on the other issues and determines it would therefore serve no worthwhile purpose;
- (l) hold a hearing and receive evidence by video link or use any other method of direct oral communication;
- (m) instead of holding an oral hearing deal with a matter on written representations submitted by the parties;
- (n) stay the whole or part of any proceedings generally or until a specified date or event;
- (o) impose a fine not exceeding two hundred and fifty dollars for any civil contempt, in particular any willful breach of any case management order or rules 15(27), 26(2), 26(4), 34(12) and 36(3), but any fine imposed under this paragraph shall be recoverable in the same manner as a fee payable under the Act;
- (p) hear two or more complaints on the same occasion; and
- (q) take any other step, give any other direction, or make any other order for the purpose of managing the case and furthering the overriding objective.

(2) In considering whether to make an order, the Tribunal may take into account whether a party is prepared to give an undertaking, but shall not provide any interim remedy without an undertaking from the party benefiting from such interim remedy, and the undertaking must be endorsed with a notice in accordance with rule 39(6).

(3) The Chairperson shall receive evidence, hear witnesses and oral arguments during any case management hearing and may reserve decision on any interlocutory application but whether the decision is given at a hearing or otherwise it must be given in writing in accordance with section 7(c) of the Act, and sent to all parties, and it shall form part of the case file.

(4) Where the Tribunal exercises its power to adjourn any hearing or trial, it shall not adjourn the hearing or trial for more than thirty (30) days, and the Tribunal may only adjourn the same hearing or trial for a cumulative maximum of sixty (60) days except for reasons of defence, public safety, public order, public morality, public health or the administration of justice otherwise requires a longer adjournment.

(5) Any order made pursuant to this rule may by subsequent order of the Tribunal be varied, suspended, or set aside, and for this purpose the Tribunal shall consider any appropriate steps or measures as may be necessary in accordance with rule 6(1).

(6) The Secretary to the Tribunal shall send a copy of the case file, either in documentary or electronic form, or both, to the Chairperson at least five (5) days before the date fixed for the case management hearing.

(7) The Secretary to the Tribunal shall send to the Chairperson, and any other person as may be directed by the Chairperson at least by the last business day of each week with a list of the date and time of all applications under rule 15, all complaints, as well as all applications and requests scheduled for consideration during the following week.

(8) When sending the notice in accordance with rule 15(15)(b), or after any adjourned case management hearing, the Secretary to the Tribunal shall

- (a) send a copy of the Notice of Case Management Hearing, or a copy of any order adjourning the case management hearing, to the members of the Tribunal recommended by the parties; and
- (b) canvass the members of the Tribunal recommended by the parties to determine the most convenient dates for a trial not more than sixty (60) days after the case management hearing.

(9) The Secretary to the Tribunal shall send to the Chairperson a list of the most convenient dates for a trial along with the case file in accordance with sub-rule (6).

(10) The Secretary to the Tribunal may contact the parties from time to time in order to monitor compliance with any case management order. The parties must respond promptly to any such enquiries.

Attendance by parties.

26. (1) If a party is represented by a legal practitioner in accordance with rule 16(1)(b), that legal practitioner must attend every proceeding on behalf of the party before the Tribunal and the Tribunal may consider as an appropriate excuse for non-attendance by a legal practitioner, subject to any undertaking as to costs

- (c) evidence of illness with a medical certificate exhibited; or
- (d) evidence of appearance before any superior court of record for the Virgin Islands.

(2) A legal practitioner shall attend every proceeding on behalf of any party in formal business attire of dark colours (black, blue, grey or brown), with appropriately

groomed hair without head covering except for religious purposes, and the Tribunal shall hear in order of priority

- (a) the Attorney General;
- (b) the Solicitor General on behalf of the Crown or any legal practitioner who holds Her Majesty's Patent as Queen's Counsel and is appearing at the appointed time and venue *in pari passu* the Solicitor General or any other Queen's Counsel;
- (c) any Senior Crown Counsel on behalf of the Crown or any legal practitioner who has at least ten (10) years practical experience who is appearing at the appointed time and venue *in pari passu* any Senior Crown Counsel or any other senior legal practitioner;
- (d) any other legal practitioner who is appearing at the appointed time and venue *in pari passu* any other legal practitioner; and
- (e) any unrepresented party who is attending personally at the appointed time and venue *in pari passu* any other unrepresented party.

(3) The general rule is that the party must attend the case management hearing and every hearing during which the Tribunal has all the powers of a case management hearing under rule 25, but the Tribunal may dispense with the attendance of a party when that party is represented by a legal practitioner.

(4) Unless with the express permission of the Tribunal, any party attending before the Tribunal must attend in accordance with the following rules of etiquette which may be supplemented by any guidelines issued in accordance with rule 7

- (a) be dressed in at least business casual attire, which includes no jeans, no sneakers, no sandals, no work boots, no t-shirts, no sunglasses, no hats, clothing should adequately cover any tattoos, no large or excessive jewellery, and except for earrings (both men and women), no jewellery in body piercings;
- (b) attend at the appointed time and venue;
- (c) turn off all electronic devices, including radios, tape recorders, computers, cameras and cell phones;
- (d) when allowed by the Tribunal, address the Tribunal, any other party, the Secretary to the Tribunal or any other person with business before the Tribunal in a polite and courteous manner;

- (e) remain seated while addressing the Tribunal, or questioning a witness;
- (f) rise when the Tribunal enters and leaves the room or at such other times as may be instructed by an enforcement agent, and if the Tribunal is already sitting, upon entering the room not to sit except as directed by an enforcement agent or the Tribunal;
- (g) not to speak while someone else is speaking;
- (h) direct all concerns and remarks to or through the Chairperson and not any other party, except a witness during cross-examination or re-examination;
- (i) no smoking, no eating, no drinking and no chewing;
- (j) no minor is allowed; and
- (k) no overt advertising, campaign buttons, and campaign materials are permitted.

(5) If a party does not attend the case management hearing or any other hearing during which the Tribunal has all the powers of a case management hearing under rule 25, either personally or by his or her legal practitioner, the Tribunal may adjourn the hearing to a fixed date with the condition that should the party or his or her legal practitioner not attend on the next fixed date the Tribunal shall proceed in the absence of the party, but where the Tribunal exercises its power of adjournment under this sub-rule it shall consider awarding costs against the non-appearing party in accordance with Part IX.

(6) Unless otherwise directed by the Tribunal on application of any party, the case management hearing shall not be held in public.

(7) Any person having any business at the Office of the Tribunal, or any other venue where the Tribunal may be sitting, may be refused entry where an enforcement agent has caused the person to be searched, either by hand or by any electronic device, or has not been permitted to search the person, and has reason to suspect that the person has an offensive or prohibited weapon, in accordance with section 68(1) of the Criminal Code, 1997, concealed about his or her person.

(8) The Tribunal may on an interlocutory application, or on its own initiative for reasons of defence, public safety, public order, public morality, public health or the administration of justice, allow a party to attend and to give evidence through video link or by any other method of direct oral communication subject to such conditions and in accordance with such directions as the Tribunal may determine.

(9) A party who is required to attend any hearing in accordance with these Rules shall be granted leave on full pay by his or her employer in accordance with section 77(2) of the Act, and the Tribunal shall refer any information it may have concerning any offence under section 78(5) of the Act to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

No. 1 of 1997.

(10) Where the Tribunal is of the opinion that any party or any other person within the precincts of any hearing shows disrespect, in speech or manner, to or with reference to any proceedings before the Tribunal, or causes any obstruction or disturbance it shall refer any information it may have concerning any offence under section 109(1)(a) or (f) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

(11) Unless otherwise directed by the Tribunal, a case management hearing shall be scheduled for 30 minutes in the first instance, but if there are matters which may cause the case management hearing to be extended for a longer period, the Tribunal may stand down the matter for a later time on the same day or exercise its case management power under rule 25(1)(a) to adjourn the matter to another day, time and venue.

Directions for Trial.

