



---

# COMPANY REGISTRY POLICY

---

**Company registry development and the facilitation of international financial services**

**A strengths, weakness, opportunities and threats summary of the proposed Companies Registry policy  
May 2020**

**Andrew Radley  
Orgueil Limited  
May 19 2020**

Strength	Weakness	Opportunity	Threat
<p>1. Ability for the new Company Registry Policy to generate new revenue for SHG</p>	<p>As St Helena will be commencing company incorporation and administration services for non-resident businesses and individuals for the first time, it will be important to ensure that there will be companies interested in using St Helena as a jurisdiction; the weakness being that St Helena will be an unknown and untested jurisdiction.</p>	<p>Further to the commentary about the opportunities for St Helena as set out in the policy, in-depth discussion will be explored with potential company registry business partners during consultation on the policy in order to quantify revenue raising opportunities and possible businesses to approach. External parties with a potential financial interest in referring companies to St Helen have not been consulted with to-date (so as to not allow such partners to affect policy development), but SHG is aware of a number of companies that may be interested in moving their incorporation and administration headquarters to a new non-tax haven jurisdiction such as St Helena. Further communication to assist with quantification of these companies will be undertaken during the consultation period of the policy.</p>	<p>There are many other well developed Company Registries around the world and a threat in using St Helena may be that potential new companies will be involving themselves in an unknown and untested jurisdiction.</p> <p>This risk can be mitigated by:</p> <ul style="list-style-type: none"> <li>• Ensuring that all intergovernmental, supranational and transparency measures are in place before effective launch of the newly developed St Helena company registry.</li> <li>• Ensuring that the legislation passed by St Helena is robust and fit for purpose.</li> <li>• Ensuring that a strong business development and marketing programme is undertaken internationally to sell St Helena’s offerings to the international community with an appropriate message.</li> </ul>
<p>2. Ability to offer international company administration in a ‘non-tax haven way’ and in compliance with best international standards.</p>	<p>Despite all of the measures set out in the policy which are designed to mitigate the risk that St Helena will be seen as a tax haven, there nonetheless remains a risk that the international community will see St Helena as undermining other countries of tax revenues by applying an effective tax rate of 5% of global profits.</p> <p>The issues around tax havens are inherently political and their role in the international economy is hotly debated by academics and practitioners. This analysis does not propose to attempt to summarise these issues (there are many separate publications available to those interested). However, it is obviously necessary to be aware of political issues.</p>	<p>The new company registry capabilities will need to be led by someone who can deal with the political as well as the technical and financial challenges that expansion of the registry will bring. The opportunity nonetheless exists to market St Helena in the ways set out in the policy and to point to the non-discriminatory tax regime and compliance with all standards as set out in the policy.</p> <p>Essentially, St Helena will be marketing itself as a fair-tax, well-regulated and transparent jurisdiction. This is a significant opportunity.</p>	<p>There will be challenges in concluding the intergovernmental agreements needed (such as Tax information exchange agreements, double taxation agreements, CRS agreements with the UK/OECD, FATCA Agreements with the US and Base erosion and profit shifting measures with the OECD). This will require a dedicated SHG resource and will need to be undertaken in advance of the new company registry going live. If this is scheduled to be April 1 2021 then SHG will need to start these measures imminently.</p> <p>There is also the threat that enactment of these measures may simply not be possible, either due to political or other obstacles outside of the control of SHG.</p>

Strength	Weakness	Opportunity	Threat
<p>3. Ability to implement a comprehensive economic substance law in a way that is appropriate for St Helena and in compliance with international standards</p>	<p>There are varying forms of economic substance laws, and given St Helena’s remoteness, unless there is appropriate personnel to manage a company’s affairs substantively and which possesses the relevant skills (together with adequate premises and facilities) there may be difficulties in introducing some of the measures commonly seen in other jurisdictions which have more sophisticated financial services industries. Some of the However, this risk can be mitigated - see opportunities tab.</p>	<p>The measures that SHG can implement to satisfy the economic substance requirements can vary depending on the activity that the relevant company will be undertaking. Other jurisdictions have passed two general regimes - (i) which deals with companies undertaking “Relevant Activities” and (ii) those which are simply equity holding entities.</p> <p>Relevant Activities are generally defined as:</p> <ul style="list-style-type: none"> <li>• Banking</li> <li>• Insurance</li> <li>• Fund management</li> <li>• Finance and leasing</li> <li>• Shipping</li> <li>• Headquarters activities</li> <li>• Distribution and Service Centre Activities</li> <li>• (Pure equity holding company/entity - this is where the principal difference applies across jurisdictions)</li> <li>• Intellectual property asset holding company</li> </ul>	<p>If SHG do not pass a law that is capable of appropriately being undertaken in St Helena with regard to the corporate activity being undertaken, there is a risk that St Helena may be blacklisted (by the EU or otherwise) and which may therefore affect business opportunities within the Company Registry. It may also attract international criticism and unwanted scrutiny.</p>
<p>3. Economic substance requirements considerations (cont)</p>		<p>It is probable that the first few companies looking to set up in St Helena will require only more limited administration (and may in all likelihood be ultimate group/equity holding companies), in which case the requirements can be lighter: the lightest of these seems to be those applicable in Guernsey which requires only that:</p> <p><i>“an adequate level of people and physical presence in [Guernsey] in order to hold and manage the shares”.</i></p>	

