



## COMMISSION OF ENQUIRY INTO

**ALL OF THE CIRCUMSTANCES WHICH LED TO THE TRAGIC INCIDENTS WHICH OCCURRED ON FRIDAY FEBRUARY 25, 2022, AT FACILITIES OWNED BY PARIA FUEL TRADING COMPANY LIMITED, LOCATED AT NO. 36 SEALINE RISER ON BERTH NO. 6, POINTE-A-PIERRE, WHICH LED TO THE DEATHS OF FOUR (4) EMPLOYEES OF LMCS LIMITED.**

### PROCEDURAL RULES

In exercise of the powers conferred on it under section 9 of the Commissions of Enquiry Act Chapter 19:01, the Commission of Enquiry appointed by the President of the Republic of Trinidad and Tobago and which appointment was published in the Trinidad and Tobago *Gazette* makes the following Rules:

#### **PART 1**

##### **Interpretation**

1. In these Procedural Rules:
  - (i) *Commission* means the Commission of Enquiry appointed by the President of the Republic of Trinidad and Tobago.
  - (ii) *Commissioners* mean Mr. Jerome Lynch Q.C. and Mr. Gregory Wilson Esq. being the persons appointed as Commissioners by Her Excellency, the President of the Republic of Trinidad and Tobago under the provisions of the Commissions of Enquiry Act Chapter 19:01.
  - (iii) *Commission Counsel* means Counsel appointed to the Commission and retained by the Government of the Republic of Trinidad and Tobago to act as Counsel to the Commission.
  - (iv) *Designated email address* means:
    - (a) in the case of the Commission, the email address notified to any person (and their recognised legal representatives if any), by the Secretary to the Commission, in whatever manner she sees fit, as the email address to be used for communication by email; and

- (b) in the case of any person, the email address notified by the person to the Secretary to the Commission, in writing, as the email address to be used for communication by email.
  
- (v) *Designated postal address* means:
  - (a) in the case of the Commission, the address notified to any person (and their recognised legal representatives if any), by the Secretary to the Commission, in whatever manner she sees fit, as the address to which correspondence should be sent; and
  - (b) in the case of any person, the address notified by that person to the Secretary to the Commission, in writing, as the address to be used for postal communications.
  
- (vi) *document* includes any paper writing or material that is in electronic, audiotape or videotape form, digital reproductions, photographs, maps, graphs, microfiche and any data or information recorded or stored by means of any device or on any platform.
  
- (vii) *electronic means* includes any website, software or electronic programme in use for the time being for the purposes of receiving and sending documents and operated on platforms as determined by the Commission.
  
- (viii) *hearing* means procedural, evidentiary and/or any other hearing of the Commission whether in-person, or electronically/virtually or a hybrid of both and whether in public or in private.
  
- (ix) *media* refers to the print and electronic media including newspaper, radio and television broadcasters and the Parliament channel.
  
- (x) *person* means a person, group of persons, association, entity or organization. The singular includes the plural and the plural includes the singular; the masculine gender includes the feminine; the word *person* includes bodies corporate, companies, partnerships, sole traders, trusts and any association of persons.
  
- (xi) *Report* means the Final Report issued by the Commissioners to Her Excellency the President.
  
- (xii) *Rules* mean these Procedural Rules as may be amended from time to time.
  
- (xiii) *Service* means in relation to any documents, summons or subpoenas, personal service or service by electronic means.
  
- (xiv) *Secretary* means the person so appointed by the President and who, when appointed, will be the Head of the Secretariat.

- (xv) *Secretariat* means the administrative office of the Commission.
  - (xvi) *Standing* means a person who has expressly been granted *standing* by the Commission in accordance with Part 4 of the Rules.
  - (xvii) *Terms of Reference* refers to the Commission's Terms of Reference gazetted on 22<sup>nd</sup> April 2022 including any amendment thereto.
2. Any requirement under these Rules that a document is given or sent to any person by the Commission is satisfied by that document being-
- (a) delivered in person; or
  - (b) sent by registered mail to the person's designated postal address; or
  - (c) sent by email to a person's designated email address.
3. Any requirement under these Rules that a document is received by the Commission is satisfied by that document being:
- (a) left at the Commission's designated postal address (where it has been acknowledged as having been received);
  - (b) sent to the Commission's designated postal address by registered mail; or
  - (c) sent by email to the Commission's designated email address.