27. (1) At the case management hearing the Tribunal may, in addition to exercising any of its other powers, give the following directions

- (a) the date for any party to provide additional evidence;
- (b) the deadline for filing any interlocutory application, or any opposition, for determination by the Tribunal and fixing a date for any further hearing before the trial date to be known as the “pre-trial hearing”;
- (c) the total number of witnesses for each party and the issuing of witness summons in accordance with these Rules;
- (d) the total time to be allowed for the trial, including any time limits on examination-in-chief, cross-examination, re-examination and closing addresses;
- (e) the trial which must be fixed to a business day within thirty (30) to forty-five (45) days of the case management hearing at a venue permitted by the Minister for public hearings and trials, subject to the limitation that in calculating the time to fix a date for the trial the month of August, the seven (7) days following Boxing Day and the seven (7) days following Easter Monday shall be excluded.; and
- (f) any inspection of any place or thing during the trial that may be relevant to any issue in the complaint.

(2) A party may file an interlocutory application if that party wishes to vary, suspend or set aside any of the directions given pursuant to sub-rule (1), and for this purpose the Tribunal shall consider any appropriate steps or measures as may be necessary in accordance with rule 6(1).

(3) The Secretary to the Tribunal shall send a copy of any directions for trial given at a case management hearing to each member of the Tribunal appointed by the parties within seven (7) days after the case management hearing.

Interlocutory
Applications.

28. (1) Unless otherwise provided in these Rules, all interlocutory applications to the Tribunal shall be filed and accompanied by evidence in support at least fourteen (14) days before the case management hearing or on any other deadline directed by the Tribunal in accordance with rule 27(1)(b), but if an interlocutory application is made after that date in accordance with rule 5(7) when it could have reasonably been made by that date, the applicant may be ordered to pay the costs of the application in accordance with rule 47.

(2) Any party who opposes any interlocutory application shall file an affidavit in response at least seven (7) days before the case management hearing or on any other deadline directed by the Tribunal in accordance with rule 27(1)(b), but where the Tribunal finds that the opposition is unreasonable in the circumstances, the opponent may be ordered to pay the costs of the application and opposition in accordance with rule 47.

(3) If no opposition to an interlocutory application, or any application for an extension of time to file the opposition in accordance with rule 5(7), is received by the Tribunal within the time required by sub-rule (2), the Tribunal may make any order it deems appropriate in the circumstances without a hearing.

(4) Where the interlocutory application is not made before the deadline in accordance with sub-rule (1) and there is no other hearing date scheduled for this matter before the trial date, the Tribunal may make an order to schedule a hearing and if it is not fourteen (14) days before the trial date, the full panel may vacate the trial date and may give new directions at the trial for the purpose of rule 27(1).

PART VI EVIDENCE

Disclosure of
Documents.

29. (1) A party must disclose all documents, other than privileged documents, which are directly relevant to the matters in question in the proceedings in either the list of documents filed with the response under rule 20(1)(i) or the list of documents filed with the reply under rule 23(1)(e).

(2) A party who fails to give disclosure by filing the list of documents with a response under rule 19, the list of documents with a reply under rule 22 or any additional evidence, may not rely on or produce at the trial any document not so disclosed without the leave of the Tribunal.

UK SI 2007
No. 1678.

(3) In accordance with section 23(3)(b) of the Virgin Islands Constitution Order 2007, documents disclosed in proceedings before the Tribunal shall only be used for the purpose of the proceedings in which it is disclosed and shall not be available to the public or subject to any access to information request by any person not a party to the proceedings even where it has been made public by the party disclosing it.

No. 1 of 1997.

(4) Where the Tribunal is of the opinion that any person publishes a report of any document contrary to sub-rule (3), it shall refer any information it may have concerning any offence under section 109(1)(h) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

(5) A party shall be deemed to admit the authenticity of any document disclosed to that party under this rule unless that party files a notice with the Tribunal within seven (7) days before the case management hearing or on any other deadline directed by the Tribunal in accordance with rule 27(1)(b), that the documents must be proved at trial.

Inspection of
Documents.

30. (1) A party has a right to inspect any document which has been disclosed.

(2) The party wishing to inspect the document must file written notice of the intention to inspect the disclosed document.

(3) The party who is to give inspection must permit inspection not more than seven (7) days after the date on which the written notice was received from the Tribunal and lodge confirmation of inspection, or that inspection was made available, with the Tribunal by the day following the inspection or the deadline for doing so.

(4) If the party giving the notice undertakes to pay the reasonable cost of copying, the other party must lodge with the Tribunal a copy of each document requested not more than seven (7) days after the date on which the notice was received.

No. 1 of 1997.

(5) A party who fails to give inspection by the date required may not rely on or produce at the trial any document and the Tribunal shall refer any information it may have concerning any offence under section 109(1)(d) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

No. 1 of 1997.

(6) Where the Tribunal is of the opinion that any party has removed, destroyed or otherwise tampered with evidence, with the intent of preventing it from being used before the Tribunal, it shall refer any information it may have concerning any offence under section 105 of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

Admissibility
of Documents

31. (1) Any document, including any contract of employment which is considered

subject to stamp duty.
Cap. 212.

by the Tribunal under section 44(3) of the Act, for which stamp duty is payable in accordance with section 21 of the Stamp Act shall not be admissible before the Tribunal until the stamp duty has been paid and evidence of payment is provided to the Tribunal.

(2) The Tribunal may make any order conditional on the payment of the stamp duty or may require the lodging of proof of payment by a fixed date before any other step or action is taken by a party.

Requests for Additional Evidence.

32. (1) A party may obtain from any other party additional evidence about any matter which is in dispute in the proceedings by filing a request with the Tribunal identifying the information sought.

(2) If a party does not, within seven (7) days of receipt of the request, file the additional evidence which another party has requested under sub-rule (1), the party who filed the request may file an interlocutory application within fourteen (14) days before the case management hearing, or in accordance with a direction given under rule 27(1)(a), for an order compelling the other party to do so.

(3) An order may not be made under sub-rule (2) unless it is necessary to dispose fairly of the complaint.

(4) When considering whether to make an order under sub-rule (2), in addition to the overriding objective under rule 3, the Tribunal must have regard to

- (a) the likely benefit which will result if the additional evidence is given;
- (b) the likely cost of giving it; and
- (c) whether the financial resources of the party against whom the order is sought are likely to be sufficient to enable that party to comply with the order.

Statutory Declarations and Affidavits.
No. 15 of 2006.

33. (1) For the purposes of any proceedings before the Tribunal, a statutory declaration in the form prescribed in Schedule 4 to the Evidence Act, 2006 or an affidavit may be made and subscribed in accordance with section 152 of the Evidence Act, 2006.

(2) A person who signs a statutory declaration or affidavit shall state on the statutory declaration or affidavit the capacity in which he or she makes the declaration or affidavit.

(3) A document purporting to have affixed, impressed or subscribed to or on it the seal or signature of a person authorized by sub-rule (1) or rule 14(7) to take a statutory declaration or affidavit may be admitted by the Tribunal without proof of the genuineness of the seal or signature or of the official character of the person or his or her authority to take the declaration or affidavit.

(4) If a statutory declaration or affidavit is not filed within the time specified by the Tribunal, the witness may not be called and the evidence may not be adduced unless the Tribunal permits, with good cause being shown, in accordance with rule 5(7).

UK SI 2007
No. 1678.

(5) In accordance with section 23(3)(b) of the Virgin Islands Constitution Order 2007 a statutory declaration or affidavit shall only be used for the purpose of the proceedings in which it is filed and shall not be available to the public or subject to any access to information request by any person not a party to the proceedings even where it has been made public by the party swearing or affirming it.

No. 1 of 1997.

(6) Where the Tribunal is of the opinion that any person publishes a report of any statutory declaration or affidavit contrary to sub-rule (5), it shall refer any information it may have concerning any offence under section 109(1)(h) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

(7) The Tribunal may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any statutory declaration or affidavit.

(8) A statutory declaration or affidavit containing any alteration may not be used in evidence unless all such alterations have been initialed by the witness and the person before whom it is sworn.

(9) Notwithstanding rule 4(1)(d), a party to any proceedings before the Tribunal who files a statutory declaration or affidavit under these Rules other than with a response, a reply or an interlocutory application shall send a copy of the statutory declaration or affidavit to each other party to the proceedings.