Strength	Weakness	Opportunity	Threat
		<p>Where an entity is carrying on a “Regulated Activity” as defined in the list above, then the following are the requirements (which appear to be more universal):</p> <ul style="list-style-type: none"> <li>• the entities must be: directed and managed in the relevant jurisdiction conduct their 'core income-generating activities' in the jurisdiction; and have adequate employees , expenditure and physical assets/presence in the jurisdiction.</li> <li>• It should be noted that the jurisdictions that have passed these economic substance laws do allow the outsourcing of core income generating activities to third parties, provided that the core income-generating activities are nonetheless subject to some level of management and supervision by the relevant jurisdiction. This could also be a good opportunity for St Helena (provided appropriate safeguards are put in place).</li> </ul>	
<p>4. Ability to use development of the Company Registry to bolster anti-money laundering laws and enactment of anti-terror law in a way that will ensure St Helena is able to defend against use of the jurisdiction for criminal purposes.</p>	<p>There is an inherent risk in launching new service offerings in a jurisdiction that any unforeseen areas of activity may be open to exploitation. While the policy has been designed to mitigate this weakness, it does not claim to be necessarily comprehensive in its remit in safeguarding against all financial crime (or indeed other activity which may be deemed illegal in other jurisdictions).</p>	<p>The policy sets out measures to use the development of the Company Registry in order to facilitate development of St Helena's anti-money laundering (and associated) laws.</p>	<p>The threat that the island may be used by unscrupulous businesses or individuals can be mitigated by:</p> <ul style="list-style-type: none"> <li>• Preparation of an acceptable industries/activities list as set out in the policy</li> <li>• Enactment of robust anti money laundering and anti-terrorism laws</li> <li>• International assistance and cooperation provisions being included in DTAs/TIEAS etc.</li> <li>• Reciprocal enforcement of judgment provisions being negotiated (even outside of DTAs/TIEAS) with identified partner countries.</li> </ul>

Strength	Weakness	Opportunity	Threat
<p>5. Potential ability to tie in introduction of company incorporation and administration services to global business with changes to the Immigration Ordinance</p>		<p>If St Helena progresses with measures to offer fast-track residency in return for a revenue contribution to SHG, an alternate way of obtaining this would be to acquire the administration of the businesses of the applicant and for those businesses to also redomicile to St Helena (using the continuance measures set out in the policy). This would assist the Company Registry's opportunities and provide a longer term tax take for SHG.</p>	
<p>6. Ease of data flows afforded by St Helena's obtaining the fibre optic cable (Equiano) and the facilitation of business that will inevitably flow from faster and cheaper internet access in St Helena.</p>	<p>Lack of data protection law (including relevant General Data Protection Regulation awareness) within St Helena; lack of awareness of cybersecurity issues for international businesses and/or lack of general awareness of further laws or regulation of IT and IP matters within St Helena</p>	<p>St Helena can hugely benefit from the ability to service international companies by the ease and cost effectiveness of data transmission which will be afforded to the island by virtue of the Equiano cable.</p>	<p>Cybersecurity criminals may target a new financial services jurisdiction. The Registry will need to safeguard against this threat by use of appropriate safeguards, software and training in the field.</p> <p>The weaknesses and threats highlighted in this section can be mitigated by appropriate new data protection law as well as SHG ensuring that new digital IT systems are able to provide up-to-date and comprehensive defences against cyber attacks and other digital criminal initiatives.</p> <p>As identified in the policy, Inadequate data protection law may deter any Company Registry business opportunities.</p>