## **PART 2**

### **General**

4. The Commission by its Terms of Reference is:-
- (a) To enquire into –
    - (i) the circumstances which led to the tragic incidents which occurred on Friday February 25, 2022, at facilities owned by Paria Fuel Trading Company Limited ("Paria") located at No. 36, Sealine Riser on Berth No. 6, Pointe-a-Pierre which led to the deaths of four (4) employees of LMCS Limited ("LMCS");
    - (ii) the scope of works issued by Paria for the underwater maintenance exercise on a 30-inch pipeline which LMCS' divers were carrying out on Friday February 25, 2022 within a hyperbaric chamber at the said No. 36, Sealine Riser on Berth No. 6;

- (iii) and ascertain the proposals and plans submitted by LMCS to conduct the works at the said No.36 Sealine Riser on Berth No. 6;
  - (iv) and examine generally the policies, procedures, practices and conduct relating to Paria and LMCS' employees, organized and contracted labour for these types of maintenance exercises;
  - (v) and identify the precise facts and circumstances which led up to and resulted in the loss of life and whether this was reasonable and justifiable in the particular circumstances;
  - (vi) and examine all of the decisions and actions taken after it became clear that the five (5) LMCS' divers went missing;
  - (vii) and investigate the nature, extent and application of any standing orders, policy considerations, legislation or other instructions in dealing with the situation which gave rise to these incidents;
  - (viii) and identify whether Paria and LMCS had in place any lifesaving contingency plans in the event that life threatening incidents occurred and, if so, whether such or any plans were employed in response to these incidents; further, whether they employed sufficient safeguards and measures to ensure the safety of their contracted employees, property and the prevention of these incidents and to rescue the five (5) LMCS' divers;
  - (ix) and determine the adequacy and mechanical integrity of equipment utilized by LMCS;
  - (x) and determine the adequacy of LMCS' plans utilized for the operation of the maintenance exercise;
  - (xi) and identify whether by act or omission any identified or unidentified person or entity directly or indirectly caused loss of life;
  - (xii) and examine the role played by Paria and LMCS through their respective units, individually and collectively in dealing with these incidents; and
  - (xiii) and examine all other material circumstances leading up to and surrounding the incidents which took place on February 25, 2022 that led to the tragic deaths of the four (4) LMCS' divers and continuing up to the recovery of their bodies.
- (b) To make observations and recommendations arising out of the deliberations, as may be deemed appropriate, in relation to –

- (i) whether there has been any breach of duty by any persons or entities;
- (ii) whether there are any grounds for any criminal proceedings to be initiated against any persons or entities;
- (iii) whether criminal proceedings should be recommended to the Director of Public Prosecutions for his consideration;
- (iv) the appropriate and best practices and/or policies and/or procedures to be utilised by companies such as Paria and LMCS for the conduct of these types of maintenance exercises and in response to these types of incidents;
- (v) the policies, measures, mechanisms and systems that should be implemented to prevent the recurrence of the tragic incidents which occurred on Friday February 25, 2022 and continuing up to the recovery of the bodies of the four (4) LMCS' divers; and
- (vi) making any other recommendations that may be deemed necessary in the circumstances.

5. The Commission is governed and guided by the Commissions of Enquiry Act Chap. 19:01 as may be amended from time to time.

6. The Commissioners have the power to control the Commission's process and procedures in advance of and during the hearings. The Commissioners may set up timetables, convene hearings on preliminary and procedural matters, make rulings in respect of the application of these Rules, and convene procedural and evidentiary hearings as they deem fit.

7. Notice of any hearing will be provided by the Secretary with as much notice as is practicable.

8. Unless otherwise directed by the Commissioners, hearings shall commence at 10:00 a.m. and conclude at 3.30 p.m. There shall be refreshment breaks as determined by the Commissioners.