(10) Subject to sub-rule (11), a party to any proceedings before the Tribunal may file a photograph as an exhibit to any statutory declaration or affidavit which must be of sufficient size and clarity to properly depict any details of the exhibit referred to in the statutory declaration or affidavit.

(11) A party who files a photograph under sub-rule (10) shall, at the same time as he or she files the photograph, give a written undertaking to the Tribunal that he or she will produce the original of the exhibit at the trial and whenever otherwise required by the Tribunal.

(12) Where a party files a statutory declaration or affidavit in accordance with these Rules otherwise than when accompanying a response, a reply or an interlocutory application shall pay a fee of **\$25.00**.

(13) Where the Tribunal is of the opinion that any material evidence is false, it shall refer any information it may have concerning any offence under section 110(1) of the Criminal Code, 2010 to the Commissioner of Police in addition to exercising any of

No. 1 of 1997.

its case management powers under rule 25.

PART VII THE TRIAL

Trial. **34.** (1) A full panel shall be constituted in any particular case to take oral evidence, in addition to any evidence filed by way of a statutory declaration or affidavit and any other document properly before the Tribunal, during a full hearing on the substantial merits of the case to be called a “trial”.

UK SI 2007
No. 1678. (2) Subject to sub-rule (3), and in accordance with section 16(10) of the Virgin Islands Constitution Order 2007, the trial shall be held in public at such venue as the Minister may permit, except with the consent of all the parties.

(3) Where the Tribunal forms the opinion, either on an interlocutory application or on its own initiative, that a trial will or is likely to involve a discussion or revelation of a trade secret or other matter of a confidential nature which might not be in the interest of any of the parties if the trial was held in public, the Tribunal shall order such trial to be held in private, or may order such trial to be held in public subject to such terms and conditions as the Tribunal may direct.

(4) The Secretary to the Tribunal shall send a copy of the case file, either in documentary or electronic form, or both, to each member of the Tribunal at least ten (10) days before the trial date.

(5) The Secretary to the Tribunal shall send a report to the Chairperson at least by the last business day of each month with a list of the date, time and venue of all trials to be held during the following month and such report shall also be published on the Internet site with such redaction or specially edited version where it includes any trial that will not be held in public in accordance with these Rules.

(6) Rule 26 shall apply to parties at the trial with the following modifications as though references to any hearing is a reference to a trial

- (a) the Tribunal may not dispense with the attendance of a party even when a party is represented by a legal practitioner;
- (b) an individual must rise and remain standing while addressing the Tribunal, or questioning a witness;
- (c) rule 26(6) does not apply to a trial; and
- (d) unless otherwise directed by the Tribunal, a trial shall be scheduled for three (3) hours in the first instance, but if there are matters which may cause the trial to be extended for a longer period, the Tribunal may exercise its case management powers under rule

25(1)(a) to adjourn the trial to another day, time and venue.

Attendance of
Witnesses.

35. (1) A witness summons is a document issued with or without an interlocutory application pursuant to section 32(1) of the Act to any person who has sworn evidence in proceedings before the Tribunal, or has possession of some document relevant to the proceedings, or is otherwise relevant to the proceedings including any expert witness.

Form 3.
Schedule.

(2) There must be a separate witness summons issued for each witness in Form 3 of the Schedule.

(3) A witness summons is issued on the date entered on the summons by the Chairperson and shall remain valid until the conclusion of the trial or any other date on which the witness is required to appear before the Tribunal.

(4) A witness summons shall only be valid if sent at least seven (7) days before the date of the trial or other date on which the witness is required to appear before the Tribunal, unless the Tribunal permits, with good cause being shown, in accordance with rule 5(7).

(5) The Tribunal may dispense with the issuing of a witness summons and instead order any person who is present on the date of the order to be bound over to appear on the date of the trial or any other date to give evidence or produce any document to the Tribunal and shall cause a copy of that order to be sent to that person.

(6) Unless otherwise directed by the Tribunal in accordance with rule 47, the cost and expense of any witness shall be borne by the party calling the witness, but the cost and expense of any witness shall not exceed \$50.00 without the prior approval of the Tribunal.

No. 1 of 1997.

(7) Where a witness who has been issued a valid witness summons, or ordered to be bound over, fails to attend without reasonable cause, the Tribunal shall refer any information it may have concerning any offence under section 34 of the Act and section 109(1)(b) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

No. 1 of 1997.

(8) Where a witness who has been issued a valid witness summons, or ordered to be bound over is present before the Tribunal and being called upon to give evidence, refuses to be sworn or to make an affirmation, the Tribunal shall refer any information it may have concerning any offence under section 109(1)(c) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

(9) Where a witness who has been issued a valid witness summons, or ordered to be bound over, attends before the Tribunal to give evidence and remains in the room in which the proceeding is being held after the witnesses have been ordered to leave the room, the Tribunal shall refer any information it may have concerning any offence under

No. 1 of 1997.

section 109(1)(e) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

(10) Where a witness who has been issued a valid witness summons, or ordered to be bound over, attends before the Tribunal to give evidence and knowingly makes a false statement under oath or affirmation, the Tribunal shall refer any information it may have concerning any offence under section 32(4) of the Act to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

(11) The Tribunal may on an interlocutory application, or on its own initiative for reasons of defence, public safety, public order, public morality, public health or the administration of justice, allow a witness to give evidence through video link or by any other method of direct oral communication subject to such conditions and in accordance with such directions as the Tribunal may determine.

(12) A witness shall appear before the Tribunal subject to the same rules of etiquette in accordance with rule 34(6).

(13) A witness who is required to attend any hearing in accordance with these Rules shall be granted leave on full pay by his or her employer in accordance with section 77 of the Act and shall not be dismissed because he or she has given evidence before the Tribunal, and the Tribunal shall refer any information it may have concerning any offence under section 78(5) of the Act or sections 107(b) or 109(1)(j) of the Criminal Code, 1997 to the Commissioner of Police in addition to exercising any of its case management powers under rule 25.

No. 1 of 1997.

Cross-examination.

36. (1) Unless otherwise provided by these Rules, any person who has provided evidence before the Tribunal, whether oral evidence or by way of statutory declaration or affidavit, may be cross-examined and re-examined on that evidence as the Tribunal may direct.

No.15 of 2006.

(2) Any person giving oral evidence before the Tribunal shall swear an oath or make an affirmation in accordance with section 23 of the Evidence Act, 2006.

(3) The Tribunal may set limits on the time that a party may take in cross-examination and re-examination, and may prevent the party from proceeding beyond any time so allotted.

Closing Submissions.

37. (1) The Tribunal may permit the parties to file written closing submissions by a fixed date instead of giving closing addresses to the Tribunal, and upon the date fixed for filing those written closing submissions, if any, shall conclude the trial.

(2) The Tribunal may not accept any representation, other than in relation to costs, after it has concluded the trial unless it orders the reopening of the trial by giving notice of the date, time and venue of the reopened trial to all parties to the proceedings.

(3) The Tribunal may set limits on the time that a party may take in closing addresses, and may prevent the party from proceeding beyond any time so allotted.

PART VIII ORDERS AND AWARDS

Time of Final
Order or
Award.

38. (1) Within thirty (30) days after the Tribunal has closed the trial, the Tribunal shall give notice to the parties of any final order or award in the matter or of any order extending this deadline for reasons of defence, public safety, public order, public morality, public health or the administration of justice, except that the Tribunal may fix a date to report on the compliance with any final order or award within the time for a costs hearing under rule 49(3).

UK SI 2007
No. 1678.

(2) For the purpose of section 16(10) of the Virgin Islands Constitution Order 2007, the final award or order shall be delivered in public unless the trial was not held in public in accordance with rule 34(2) or (3), and when delivered in public it shall also be published on the Internet site in accordance with section 7(e) of the Act, but in any other case a redacted or specially edited version may be published on the Internet site with the consent of the parties.

Form of Order
or Award.

39. (1) Every order or award must state the name and position of the person or persons who made it and give the names and capacity of all persons in attendance, including the Secretary to the Tribunal and any staff of the Tribunal who were present for the order or award.

