

# Beneficial Ownership Register Policy and Draft Companies (Amendment) Bill 2024 – Explanatory Information Note

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## Contents

Introduction .....	1
Background .....	1
Rationale for introducing measures .....	2
Impacts and implications .....	5
The beneficial ownership register .....	5
Requirements on companies .....	5
Access to beneficial ownership information.....	6
Exemptions .....	6
Offences .....	6

## Introduction

1. On Tuesday 17 September 2024, the Executive Council (ExCo) approved the Companies (Amendment) Bill 2024 to be taken forward to Legislative Council (LegCo).
2. The draft Bill is the legislative instrument that translates the provisions of the Beneficial Ownership Register Policy<sup>1</sup> into law. Whilst the policy is comprehensive and draft Bill proportionate to the requirements of the policy, this explanatory information note provides an executive summary for stakeholders to understand the likely impacts of the changes, and the motivations for their introduction.

## Background

3. Beneficial ownership refers to a person who ultimately owns or controls an asset (i.e. property, securities, land, company, etc.). In this context, the asset in question is a company.
4. The concept of beneficial ownership exists because the direct legal owner of an asset (a company being one example of an asset) is not necessarily the person who actually controls and benefits from it. For example, the registered legal owner of a company may be another company registered overseas, which itself is controlled by an individual located in a third country.
5. There are both lawful and unlawful reasons for wanting to separate the legal and beneficial owners of an asset. Nonetheless, registers of beneficial ownership provide transparency and play an important role in the fight against corruption, tax evasion and money laundering.

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<sup>1</sup> [Beneficial Ownership Register Policy](#)

6. Registers of beneficial ownership are records of who the beneficial owners of an asset are. When a regulator or an official registrar collects and collates this information in one place, it creates a central register of beneficial ownership<sup>2</sup>.
7. In December 2020, the UK government issued a Draft Order in Council, *The Overseas Territories (Publicly Accessible Registers of Beneficial Ownership of Companies) Order 20\*\**. If it were enacted, it would require St Helena (along with the other Overseas Territories) to implement a Publicly Accessible Beneficial Ownership Register (PARBO).
8. The UK introduced its own PARBO in 2016<sup>3</sup> and Gibraltar introduced a PARBO in 2020<sup>4</sup>. St Helena has committed to adopting a PARBO, in line with some other overseas territories. In making this commitment St Helena has demonstrated its commitment to playing a leading role in global efforts to increase transparency and tackle illicit finance flows, recognising the significant positive social impact this has both here and across the world.
9. St Helena currently has a Company Registry administered on a part time basis by two judicial services staff under the supervision of the Chief Magistrate. The statutory framework establishing and facilitating the ongoing operation of the Company Registry is contained in Part VI, Division A of the Companies Ordinance 2004. Administration of the Company Registry generally requires a single staff member to dedicate approximately eight hours per month to its operation.
10. As of February 2023, there were 235 companies listed on the register, of which 131 had either been dissolved, struck off the register or were due to be struck off the register. This means that there were effectively 104 “active” companies on the Company Registry at the time the Beneficial Ownership Register Policy was drafted. The Company Registry currently generates approximately £2500 to £3000 per year in revenue through the collection of fees.

## Rationale for introducing measures

11. The objectives of the Bill are the prevention of money laundering, tax evasion, and terrorist financing. The relevant public interest justifications are in the interests of order, public morality, and preventing or detecting breaches of the criminal law.
12. While just one step towards the prevention of financial crime on St Helena, the government believes that the introduction of the Bill will begin to mitigate money laundering, tax evasion, and terrorist financing threats. In the absence of a modern framework for regulating and developing financial services, the Bill is seen as a precautionary measure to inhibit or prevent any influx of illicit finance through the Company Registry. St Helena is currently susceptible to these sorts of illicit activities for a number of reasons:
  - a. St Helena’s anti-money laundering legislation, regulation and supervision is underdeveloped;
  - b. Remote offshore locations have historically provided opportunities for financial crime;
  - c. The government has limited public resources, expertise and capacity to interdict financial crime;
  - d. There are plans to generate economic development through the growth of the financial services sector and attracting foreign direct investment. To do this, a clean reputation as a centre for financial business is seen as essential;

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<sup>2</sup> <https://commonslibrary.parliament.uk/research-briefings/cdp-2023-0220/>

<sup>3</sup> <https://www.gov.uk/government/publications/g7-finance-ministers-meeting-june-2021-communique/g7-factsheet-beneficial-ownership>

<sup>4</sup> <https://uboregister.egov.gi/>

- e. Cash transactions, common in St Helena, lack transparency and may facilitate the concealment of the source and destination of funds;
- f. As an asset class, real property is well-suited to money laundering because on St Helena transfers of land are not subject to strong regulation, supervision, or reporting requirements and real estate may be improved over time using cash;
- g. An increase in tourism – a key growth sector identified in the Sustainable Economic Development Strategy 2023-33 (SEDS) – inevitably brings foreign money into the territory, which may be difficult to trace or monitor;
- h. St Helena's dependence on foreign aid may make it vulnerable to exploitation by those seeking to launder money through purported development projects, infrastructure proposals or charitable activities; and,
- i. A small population and new political governance structures create potential for concentration of power in the hands of a few individuals or organisations.