9. All persons and their counsel shall adhere to these Rules. Any person may raise any issue of non-compliance with these Rules with the Commissioners. The Commissioners shall deal with a breach of these Rules as it sees fit including, but not restricted to, revoking the standing of a person and imposing restrictions on the further participation in or attendance at the hearings by any person, counsel, individual or member of the media.

10. The Commissioners may depart from these Rules when it considers it appropriate to do so.

11. The Commissioners may amend these Rules or dispense with compliance with them as it deems necessary in order to ensure that it complies with the Terms of Reference.

12. The Commissioners may reschedule any date set for any hearing or the doing of anything. The Commission shall notify all counsel and any person affected by the re-scheduling.

13. All applications to the Commission shall be in writing and submitted to the Secretary at the earliest possible opportunity save that the Commissioners may, at their discretion, permit an oral application without notice

### **PART 3**

#### **Investigation**

14. The Enquiry by the Commission has commenced and will continue with an investigation by the Commission, including obtaining information and documents in relation to the Terms of Reference. The principal objective of the investigation is to identify the witnesses for the evidentiary hearing.

15. The investigative phase will consist primarily of the collection and review of documents from persons with information, inspection of physical evidence (including plant and equipment), consultations and interviews of persons with information.

16. All persons are required to preserve originals of all documents relevant to the Commission's Terms of Reference that are in their possession, power or control and any relevant physical evidence in their possession, power or control until such time as the Commissioners have ordered otherwise.

### **PART 4**

#### **Standing**

17. Commission Counsel have standing throughout the Enquiry and shall assist the Commission throughout the Enquiry and are responsible for ensuring that the Enquiry is conducted in an orderly fashion and that all matters bearing on the public interest and falling within the Terms of Reference are brought to the Commission's attention.

18. Persons who wish to participate in the Enquiry may apply for standing. The Commissioners may grant *standing* if it is satisfied that an applicant:

- (a) has played or may have played, a direct and significant role in relation to the matter to which the Enquiry relates;
- (b) has a substantial and direct interest in the subject-matter of the Enquiry;
- (c) may be subject to explicit or significant criticism during the proceedings of the Enquiry or in the Report; or

- (d) should participate in the Enquiry as his participation may be helpful to the Commission in fulfilling the Terms of Reference.

19. Applications for standing may be made to the Commission by submitting a written request to the Secretary:-

- (a) giving the name of the person seeking standing and his contact information;
- (b) giving the name of the legal representative of the person seeking standing (if any) together with his contact information;
- (c) saying (in no more than 3 pages) why standing is sought; and
- (d) enclosing copies of any relevant documents.

20. The Commissioners shall determine on what terms a person may participate in the Enquiry, and the nature and extent of such participation.

21. Counsel representing a witness who is called to testify before the Commission may participate during the hearing of that witness' evidence without the necessity of applying for standing.

22. Counsel shall be required to be admitted to practice at the Supreme Court of Judicature of the Republic of Trinidad and Tobago and in receipt of a valid Practising Certificate pursuant to Section 23 of the Legal Profession Act Chapter 90:03, in order to represent a person or a witness before the Commission.

## **PART 5**

### **Evidence**

#### **A. General**

23. The Commission may receive evidence in such or any form that it considers to be helpful in fulfilling the Terms of Reference whether or not such evidence would be admissible in a court of law.

#### **B. Collection of Documentary Evidence**

24. All persons granted *standing* under Part 4 of these Rules shall, as soon as practicable after being granted standing, produce to the Commission, true copies of all documents in their possession or control having any bearing on the subject matter of the Enquiry. Documents in the possession or control of a person granted standing that are already in the possession of the Commission shall be listed but need not be produced, unless specifically requested by the Commission. Upon the request of the Commission, persons granted standing shall also provide originals of relevant documents in their possession or control for inspection.

25. Upon the request of the Commission, anyone not being a person granted standing shall produce to the Commission true copies of all documents in their possession or control which have any bearing on the subject matter of the Enquiry. Documents in the possession or control of a person without standing that are already in the possession of the Commission shall be listed but need not be produced, unless specifically requested by the Commission. Upon the request of the Commission, such persons without standing shall also provide originals of relevant documents in their possession or control for inspection.