(2) Every order or award must bear the date on which it is given or made with the signature of the person or persons who made it, along with a dissenting opinion, if any, and may bear such security measures and other features as the Tribunal deem appropriate to reduce the possibility of fraud.

(3) Every order or award must be drawn by the Tribunal.

(4) Unless otherwise directed by the Tribunal, an enforcement agent shall send every order or award to every party to the proceedings and any other person to whom the Tribunal directs the order or award to be sent.

(5) An order or award for a sum of money shall also indicate whether interest on that sum is included in the order or award from the date of the cause of the complaint until the date of the order or award and shall also include a reference to section 7 of the Judgments Act on interest from the date of the order or award until the sum ordered has been satisfied.

Cap. 35.

(6) An order or award by the Tribunal to do or cease from doing any act whether permanently or within a specified time shall be endorsed with a notice in the following terms:

“PENAL NOTICE: If you fail to comply with the terms of this order,

proceedings may be commenced against you for contempt of court and you may be liable to be imprisoned.”

or in the case of an order or award made against a body corporate, in the following terms:

“PENAL NOTICE: If [name of body corporate] fails to comply with the terms of this order proceedings may be commenced for contempt of court and you [name of officer] may be liable to be imprisoned or to have an order of sequestration made in respect of your property.”

Time When
Order or Award
to Take Effect.

40. An order or award takes effect from the day it is given or made, unless the Tribunal specifies that it is to take effect on a different date, and a party must comply with an order or award immediately unless the Tribunal varies the order under rule 42(9).

Correction of
errors in Orders
or Awards.

41. The Tribunal may, on an interlocutory application of any party or on its own initiative, at any time correct a clerical error in an order or award, or an error arising in an order or award from any accidental slip or omission.

Enforcement of
Orders or
Awards.

42. (1) In this rule

“judgment creditor” means the person who is entitled to the benefit of an order or award of the Tribunal; and

“judgment debtor” means the person who is to suffer a detriment or obligation of an order or award of the Tribunal.

(2) Pursuant to section 30(4) of the Act and, subject to these Rules or any guidelines, if any, issued in accordance with rule 7, once an order or award takes effect the Tribunal must issue an enforcement order on the interlocutory application of the judgment creditor supported by evidence which must

- (a) certify the amount remaining due under the order or award;
- (b) identifying the order or award to be enforced;
- (c) show the reasons why the applicant is entitled to enforce the order or award; and
- (d) state the name and address of the judgment debtor.

(3) If a person has the benefit of an order or award subject to the fulfilment of a condition and that person fails to fulfil that condition, then unless the Tribunal orders otherwise, that person loses the benefit of the order or award.

(4) A judgment creditor who has an order or award with costs may enforce the costs separately from the rest of the order or award.

(5) The general rule is that if the Tribunal sets aside an order or award, any order made for the purpose of enforcing it ceases to have effect unless the Tribunal gives a direction for the order or award to remain in force.

(6) The Tribunal may enforce its own order or award by

- (a) charging either shares or other property, in which case the evidence in support of the interlocutory application must also
 - (i) show how to the best of the deponent's information and belief the judgment debtor is beneficially entitled to the shares or other property as the case may be,
 - (ii) state the name and address of every person who is believed to be an unsecured creditor of the judgment debtor,
 - (iii) identify the company and shares or other property to be charged,
 - (iv) identify any person who has responsibility for keeping a register of the shares, if necessary, or produce an officially certified copy of any register of any property to be charged,
 - (v) give the names and address of any person, if any, other than the judgment debtor who is believed to have an interest in the property to be charged, whether as beneficiary, a joint owner or trustee;
- (b) issuing a "stop notice" requiring any person or body on whom it is served to refrain from taking, in respect of any of the shares specified in the notice, any of the specified steps without first notifying the person by whom, or on whose behalf, the notice was served, or a "stop order" prohibiting the taking, in respect of any of the shares or funds specified in the order, any of the following steps
 - (i) in the case of shares or funds, the transfer, sale or other dealing with the shares or funds or the payment out of the income thereof,
 - (ii) the making of any payment by way of dividend, interest or otherwise in respect of the shares; or
- (c) ordering a person within the territorial jurisdiction of the Tribunal who owes the judgment debtor money to pay to the judgment

creditor all or part of a judgment debt along with any costs ordered for the enforcement proceeding, but

- (i) the debt owed to the judgment debtor must be due or accruing to the judgment debtor on the date of the enforcement order,
 - (ii) the third party must be served with a copy of the interlocutory application and given notice of the enforcement hearing,
 - (iii) an enforcement order under this paragraph must not require a payment that would reduce below US\$50.00 the amount standing in the name of a judgment debtor in an account with a bank or other financial institution,
 - (iv) if a fund is owned jointly by the judgment debtor and another person or persons, each owner of the fund must be served with a copy of the interlocutory application,
 - (v) unless otherwise proven to the satisfaction of the Tribunal, there is a presumption that a joint fund is owned in equal shares.
- (d) sequestering of property for non-payment of a debt or for failure to comply with an order, award or undertaking for which a notice under rule 39(6) is endorsed once the Tribunal is satisfied that the person against whom the order, award or undertaking is to be enforced has had notice of the terms of the order, award or undertaking, including being present when the order, award or undertaking was made or given and is wilful or reckless as to compliance.

(7) The Tribunal shall give notice to all parties of a date, time and venue of a hearing to enforce any order or award and that hearing shall be referred to as an “enforcement hearing”, in similar manner and form, and subject to the same limitations and effects, as the Notice of Case Management Hearing with such modifications as may be appropriate, during which the Tribunal shall have all the powers of a case management hearing under rule 25, except that an enforcement hearing may take place as part of any other hearing, including a costs hearing.

(8) The Tribunal may order that all or part of any goods sequestered under sub-rule (6)(d) be sold and the proceeds applied in accordance with the enforcement order, but a judgment creditor may not sell any such goods without such an order by the Tribunal.

(9) Where the judgment debtor intends to oppose the interlocutory application for an enforcement order under this rule, or requires time to pay a sum of money or otherwise seeks to suspend the payment of money for any period as the Tribunal considers just the Tribunal may receive evidence of means of the judgment debtor the party over the last twelve (12) months as follows

- (a) all sources of income, whether from in or outside the Virgin Islands, including
 - (i) earned income, whether from any full-time, part time, temporary or other employment or self-employment
 - (ii) profit income from any business, profession or trade, whether regulated under the Business, Professions and Trade Licenses Act or not owned, either solely or jointly, by the party before the Tribunal
 - (iii) interest income from all bank accounts, bonds or investments of any kind
 - (iv) dividend income from shares or other interest in any company, partnership, limited partnership or other legal entity
 - (v) rental income from any asset owned
 - (vi) capital gains which for the purpose of this sub-rule is the difference in the value of any asset owned at the time of its acquisition from its value at the time of its sale, transfer or other disposition and
 - (vii) royalty income from any trade mark, patent or copyright,
- (b) all expenses, whether from in or outside the Virgin Islands, including
 - (i) operating expenses of any business, profession or trade, whether regulated under the Business, Professions and Trade Licenses Act or not owned, either solely or jointly, by the party before the Tribunal
 - (ii) interest expenses of any kind
 - (iii) taxes, charges, fees and commissions of any kind

- (iv) household expenses such as rent, mortgage, home insurance and utilities (electricity, water, gas, telephone, internet, cable, satellite dish, etc.)
 - (v) personal expenses and expenses for any child or dependent, giving full details of such child or dependent including food, clothing, daycare, tuition, auto maintenance, clothing, entertainment and travel and
 - (vi) depreciation or amortization of any asset, which for the purpose of this sub-rule is the difference in the value of any asset owned at the time of its acquisition from its value at the time of its sale, transfer or other disposition,
- (c) the value of all assets, including
- (i) all property, whether real or personal, such as houses, furniture, appliances, cars and clothing
 - (ii) any business, profession or trade, whether regulated under the Business, Professions and Trade Licenses Act or not, owned solely or jointly by the party before the Tribunal and
 - (iii) any trade mark, patent, copyright or other intellectual property right,
- (d) the value of all liabilities, including
- (i) mortgages and loans
 - (ii) insurance policies, including home, auto, health, indemnity and life insurance
 - (iii) settlement agreement or court order requiring the payment of any money or transfer of any asset and
 - (iv) any unpaid invoices for goods or services in respect of any business, profession or trade, whether regulated under the Business, Professions and Trade Licenses Act or not owned, solely or jointly, by the party before the Tribunal.
- (10) At any enforcement hearing the Tribunal may, if satisfied that the

judgment debtor is wilfully evading service proceed in the absence of the judgment debtor as if the judgment debtor had been personally served.