13. As such, the changes are being introduced for four broad purposes:

- 1. national security, anti-corruption, anti-money laundering, and preventing organised crime;
- 2. protecting individuals and business from fraud;
- 3. improving economic wellbeing by facilitating the growth of the digital, financial and professional service sectors; and,
- 4. The UKG has issued a draft order in council to all Overseas Territories to implement a PARBO, if this is not implemented willingly by each of the jurisdictions it may be passed into law on our behalf via the enactment of an Order in Council. SHG recognises the value in complying with the draft Order in Council

14. These changes align with priority areas articulated in the ministerial Vision and Strategy 2022-2025<sup>5</sup> and the principles followed in the Company Registry Policy 2020<sup>6</sup>. These being:

- openness and transparency;
- sound business practice;
- non-discriminatory taxation; and,
- anti-tax avoidance.

15. The Company Registry Policy 2020 committed to the development of a publicly accessible register, noting that "*the Registry in St Helena has always been reviewable by the public in person (upon payment of a fee), a requirement will be to digitise the Company Registry so that this can be searched by the public online*"<sup>7</sup>.

16. Delivering transparency, openness and anti-secrecy in a fair and balanced manner was a key principle in the development of the Company Registry Policy 2020. It notes that "*this policy has therefore been developed to inform the ways in which companies registration and administration can be performed in St Helena thus diversifying the local economy and in an attempt to raise revenues for the benefit of the island while also explaining how these activities can be undertaken in a way that is transparent and in accordance with best international standards, thus avoiding the island being drawn into any criticism of tax haven behaviour and avoiding any secrecy issues*"<sup>8</sup>.

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<sup>5</sup> <https://www.sainthelena.gov.sh/wp-content/uploads/2022/05/SHG-Strategy-2022-2025-FINAL.pdf>

<sup>6</sup> <https://www.sainthelena.gov.sh/wp-content/uploads/2020/12/Company-Registry-Policy-Final-Nov-2020.pdf>

<sup>7</sup> Section 2, P.4

<sup>8</sup> Section 3, Page 5

17. The policy articulated the intention to comply with a number of international rules and regulations of international bodies, including the Financial Action task Force (FATF). Working towards compliance with FATF recommendations is also an action identified in the SEDS.
18. In 2014 the FATF published Guidance on Transparency and Ownership<sup>9</sup>. Immediate Outcome 5 established the need to develop a system on beneficial ownership that resulted in legal persons and legal arrangements being unattractive for criminals to misuse for money laundering and terrorist financing.
19. St Helena already makes information on beneficial ownership of companies available to competent authorities without impediments, in line with the FATF guidance.
20. A wider programme of work is underway to develop St Helena's company registry into a registry that attracts registrations from a wide range of companies, both here and overseas. This is being driven by the need to raise revenues in order to better progress and deliver the government's key objectives, and continue to provide much needed public services to users. In doing so it is imperative that proportionate steps are taken to prevent the misuse or abuse of the company registry.
21. The UK has received reports of thousands of UK companies and partnerships being misused by international money laundering networks in recent years<sup>10</sup>. These opaque companies are used by organised criminals, kleptocrats, and terrorists. They are also used to perpetrate fraud, and in the theft of assets, both public and private.
22. St Helena is a small territory with limited resources to effectively manage the impacts of such misuse or abuses. Currently there is very limited regulatory infrastructure in place to deal with such issues, and whilst work is underway, the government does not have the resources to bring this work forward and immediately implement measures which would address these.
23. Our geographical isolation and the history of our financial services sector raise further risks. Remote offshore locations have historically provided opportunities for financial crime, and the relatively low profile of St Helena means that it is not subject to the same levels of scrutiny as other Overseas Territories with developed economies and well-established offshore financial centres.
24. The nature of St Helena's economy (being largely tourism-based, ODA dependant and with wealth mainly stored in real estate investment), make it yet more vulnerable to exploitation by those seeking to launder money.
25. These factors make St Helena an attractive target for those seeking to undertake money laundering, or associated illicit financial activities, such as terrorist financing. It is therefore critical that reasonable safeguards are built into the company registry system from the outset.
26. Requirements around publicly accessible registers of beneficial ownership are one such safeguard. It is one that is not only very effective, but one which can be implemented within St Helena's means and is proportionate to the risks it seeks to address.