26. All documents received by the Commission shall be collated and indexed in electronic form and treated by the Commission as confidential, unless and until they are made part of the public record or the Commissioners otherwise directs. The Commission may submit or disclose any relevant document to a potential witness prior to the testimony of the witness or to a person with standing, subject to the limitations described in Rule 34(b) below.

27. Any person required to produce a document or documents whether pursuant to a subpoena or summons issued under the Commissions of Enquiry Act Chap.19:01 or otherwise, and who claims privilege in respect of such document or documents, shall apply to the Commission for an order of non-disclosure, stating the basis and reasons for the claim of privilege. The Commissioners shall determine whether such claim of privilege is justified.

28. Where privilege is claimed, and is upheld by the Commissioners, the Commission shall not disclose the privileged document but may, with the assistance of the person benefitting from the privilege, prepare and produce a summary of the document or a redacted version for disclosure.

### **C. Witness Interviews and Disclosure**

29. The Commission, with or without the assistance of Commission Counsel, may interview persons believed to have information or documents bearing on the subject matter of the Enquiry. The Commission may choose whether or not to attend an interview and Commission Counsel shall provide the Commission with a transcript or summary of all interviews conducted in its absence.

30. Persons interviewed by Commission Counsel may choose to have counsel present during the interview, but are not required to do so.

31. A person whose interview is requested by the Commission or Commission Counsel shall answer all relevant questions and produce any relevant documents.

32. A subpoena or summons may be issued if the person to be interviewed requests one or if the Commissioners or Commission Counsel deems it prudent to compel the attendance of the person or the production of relevant documents.

33. (a) Where the Commissioners or Commission Counsel determines that a person who has been interviewed should be called as a witness in a hearing, the Commission Counsel, in advance of the testimony by the witness at the hearing, may:-

(i) prepare a statement of the witness' anticipated evidence or a summary



of the witness' anticipated evidence;

- (ii) provide a copy of the statement or summary to the witness for his review before he testifies in the hearing; and
- (iii) invite the witness to sign the statement if he wishes and to submit the original signed statement to the Secretary.

(b) A witness statement or summary, whether signed or unsigned, may be disclosed by the Commission to persons with standing upon their written undertaking to use it only for the purposes of the Enquiry and on the terms described in Rule 34(b) below.

34. (a) Unless the Commissioners order otherwise, all relevant non-privileged documents in the possession of the Commission shall be disclosed to a potential witness reasonably in advance of the witness interviews and/or hearing or within a reasonable time of the documents becoming available to the Commission.

(b) Before any documents (including statements and summaries) are provided to a person or a potential witness, the person or potential witness must undertake in writing to use these documents only for the purposes of the Enquiry, to keep their contents confidential to himself and his counsel unless and until those documents have been admitted into evidence, and to abide by such restrictions on disclosure and dissemination as the Commissioners considers appropriate.

(c) The Commissioners may, upon application, release any witness, person or Counsel in whole or in part from the provisions of an undertaking regarding the use or disclosure of documents or information.

35. Commission Counsel may refuse to call witnesses or present evidence proposed by a person granted standing and in such a case, a person granted standing may apply to the Commissioners for an order permitting that evidence to be called or presented. Such application will be made in advance of the hearing, where possible. If the Commissioners are satisfied that the evidence of the witness is required, the Commissioners may direct that a witness be called or may allow the requesting party to call the witness and adduce his evidence (in which case Rules 44 and 45 apply where appropriate).

#### **D. Witnesses**

36. Witnesses who testify at a hearing shall give their evidence under oath or upon affirmation.

37. Each person called to give evidence before the Commission will be requested to provide a written and signed statement being the evidence in chief of that witness. All witness statements including exhibits are to be provided in both hard copy and electronic format.

38. Any person given standing shall be at liberty to submit an original signed witness statement to the Secretary whether prepared by the person or his legal representative.