Discontinuation
of Proceedings.

43. (1) If the parties settle their dispute at any time before the final order or award in accordance with section 7(d) of the Act, the Tribunal shall set forth the terms of the settlement in an award to be known as a “consent award”, and the consent award shall have the effect of a final order or award.

(2) Subject to sub-rule (3), a complainant may discontinue a complaint or any part of a complaint at any time by filing a notice of discontinuance, and if that complaint is in respect of more than one response the notice of discontinuance must specify against which respondent or respondents the complaint is discontinued.

(3) A complainant must file an interlocutory application for permission to discontinue a complaint where

(a) any party has given an undertaking to the Tribunal that is still in effect;

(b) the Tribunal has granted an interim remedy; or

(c) there is more than one complainant;

unless

(d) in respect of paragraphs (a) or (b) the respondent, or all respondents, file a consent; or

(e) in respect of paragraph (c), all other complainants file a consent.

(4) A complaint or the relevant part of a complaint is brought to an end as against the respondent on the date the notice of discontinuance is filed, except as it relates to cost in accordance with Part IX.

(5) Unless the parties agree or the Tribunal orders otherwise, a complainant who discontinues a complaint or part of a complaint is liable for the costs incurred by any respondent against whom the complaint is discontinued on or before the date on which notice of discontinuance is filed.

Foreign
Currency
Award.
Cap. 102.

44. (1) Subject to sub-rule (2), every award of the Tribunal shall be expressed in the currency of the United States of America in accordance with the Legal Tender (Adoption of United States Currency) Act.

(2) A party to any proceedings before the Tribunal who resided in the Virgin Islands but is no longer resident in the Virgin Islands may file an interlocutory application to the Tribunal for any award to be expressed in a foreign currency.

Cap. 132.

(3) Where the Tribunal must consider any foreign currency, whether on an interlocutory application by a party under sub-rule (2) or when considering a comparative award from a court of competent jurisdiction from outside the Virgin Islands or the writings of eminent jurists, it shall take into consideration section 2 of the Currency Interpretation Act as though its award or the award from the foreign jurisdiction was an enactment.

Principles
Governing
Awards for
Dismissal.

45. (1) An award of the Tribunal in respect of the termination of an employment contract pursuant to section 88 of the Act shall take into consideration the following

- (a) the notice period, and where the Tribunal finds that there was not proper notice it shall determine that the dismissal was invalid;
- (b) the set of facts known to the employer, or a set of beliefs held by the employer, which causes the employer to dismiss the employee (in this Rule referred to as the “reason for the dismissal”) which must be given to the employee in writing;
- (c) the reason for the dismissal must be the real reason for dismissing an employee, so that it cannot be a set of facts or beliefs that the employer did not know, or could not reasonably hold, at the time of the dismissal of the employee;
- (d) once the employer has established the real reason for dismissing the employee, then the Tribunal must decide whether the dismissal was for a fair reason which requires, first and foremost, the application of the statutory test set out in section 85(3) of the Act, and the Tribunal may accordingly determine that the dismissal was unfair;
- (e) the Tribunal shall consider three (3) aspects of the employer’s conduct to determine the fairness of the decision
 - (i) did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case?
 - (ii) did the employer believe, or have reasonable grounds for believing, that the employee was guilty of the reason for the dismissal?
 - (iii) did the employee have a fair opportunity to defend him or herself, including access to his or her employment record in accordance with section 81(2) of the Act?
- (f) the Tribunal must consider by the objective standards of the hypothetical reasonable employer, rather than by reference to its

own subjective views, whether the reason for the dismissal was within the “band of reasonable responses”. If it was, then the reason for the dismissal will be fair;

- (g) during this exercise the Tribunal shall not substitute its own evaluation of a witness for that of the employer at the time of the dismissal, save in exceptional circumstances, and if it does it must expressly outline those exceptional circumstances; and
- (h) the Tribunal shall only focus on the fairness of the conduct of the employer at the time of the dismissal and not on whether in fact the employee has suffered an injustice.

(2) An award of the Tribunal in respect of the termination of an employment contract pursuant to section 89 of the Act shall take into consideration the following

- (a) the notice period, and where the Tribunal finds that there was not proper notice it shall determine that the dismissal was invalid;
- (b) the reason for the dismissal, which need not be given to the employee in writing;
- (c) the reason for the dismissal must be the real reason for dismissing an employee, so that it cannot be a set of facts or beliefs that the employer did not know, or could not reasonably hold, at the time of the dismissal of the employee;
- (d) once the employer has established the real reason for dismissing the employee, then the Tribunal must decide whether the dismissal was for a fair reason which requires, first and foremost, the application of the statutory test set out in section 85(3) of the Act, and the Tribunal may accordingly determine that the dismissal was unfair;
- (e) the Tribunal must consider by the objective standards of the hypothetical reasonable employer, rather than by reference to its own subjective views, whether the reason for the dismissal was within the “band of reasonable responses”. If it was, then the reason for the dismissal will be fair;
- (f) during this exercise the Tribunal shall not substitute its own evaluation of a witness for that of the employer at the time of the dismissal, save in exceptional circumstances, and if it does it must expressly outline those exceptional circumstances; and
- (g) the Tribunal shall only focus on the fairness of the conduct of the

employer at the time of the dismissal and not on whether in fact the employee has suffered an injustice.

(3) An award of the Tribunal in respect of the termination of an employment contract pursuant to section 101 of the Act shall take into consideration the following

- (a) the reason for the dismissal, which must be given to the employee in writing, and must be precise in accordance with section 101(3) of the Act and the Tribunal shall grant an estoppel in accordance with rule 3(4)(c) against any employer who seeks to introduce any new reasons or clarifications of the precise reason for the dismissal;
- (b) the reason for the dismissal must be the real reason for dismissing an employee, so that it cannot be a set of facts or beliefs that the employer did not know, or could not reasonably hold, at the time of the dismissal of the employee;
- (c) once the employer has established the real reason for dismissing the employee, then the Tribunal must decide whether the dismissal was for a fair reason which requires, first and foremost, the application of the statutory test set out in section 85(3) of the Act, and the Tribunal may accordingly determine that the dismissal was unfair;
- (d) the Tribunal shall consider three (3) aspects of the employer's conduct to determine the fairness of the decision
 - (i) did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case?
 - (ii) did the employer believe, or have reasonable grounds for such belief, that the employee was guilty of the reasons for the dismissal?
 - (iii) did the employee have a fair opportunity to defend him or herself, including access to his or her employment record in accordance with section 81(2) of the Act?
- (e) the Tribunal must consider by the objective standards of the hypothetical reasonable employer, rather than by reference to its own subjective views, whether the reason for the dismissal was within the "band of reasonable responses". If it was, then the reason for the dismissal will be fair;
- (f) during this exercise the Tribunal shall not substitute its own

evaluation of a witness for that of the employer at the time of the dismissal, save in exceptional circumstances, and if it does it must expressly outline those exceptional circumstances; and

- (g) the Tribunal shall only focus on the fairness of the conduct of the employer at the time of the dismissal and not on whether in fact the employee has suffered an injustice.