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<sup>9</sup> <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-transparency-beneficial-ownership.pdf.coredownload.pdf>

<sup>10</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1060726/corporate-transparency-white-paper.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1060726/corporate-transparency-white-paper.pdf)

27. That being said, the draft Bill has been written so as to have due regard to the interests of private individuals when balanced against the aims to be achieved by the legislation. To be effective, the requirements of a beneficial ownership register must provide a deterrent effect to those who would seek to misuse or abuse a company register. There would be little deterrent effect provided were no information on beneficial ownership to be disclosed. However, it is recognised that the interests of private individuals in protecting their personal data must be considered.
28. The draft Bill therefore seeks only to make public that which we consider necessary to provide the deterrent effect. This being their name, nationality, manner of their beneficial ownership, territory of ordinary residence, and month and year of birth. In order to ensure this is proportionate to the aims of the legislation, certain exemptions to the inclusion of a beneficial owner's information have also been included (see paragraphs 38-39). In doing so a balance has been struck between full transparency, the legitimate objectives pursued, and the privacy rights of the individual.
29. Increasing the level of transparency with respect to local St Helena businesses it is hoped that this will contribute to St Helena developing a reputation as a safe, stable, modern and reputable jurisdiction to conduct business with, and that this positive reputation will indirectly contribute to an increase in exports.
30. By contributing to the modernisation of company law this policy will support St Helena in becoming a more attractive jurisdiction for professional services companies to be based.

## Impacts and implications

### The beneficial ownership register

31. A beneficial owner is defined as a natural person or certain specified legal persons (who are not companies but whose characteristics are akin to a natural person) who meet at least one specified criteria. This means a corporation sole, a government, an international organisation, etc. are included in the definition.
32. The specified criteria to be met to be considered a beneficial owner mirrors those used in the UK Persons with Significant Control provisions contained in the UK Companies Act 2006. The level of control which would constitute a person being a beneficial owner is set at 25%. Additionally, a general catch-all provision that captures circumstances where a formal interest is not held but control is still exercised is included.
33. The Beneficial Ownership Register will exist as a standalone register legally separate and independent of the existing Company Registry.

### Requirements on companies

34. It will primarily be the responsibility of companies themselves, rather than any beneficial owners, to identify and provide beneficial ownership information to the company registry registrar. This means that companies will be under a legal obligation to keep and maintain up-to-date records of their beneficial owners. These records will not need to be open to public inspection as the pertinent information will be publically available on the register.
35. There will be two lists of required information, one with respect to beneficial owners who are natural persons and one with respect to beneficial owners who are "other registrable persons" (those specified legal persons who are not companies but whose characteristics are akin to a natural person).

## Access to beneficial ownership information

36. All Overseas Territories with financial centres already share confidential information on company beneficial ownership with UK law enforcement agencies. This occurs in real time.
37. The Bill seeks to provide access to this information to anyone that requests it, subject to certain safeguards. Those being that the information is limited to that identified in the Bill, and that this information is provided only upon request. In doing so an effective balance between transparency and data protection principles has been met.

## Exemptions

38. Further to this, the draft Bill permits a number of exemptions to key requirements of the Beneficial Ownership Register. These exemptions are:
  - i. exemption for companies listed on a regulated market in the U.K. or EEA from being included on the Beneficial Ownership Register; and
  - ii. exemption from publicly disclosing beneficial ownership information where doing so would present a serious risk of fraud, kidnapping, harassment, violence, etc. or where the information relates to a child or individual lacking legal capacity.
39. An exemption will exist to allow beneficial ownership information to be excluded from the register in cases where the person is of minor age, lacks legal capacity, or if making such information public would present a serious risk of harm to the beneficial owner. This includes fraud, kidnapping, blackmail, extortion, harassment, violence, intimidation or other similar harm. This exemption will allow beneficial owners who face a serious risk of harm to have their information withheld from the public. This seeks to provide proportionate balance between the safety and security of the individual, against the need to meet the rationale and objectives of the policy intervention.

## Offences

40. The draft bill introduces new offences aimed at beneficial owners and registered companies, which do not comply with the disclosure requirements contained in the draft bill. These offences are being introduced to ensure compliance with the aims of the policy and law.

## Feedback

Should members of the public wish to provide feedback on the Policy or draft Bill, this may be done by contacting your constituent member of Legislative Council, or directly to the Economic Development Portfolio by emailing Portfolio Assistant, Alexandria Thomas, on [alexandria.thomas@sainthelena.gov.sh](mailto:alexandria.thomas@sainthelena.gov.sh).

A public drop-in session will be held at the Economic Development office in the Castle on Friday 22 November from 12.30 to 16.00.