39. At a hearing, witnesses who have provided signed witness statements shall be invited under oath or upon affirmation to confirm their written statements which shall then be accepted as the evidence-in-chief of that witness.

40. Witnesses are entitled to have their own counsel present while they testify. A witness's counsel has standing in the Enquiry for the purposes of that witness' testimony and may re-examine the witness if necessary.

41. Witnesses may be called to give evidence in the Enquiry more than once and may be recalled as determined by the Commissioners.

42. (a) Where it considers it advisable, the Commissioners may issue a summons or subpoena requiring a witness to give evidence on oath or affirmation and/or to produce documents or other things.

(b) A summons or subpoena may be issued in relation to:

(i) pre-hearing interviews conducted by the Commissioners or Commission Counsel;

(ii) pre-hearing requests for documents; or

(iii) the hearings.

43. The Commissioners shall consider any evidence adduced that is relevant to the Enquiry and the Terms of Reference. Where evidence is challenged or objected to on any ground, the Commissioners shall give only such weight to that evidence as they determine to be appropriate, having regard to all the circumstances.

#### **E. Oral Examination**

44. Subject to what is otherwise provided in these Rules, the order of examination of a witness shall be as follows:-

(a) Where a witness has provided a signed witness statement:-

(i) the witness after being sworn in or having affirmed, will be invited by the Commissioners or Commission Counsel to certify that what is contained in his witness statement is true and correct and, if so, the witness statement will be admitted into evidence as the witness' evidence-in-chief;

(ii) the Commissioners or Commission Counsel may then examine the witness by way of leading and non-leading questions;

(iii) the witness may then be cross-examined by persons granted standing (or their counsel) to the extent of their interest and in accordance with such time limits as the Commissioners may direct. If persons (or their

counsel) are unable to agree the order of cross-examination, the Commissioners shall determine the order of cross-examination;

- (iv) the witness may then be cross-examined by any person not granted standing (or their counsel) as determined by the Commissioners upon an application;
  - (v) counsel for the witness (if any) may re-examine the witness; and
  - (vi) the Commissioners or Commission Counsel may then further examine the witness by way of leading and non-leading questions.
- (b) Where a witness has not provided a signed witness statement:-
- (i) the witness after being sworn in or having affirmed, counsel for the witness (if any) will be permitted to elicit the witness' *viva voce* evidence-in-chief in accordance with the customary rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioners;
  - (ii) if the witness has not retained counsel, the Commissioners or the Commission Counsel may elicit the witness' *viva voce* evidence-in-chief as in (b)(i) above; and
  - (iii) the witness may then be cross-examined or re-examined as in (a)(iii), (iv), (v) and (vi) above.
- (c) The Commissioners shall be at liberty at any stage of the hearing to ask questions of a witness on the evidence adduced.

45. A witness' counsel may apply to the Commissioners for permission to amplify that witness' witness statement and, if granted, only in accordance with the Commission's directions.

46. After a witness has been sworn in or affirmed, no counsel or person other than Commission Counsel may speak to that witness about the evidence he has given until the witness has completed his evidence. Commission Counsel may not speak to the witness about his evidence while the witness is being cross-examined by other counsel, except with the permission of the Commissioners.

#### **F. Use of Documents at Hearings**

47. Before a witness testifies at the Enquiry, the Commission may, where practicable and appropriate, provide the witness with an electronic bundle of those documents that are likely to be referred to during the witness's testimony.

48. Without the permission of the Commissioners, no document shall be used in examination unless the document was first provided to the Commission pursuant to these Rules.

## **G. Access to Hearings and to the Evidence**

49. Hearings will ordinarily be open to the public. The media shall have access to the hearings at any time subject to Rules 50 and 51 below. One pooled television camera shall be permitted, but the Commissioners may direct that broadcasting be suspended at any time as determined by the Commissioners.

50. Where the Commissioners are of the opinion that it is necessary in the interest of the maintenance of order or the proper administration of justice or the due conduct of the Enquiry to exclude all or any members of the public and/or the media from the hearing room, it may, after hearing submissions from interested parties, direct that such or any parts of the hearing as it deems appropriate, be conducted in the absence of the public and/or the media or on such terms and conditions as the Commissioners may direct.