(4) An award of the Tribunal in respect of the termination of an employment contract pursuant to section 103 of the Act shall take into consideration the following

- (a) the disciplinary action taken by the employer, and where the Tribunal finds that the disciplinary action was wrong or improper it shall determine that the dismissal was invalid;
- (b) the reason for the dismissal which must be given to the employee in writing;
- (c) the reason for the dismissal must be the real reason for dismissing an employee, so that it cannot be a set of facts or beliefs that the employer did not know, or could not reasonably hold, at the time of the dismissal of the employee;
- (d) once the employer has established the real reason for dismissing the employee, then the Tribunal must decide whether the dismissal was for a fair reason which requires, first and foremost, the application of the statutory test set out in section 85(3) of the Act, and the Tribunal may accordingly determine that the dismissal was unfair;
- (e) the Tribunal shall consider three (3) aspects of the employer's conduct to determine the fairness of the decision
 - (i) did the employer carry out an investigation into the matter that was reasonable in the circumstances of the case?
 - (ii) did the employer believe, or have reasonable grounds for such belief, that the employee was guilty of the reasons for the dismissal?
 - (iii) did the employee have a fair opportunity to defend him or herself, including access to his or her employment record in accordance with section 81(2) of the Act?
- (f) the Tribunal must consider by the objective standards of the hypothetical reasonable employer, rather than by reference to its

own subjective views, whether the reason for the dismissal was within the “band of reasonable responses”. If it was, then the reason for the dismissal will be fair;

- (g) during this exercise the Tribunal shall not substitute its own evaluation of a witness for that of the employer at the time of the dismissal, save in exceptional circumstances, and if it does it must expressly outline those exceptional circumstances; and
- (h) the Tribunal shall only focus on the fairness of the conduct of the employer at the time of the dismissal and not on whether in fact the employee has suffered an injustice.

(5) Where the Tribunal finds that any dismissal was invalid the award shall take into consideration compensation in accordance with section 86(2) of the Act, and in respect of any loss of benefits or bonuses it may apply good conscience in accordance with rule 3(5) against an employer who seeks to argue that any benefit or bonus payment was not triggered before the dismissal or otherwise act in bad faith, perversely, irrationally or capriciously. However, where the Tribunal finds that notwithstanding the fact that the dismissal was invalid, if it also finds that the dismissal would have taken place in any event but for the invalidity, it may take into account the reasonable time it would have taken for the dismissal to have been valid and reduce any compensation accordingly.

(6) Where the Tribunal finds that any dismissal was unfair the award shall take into consideration the remedies provided under section 86(1) of the Act, unless the Act or other enactment provides for different remedies.

Principles
Governing
Awards for
Discrimination.

46. (1) An award of the Tribunal in respect of a claim under Part VII of the Act, in circumstances, known as “direct discrimination”, where an employer treats someone less favourably on one of the prohibited grounds under section 114 of the Act (in this Rule referred to as a “protected characteristic”), the test to be applied by the Tribunal is as follows

- (a) a determination that the protected characteristic caused the less favourable treatment comprises the following elements
 - (i) that the protected characteristic was a necessary condition of the occurrence of the less favourable treatment (“factual causation”), and
 - (ii) that it is appropriate for the scope of the employer’s liability to extend to the less favourable treatment so caused (“scope of liability”);
- (b) in determining in an exceptional case, in accordance with

established principles, whether the protected characteristic that cannot be established as a necessary condition of the occurrence of the less favourable treatment should be accepted as establishing factual causation, the Tribunal is to consider (amongst other relevant things) whether or not and why responsibility for the less favourable treatment should be imposed on the employer;

- (c) if it is relevant to the determination of factual causation to determine what the person who suffered the less favourable treatment would have done if the employer had not relied on a protected characteristic
 - (i) the matter is to be determined subjectively in the light of all relevant circumstances, subject to sub-paragraph (ii), and
 - (ii) any statement made by the person after suffering the less favourable treatment about what he or she would have done is inadmissible except to the extent (if any) that the statement is against his or her interest; and
- (d) for the purpose of determining the scope of liability, the Tribunal is to consider (amongst other relevant things) whether or not and why responsibility for the less favourable treatment should be imposed on the employer.

(2) An award of the Tribunal in respect of a claim under Part VII of the Act, in circumstances, known as “indirect discrimination”, where an employer applies a policy, criterion, practice or other action in connection with a set of circumstances under section 115 of the Act to everyone which has a disproportionate effect on a class of people with a protected characteristic, the test to be applied by the Tribunal is as follows

- (a) the complainant must prove that the policy, criterion, practice or other action used by the employer has the effect of causing discrimination under section 114 of the Act;
- (b) the respondent must prove an exemption under sections 116, 117 or 118 of the Act to avoid a finding of discrimination by the Tribunal; and
- (c) the Tribunal may, if necessary, make an inference of discrimination based on the facts proven in paragraph (a) where on a balance of probabilities discrimination is more likely than not to have occurred.

(3) In order to make the inference under sub-rule (2)(c) the test to be applied by the Tribunal is as follows

- (a) the circumstances under section 115 of the Act must apply equally to everyone, including the complainant;
- (b) the circumstances must disadvantage people with protected characteristics under section 114 of the Act when compared with people outside that class of persons; and
- (c) the complainant has been disadvantaged personally or will be disadvantaged by the circumstances.

PART IX COSTS

Power to
Award Costs.

47. (1) The Tribunal may by order for exceptional reasons in respect of an application under rule 9(1), or in respect of a referral by the Minister under rules 10, 11 or 12, award to any party such costs as it may consider reasonable and direct how and by whom they are to be paid.

(2) Any costs awarded under this Rule shall be recoverable by an enforcement order under rule 42.

(3) For the purpose of sub-rule (1), “exceptional reasons” shall include any situation that arises outside the standard practice and procedure contemplated by the Act or these Rules such as

- (a) where the Tribunal awards punitive damages;
- (b) where a question of equity under rule 3(4) arises;
- (c) where the Tribunal is of the opinion that a party acted without good conscience under rule 3(5);
- (d) where, in order to make a decision on the substantial merits of the case under rule 3(6), the Tribunal had to address any jurisdictional and/or procedural issues, including exercising its powers under rules 5(7) or 6;
- (e) where, in applying “good industrial relations” under rule 3(7), the Tribunal is of the opinion that a party acted other than in accordance with good industrial relations; or
- (f) improper, unreasonable or negligent conduct by a legal practitioner which causes or might cause unacceptable loss, damage or injury, in which case the Tribunal may make a wasted costs order against the legal practitioner.

Wasted Costs.

48. (1) Where the Tribunal considers making a wasted costs order under rule 47(3)(f), the Tribunal must give the legal practitioner notice of the fact that it is minded to make such an order.

(2) Notice under sub-rule (1) must state the grounds on which the Tribunal is minded to make the order.

(3) A notice under sub-rule (1) must state a date, time and place at which the legal practitioner may attend to show cause why the order should not be made.

(4) The legal practitioner against whom the wasted costs order is sought and all parties to the proceedings must be given fourteen (14) days' notice of the hearing.

Assessment of Costs.

49. (1) On deciding to award costs to any party on an interlocutory application, on its own initiative at any time, at any hearing or at the conclusion of the trial, the Tribunal must

(a) summarily assess the amount of the costs of any interlocutory application; or

(b) in any other case, give notice to all parties of a date, time and place of a hearing to assess the amount of such costs and direct when such costs are to be paid and that hearing shall be referred to as a "costs hearing", in a similar manner and form, and subject to the same limitations and effects, as the Notice of Case Management Hearing with such modification as may be appropriate, during which the Tribunal shall have all the powers of a case management hearing under rule 25.

(2) In assessing the amount of costs to be paid by any party the Tribunal must

(a) take into account any representations as to the time that was reasonably spent in making or defending the complaint or interlocutory application;

(b) take into account any representations as to the time that was reasonably spent preparing for and attending any hearing or trial; and

(c) allow such sum as it considers fair and reasonable,

and cost awarded under this rule shall always include fees incurred or ought to have been incurred, and the fees shall be paid into the Consolidated Fund if they have not already been paid.

(3) For the purpose of sub-rule (1) the date to be fixed for a costs hearing shall not exceed thirty (30) days after the date of any order or award.

(4) At least fourteen (14) days before a costs hearing, a party to whom the costs is to be awarded must file with the Tribunal a bill of costs in accordance with section 42 of the Legal Profession Act, 2015 where the party is represented by a legal practitioner, or in any other case, a brief statement showing:

- (a) any fees incurred;
- (b) how that party's costs is calculated; and
- (c) the disbursements incurred.

(5) In a complaint for a sum of money, even if it includes some other remedy, the total costs allowed under this rule in the proceedings may not exceed 15% either of the monetary value of the complaint or of the GDP per capita of the Virgin Islands at the date of the complaint, whichever is higher.

(6) In a complaint for a remedy other than a sum of money, the total costs allowed under this rule in the proceedings may not exceed 15% of the GDP per capita of the Virgin Islands at the date of the complaint.

(7) Any party intending on challenging the bill of costs or the brief statement provided under sub-rule (4) must provide written submissions to the Tribunal at least seven (7) days before the costs hearing.

(8) For the purpose of sub-rule (1)(a) the standard basis of costs to be awarded for an interlocutory application shall be

- (a) \$350.00 where the party to whom costs are to be awarded is represented by a legal practitioner in accordance with rule 16(1)(b) who has at least ten (10) years practical experience as a legal practitioner or who holds Her Majesty's Patent as Queen's Counsel based on \$25.00 for each year of practical experience up to a maximum of ten (10) years plus \$100.00, where the interlocutory application was determined without a hearing or the duration of the hearing did not exceed 30 minutes in accordance with rule 26(11). For example,
 - (i) a party entitled to costs represented by a senior legal practitioner on an interlocutory application granted without a hearing may be entitled to standard cost of \$350.00;
 - (ii) a party entitled to costs represented by a junior legal practitioner with three (3) years practical experience on an

interlocutory application granted at a hearing for 1 hour may be entitled to standard cost of \$350.00; or

(iii) a party entitled to costs represented by both a Queen's Counsel and a junior legal practitioner on an interlocutory application granted at a hearing for 30 minutes may be entitled to standard costs of \$525.00.

(b) \$100.00 where the party to whom costs are to be awarded is unrepresented in accordance with rule 16(1)(a) or (c),

and it shall be for either party to establish in accordance with sub-rule (2) to the satisfaction of the Tribunal why the costs should not be summarily assessed based on the standard basis.

(9) Where a bill of costs is filed under rule (4), or is otherwise disputed by an interlocutory application filed by any party in respect of his or her legal practitioner, a determination by the Tribunal under this Part shall be binding on both the legal practitioner and the party in accordance with section 42(3) of the Legal Profession Act, 2015 and the legal practitioner may only recover so much of the bill of costs as may be allowed by the Tribunal.

No. 13 of 2015.

PART X APPEALS

Time to Appeal.

50. For the purpose of an appeal to the High Court against an order or award of the Tribunal on a point of law, the order or award shall be made on the date on which the notice of the final order or award under rule 38 is given and the person appealing the decision must send a copy of the appeal to the Secretary to the Tribunal and every other party to the proceedings within 28 clear days thereafter (not calculated based on rule 5).

Appeal does not operate as a stay.

51. An appeal to the High Court shall not have the effect of suspending the execution of the order or award appealed from unless the Tribunal or the High Court orders otherwise.

Tribunal entitled to appear in appeal.

52. (1) In an appeal against an order or award of the Tribunal on a point of law, the Tribunal is entitled to appear and to be represented and heard in support of its order or award and shall appear if it is directed by the High Court to do so.

(2) The High Court may invite the Tribunal to clarify or supplement its order or award, or if no written reasons were previously provided, to provide such written reasons for its order or award on or before a date to be fixed by the High Court, which may be referred to as the "Burns/Barke procedure".

(3) Notwithstanding sub-rule (2), if the Tribunal has given the reasons for its order or award the High Court, in exercise of the Burns/Barke procedure, must clearly identify where the Tribunal's reasons may be inadequate.

(4) The Tribunal, in responding to the High Court in the exercise of the Burns/Barke procedure, must limit itself to answering the questions asked by the High Court and in this context is not an advocate for its own order or award, or to correct any errors of fact or law in its decision.

Certified Copy
of High Court
Order or
Declaration.

53. (1) Where any order or declaration is granted by the High Court under the Act, the person in whose favour the order or declaration has been made or granted or, if there is more than one, any one of them, shall file a certified copy of the order or declaration with the Secretary to the Tribunal.

(2) A copy of an order or declaration is considered to be certified for the purposes of sub-rule (1) if the copy is certified by the judge who made or granted the order or declaration or by the Registrar or Deputy Registrar of the Court.

(3) Where, upon receipt of a certified copy of an order or declaration under sub-rule (1), the Tribunal is directed to take some other or further step in the proceedings, the Tribunal shall operate as though the trial was closed in accordance with rule 32 on the date it received the certified copy of the order or declaration.

PART XI TRANSITIONAL PROVISIONS

New
Proceedings.

54. (1) Subject to sub-rule (2), these Rules apply to applications made in accordance with rule 9 or complaints referred to the Tribunal by the Minister on or after the date on which these Rules shall come into force in accordance with rule 1 (in this Part referred to as the “commencement date”).

(2) Proceedings commenced after the commencement date but before the 4th day of October 2020 using any previous forms or other process may continue in accordance with those previous forms or other process until that date but will then be deemed to have commenced under these Rules and must proceed accordingly.

Old
Proceedings.

55. (1) These Rules do not apply to any complaint before the commencement date in which a final order or award was made by a Tribunal constituted prior to the commencement date.

(2) If a final order or award has not been made for any complaint before the commencement date the Tribunal shall, within fourteen (14) days after the commencement date, give notice to all parties of a date, time and place of a hearing to be referred to as a “status hearing”, in a similar manner and form, and subject to the same limitations and effects, as the Notice of Case Management Hearing with such modifications as may be appropriate, during which the Tribunal shall have all the powers of a case management hearing under rule 25.

(3) For the purpose of sub-rule (2), these Rules shall apply from the date of

the status hearing, except no fee under these Rules shall be payable up to the conclusion of the trial.

(4) For the purpose of sub-rule (3) and subject to sub-rule (6), the Tribunal may approve any agreement under rule 6(2) on an oral application by any party made at the status hearing, in accordance with rule 3.

(5) Any complaint to be dealt with at a status hearing shall take priority over all complaints to which rule 54 applies and the trial shall be fixed to a date within thirty (30) days from the status hearing, unless otherwise directed by the Tribunal.

(6) Notwithstanding sub-rule (4), rules 16 and 34 and Part VI shall not be dispensed with but may be modified for the particular circumstances by order of the Tribunal.

Composition of
the Tribunal:
Special
Provisions.

56. (1) For the purpose of any status hearing in accordance with rule 55, the parties shall recommend to the Minister for appointment to the Tribunal an individual on the Roster of Accredited Arbitrators in accordance with any directions given at the status hearing unless otherwise directed by the Tribunal.

(2) For the purpose of rule 15(24), an organisation may file an application on behalf of an individual prior to, or within thirty (30) days of, the commencement date and any such application shall be deemed an application filed in accordance with rule 15(6).

(3) An application filed pursuant to sub-rule (2) shall be exempt from the payment of any fee in accordance with these Rules, and in particular the fees payable under rules 15(4)(f) and 15(6).

(4) Notwithstanding sub-rule (3), the annual renewal fee shall be due and payable in accordance with rule 15(13) on or before 31 December 2021.

SCHEDULE

Form 1

[Rule 14(a)]



Case No. BVILAT/001/20

VIRGIN ISLANDS

LABOUR CODE, 2010
(No. 4 of 2010)

IN THE LABOUR ARBITRATION TRIBUNAL

BETWEEN

A.B.

COMPLAINANT

AND

C.D.

RESPONDENT

**FORM OF CONSENT
FOR A MEMBER OF THE
LABOUR ARBITRATION TRIBUNAL**

PRELIMINARY.

This form of consent is given for the purpose of making a recommendation for appointment to the Labour Arbitration Tribunal pursuant to section 29(4) of the Labour Code, 2010.

NAME.

**ADDRESS OF
ACCREDITED
LABOUR
ARBITRATOR.**

CONSENT.