51. Applications from witnesses or persons to conduct any part of the hearing in the absence of all or any members of the public and/or the media shall be made in writing to the Commission at the earliest possible opportunity.

52. The transcripts and exhibits from the hearings shall be made available as soon as practicable for public viewing. Transcripts shall be posted on the Commission's website as soon as is reasonably practicable; transcripts of any part of the hearing held in the absence of the public and/or the media pursuant to Rule 50 above may be made available for public viewing on such terms as the Commissioners may direct if, after hearing the evidence and any submissions, the Commissioners conclude that it is in the public's interest to release these transcripts or redacted portions.

## **PART 6**

### **Notices Regarding Alleged Misconduct**

53. The Commissioners shall not make a finding of misconduct on the part of any person unless that person (including if the person is deceased, his estate), has had reasonable notice of the substance of the alleged misconduct and has been given a full opportunity during the Enquiry to be heard in person or by counsel.

54. Any notices of alleged misconduct shall be delivered on a confidential basis to the person to whom the allegations of misconduct refer or his counsel, together with a summary of the allegations with such particularity as to enable the person to understand and appreciate the allegations and answer them.

## **PART 7**

### **Opening Speeches**

55. Counsel for the Commission shall make an opening speech at the commencement of the first evidentiary hearing and at the commencement of any subsequent evidentiary hearing as determined by the Commissioners.

56. The Commission may invite persons given standing or their counsel (if any) to make opening speeches before the commencement of the testimony of witnesses and on such

terms and conditions, including time limits, as the Commissioners may direct.

## **PART 8**

### **Submissions**

57. All counsel may make submissions in relation to any matter as directed by the Commissioners subject to any restrictions that the Commissioners deems appropriate.
58. The Commissioners shall direct when submissions are to be made and whether they are to be made orally and/or in writing.

## **PART 9**

### **Hearings**

59. There shall be a procedural hearing on a date, time and venue to be determined by the Commissioners, to be attended by the Commissioners, the Commission Counsel, the persons who have been granted standing and their counsel (if appointed) as well as the media and any other person as determined by the Commissioners, for the purpose of confirming the dates for the evidentiary hearing and/or to deal with such or any procedural or other matters that are raised.
60. Hearings may be *in person* or conducted by electronic means on any platform designated by the Commission; in relation to hearings by electronic means, they shall be convened, as far as possible, in accordance with the Practice Direction *Hearings by Electronic Means* issued by the Chief Justice of Trinidad and Tobago and published in the Trinidad and Tobago Gazette on 27<sup>th</sup> March 2020 (as amended from time to time) and the Practice Guide for Electronic Hearings issued by the Chief Justice of Trinidad and Tobago on 21<sup>st</sup> April 2020, unless otherwise directed by the Commission.
61. Hearings shall be recorded solely by the Secretary and made available to the Commissioners, Commission Counsel and such other persons on terms as determined by the Commissioners before being published on the Commission's website.
62. Notice of any hearing will be provided by the Secretary with as much notice as is practicable and will be published on the Commission's website and, where practicable, in a daily newspaper.
63. The orders, directions, rulings and decisions made by the Commissioners in relation to any request or application (whether in writing or otherwise) shall be notified to the persons making the request or application by the Secretary in the form of a written order under the hand of the Secretary and shall be published on the Commission's website unless otherwise directed by the Commission.

## **PART 10**

### **Amendments to the Procedural Rules**

64. These Rules may be amended and new Rules may be added if the Commissioners considers it advisable to do so to ensure that the Enquiry is conducted in accordance with the Terms of Reference.

*Issued by the Chairman of the Commission on behalf of and with the concurrence of the Commissioners this 13<sup>th</sup> day of July 2022.*

A handwritten signature in black ink, appearing to be 'Mr. Jerome Lynch Q.C.', written in a cursive style. The signature is contained within a thin black rectangular border.

*Mr. Jerome Lynch Q.C.  
Chairman*