I, the above-named accredited arbitrator, DO HEREBY consent to act as a member of the Tribunal where the [Claimant/Respondent] has by letter dated [date] and addressed to me, a copy of which is attached,

Form 2

[Rule 14(1)(e)]



Case No. BVILAT/001/20

VIRGIN ISLANDS

LABOUR CODE, 2010
(No. 4 of 2010)

IN THE LABOUR ARBITRATION TRIBUNAL

BETWEEN

A.B.

COMPLAINANT

AND

A.B.

RESPONDENT

NOTICE OF CASE MANAGEMENT HEARING

- TO: (1) [Complainant(s)]
[Complainant's Address for Service]
- (2) [Respondent(s)]
[Respondent's Address for Service]

TAKE NOTICE that the Labour Arbitration Tribunal will convene in private on **[Monday, 17th February 2020]** at **[9 a.m.]** at the Office of the Tribunal located at **3rd Floor, Ashley Ritter Building (upstairs the Department of Labour and Workforce Development), Road Town, Tortola, Virgin Islands** for the purpose of the Case Management Hearing in the captioned matter and you are hereby summoned to appear.

Dated this **1st** day of **January, 2020**.

SECRETARY
LABOUR ARBITRATION TRIBUNAL

**GUIDELINES TO ACCOMPANY THE
NOTICE OF CASE MANAGEMENT HEARING**

A Form of Consent is enclosed with this Notice, along with the relevant part of the Roster of Accredited Labour Arbitrators. You are required to formally write to any one (1) of the persons named on the Roster, and if they agree to serve as a member of the Tribunal, they should complete sufficient original copies of the Form of Consent and give them to you. This should be done as soon as possible as you only have until **[Wednesday, 8th January 2020]**, being seven (7) days from the date this Notice is issued, to file sufficient copies at the Office of the Tribunal at the above address.

PLEASE NOTE that you are not to have any further direct communication with any member of the Tribunal about this matter.

A copy of the complaint in this matter is enclosed with this Notice and sufficient copies of a response to the complaint must be filed at the Office of the Tribunal at the above address by **[Wednesday, 15th January 2020]**, being fourteen (14) days from the date you received this Notice. Sufficient copies of any evidence by affidavit or statutory declaration should be filed with the response. Any party may by this date apply for a determination of the Tribunal's jurisdiction to hear this matter.

A copy of the response, along with any evidence filed, will be sent to all other parties within three (3) business days of receipt, but no later than **[Monday, 20th January 2020]**. Sufficient copies of a reply to the response must be filed at the Office of the Tribunal at the above address by **[Wednesday, 28th January 2020]**, being fourteen (14) days from the last day for the respondent to file a response. Sufficient copies of any evidence by affidavit or statutory declaration should be enclosed with the reply.

You have until **[Monday, 3rd February 2020]**, being fourteen (14) days before the Case Management Hearing, to object to any member of the Tribunal appointed by the Minister on the recommendation of another party, or to file any additional evidence where the Tribunal has given permission to do so. You may also file any other interlocutory applications to be heard at the Case Management Hearing by that time. You may be penalized in costs if there is an application that you could have made by this date and failed to do so. If the Minister does not issue the appointment for all the members of the Tribunal by this date, the Chairperson may make an order for the adjournment of the Case Management Hearing. **ADDITIONALLY, IF YOU NEED AN INTERPRETER OR HAVE A DISABILITY WHICH REQUIRES SPECIAL ACCOMMODATIONS TO BE MADE DURING THE CASE MANAGEMENT HEARING YOU SHOULD MAKE THE REQUEST BY THIS DATE.**

You are required to attend the Case Management Hearing in person or to be represented by a legal practitioner of your choice. If you chose to be represented by a legal practitioner you must file a notice before the legal practitioner may appear on your behalf and you are

personally responsible for any reasonable fees and costs of that legal practitioner unless the Tribunal orders otherwise. If you are a trading entity, you should also provide a copy of your trade license and only a person whose name appears on the trade license or a person authorized by one of those persons may appear as the authorized representative for the trading entity.

If you do not attend, either in person or by a legal practitioner or other authorized representative, and follow the rules of etiquette, the Tribunal may proceed without you and you may be fined up to \$5,000.00. A copy of the rules of etiquette which you must observe when you attend is attached for your information.

While there is no need for your witnesses to attend, you may bring them so that they may be bound over for the trial, otherwise you will need to apply for a witness summons.

The Office of the Tribunal is open between the hours of 9 a.m. to 4 p.m., Monday – Friday, except public holidays or any other day that the Government of the Virgin Islands is closed to the public or the public is notified of any other office closure. Any document which is to be filed or lodged at the Office of the Tribunal may be sent by e-mail along with the receipt of payment, or an authorization to pay by credit/debit card, to the following designated electronic mail box: LAT@gov.vg.

- REVERSE SIDE OF NOTICE -

CERTIFICATE OF SERVICE

I, [NAME OF ENFORCEMENT AGENT], an enforcement agent of the Labour Arbitration Tribunal, HEREBY CERTIFY that this Notice and its attachments were served on

- (1) [Complainant's Name] at [Complainant's Address] on [1st January 2020] at [3:30 p.m.];
and
- (2) [Respondent's Name] at [Respondent's Address] on [1st January 2020] at [3:30 p.m.]

Dated this 1st day of **January, 2020**.

ENFORCEMENT AGENT
LABOUR ARBITRATION TRIBUNAL

Form 3

[Rule 35(2)]



Case No. BVILAT/001/20

VIRGIN ISLANDS

LABOUR CODE, 2010
(No. 4 of 2010)

IN THE LABOUR ARBITRATION TRIBUNAL

BETWEEN

A.B.

COMPLAINANT

AND

C.D.

RESPONDENT

WITNESS SUMMONS

TO: [Name]
[Address]

You are summoned to attend at [the Office of the Tribunal] located at **3rd Floor, Ashley Ritter Building (upstairs the Department of Labour and Workforce Development), Road Town, Tortola, Virgin Islands** on **[Monday, 2nd March 2020]** at **[9 a.m.]** (and each following day of the hearing or trial until the Tribunal tells you that you are no longer required) to give evidence in respect of the above claim or to produce the following document(s):

[List Documents that must be proven at trial]

[The sum of \$50.00 is offered to you with this summons and should be paid on or before the date you are required to appear. This is to cover your travelling expenses to and from the venue and also by way of compensation for loss of time. This summons was issued on the application of the [Complainant/Respondent], who is responsible for payment of the said sum, and whose address for service is:]

Do not ignore this summons. You must

- (a) appear before the Tribunal on the date and time shown and/or produce documents as required by this summons; and
- (b) take an oath or affirm as required for the purposes of answering questions about your evidence or the documents you have been asked to produce.

If you do not comply with this summons you will be liable, in criminal proceedings, to a fine not exceeding \$5,000.00. Disobedience of a witness summons is a contempt of court and you may also be fined for contempt. If you wish to set aside or vary the order directing the issuing of this witness summons, you may make an interlocutory application to the Tribunal.

The Office of the Tribunal is open between the hours of 9 a.m. to 4 p.m., Monday – Friday, except public holidays or any other day that the Government of the Virgin Islands is closed to the public or the public is notified of any other office closure. Any document which is to be filed or lodged at the Office of the Tribunal may be sent by e-mail along with the receipt of payment, or an authorization to pay by credit/debit card, to: LAT@gov.vg.

By Order
LABOUR ARBITRATION TRIBUNAL

Location:
Ashley Ritter Building
Road Town, Tortola VG1110
British Virgin Islands

[Date]

[Name]
Chairperson

- REVERSE SIDE -

CERTIFICATE OF SERVICE

I, [NAME OF ENFORCEMENT AGENT], an enforcement agent of the Labour Arbitration Tribunal, HEREBY CERTIFY that this Witness Summons was served on [Witness' Name] at [Witness' Address] on [1st January 2020] at [3:30 p.m.].

Dated this 1st day of **January, 2020**.

ENFORCEMENT AGENT
LABOUR ARBITRATION TRIBUNAL

Made by the Chairperson of the Labour Arbitration Tribunal this 25th day of August, 2020.

Jamal S. Smith
Chairman
Labour Arbitration Tribunal