Annex A - Legislative changes required

1. Changes to Income Tax Ordinance

In order to effectively implement this policy, the Income Tax Ordinance will need to be changed as follows:

- Definitions - changes to definition of 'person' and 'body of persons' so that the law differentiates between individuals and companies - given that there will be different taxation provisions applying to companies going forward.
- Definitions - introduction of definitions of medium and large scale businesses (medium should be companies with a turnover of £25,000,000 - £50,000,000 pa and large with a turnover in excess of £50,000,000,).
- Introduction of a definition of 'worldwide' profit (20% of which will be deemed to be 'local' profits for the purposes of taxation in St Helena). This can be the consolidated group profit as stated in a company's annual consolidated financials.
- New section 8A for companies - introducing the substantive change to the tax on a specified percentage of worldwide income as being deemed to be chargeable tax in accordance with section 8.
- New section 8B for companies - introducing the substantive change to the minimum tax payable by medium and large companies to be an amount more than or equal to a percentage rate of turnover which is to be specified in Schedule 1
- Section 25 (withholding tax) will need to be amended to exempt all tax levied under section 8A for companies from the withholding taxes otherwise payable under section 25.
- Section 30 (capital gains) will need to be amended to exclude the sale of shares in a St Helena company from capital gains tax.
- Section 50 (foreign tax credits) will need to be deleted. From discussions with the Financial Secretary, these provisions are very seldom (if ever) invoked given that St Helena companies at the moment do not pay tax in other jurisdictions. The suggestion is therefore that credit for foreign tax be given under a DTA with relevant countries and that these provisions therefore be deleted.
- Schedule 1 will need to be updated to reflect the agreed percentage of worldwide profit that will be deemed to be local profits and therefore taxable in St Helena. Although in theory this rate can be agreed by a resolution of Legislative Council and is not needed to be included in the ordinance directly, from conversations with St Helena Government, SHG does not believe that this option is desirable and that the Ordinance should clarify the relevant amounts of tax to be paid.
- Schedule 1 will need to be updated to include the minimum percentage of turnover to be paid by medium and large companies (1%)

2. Amendments to Financial Services Ordinance

The following amendments to the FS Ordinance will be required:

- Definitions - need to include a definition of "foreign person". Suggest that this be "a person who does not have St Helenian status in accordance with Part 3 of the St Helena Immigration Ordinance 2011."
- Definitions - need to include a definition of "company administration". Suggest that this be:

"any and all services provided from or within St Helena to a St Helena incorporated company including but not limited to:

- Maintenance of a company's books and records
- Compilation of annual accounts
- Accounting and bookkeeping services
- Company secretarial work, including the preparation of board minutes and circulation of board information
- Conducting annual audits
- Filing tax returns
- Provision of Directors
- Provisions of a registered office address
- Provisions of administrative assistance to boards, including the use of premises for Board meetings."

- Section 4 (Powers and duties of the Regulatory Authority). In light of the expanded role of the FSRA in regulating the Companies Registry's activities and ultimately its role in supervising administration of foreign owned companies and their role in the wider international economy, it is suggested that this section may require a change to add regulatory objectives to the remit of the FSRA; i.e. new sections:

"*4 (3) (d) The protection and enhancement of the reputation and integrity of St Helena in commercial and financial matters; and*

4 (3) (e) The best economic interests of St Helena."

These additions will facilitate the FSRA's ultimate oversight in Company Registry activities.

- Section 13 (Participation in a relevant business) - this needs to be clarified to not include a Relevant Business undertaking company incorporation or administration services. This is a clarification to the law as it must be clear that the significant shareholding requirements or qualifying shareholding requirements that apply to regulated entities in St Helena will not apply to those underlying corporate entities which the St Helena Companies Registry provide services to. As seen above, the appropriate requirement for underlying corporate entities will be to obtain consent of the Companies Registry to any change in shareholding of more than 25% of the share capital of the entity. This is in line with FATF and international requirements. Provided this requirement is met, the FSRA should not be involved in approving changes to the shareholding of foreign companies. A further possible clarification would be to state that the section does not apply to the St Helena Companies Registry or entities administered by the St Helena Companies Registry.

Clearly, the existing requirements of the FS Ordinance would remain if the entity administered by the Companies Registry is itself registered under the FS Ordinance. In this case, the FSRA should retain overall control over any shareholder changes in the existing fashion.

- Schedule 1 - a new section 11 needs to be added to create a new class of regulated business by the provision of company incorporation and administration services for non-St Helena owned companies. A suggested clause would be:

"*Company incorporation and administration*

11(1) The incorporation of a St Helena company where such company is to be owned for the ultimate benefit of a foreign person

11(2) Any person undertaking company administration in or from St Helena, where such company is to be owned for the ultimate benefit of a foreign person."

- **New Financial Services Regulations made in accordance with section 39.**

The current Financial Services Regulations specifically regulate the provision of services by banks and insurance business operators in St Helena. It is proposed that there be a separate set of regulations with regard to company administration. Some of the salient considerations have been set out above at Key Issue 4 - effective regulation of the Companies Registry. Depending on St Helena's decisions here, regulations can be effected to enact a sound business policy or restriction on sensitive activities requirements in law.

3. Changes to Companies Ordinance

1. General considerations

The existing St Helena Companies Ordinance is in need of comprehensive overhaul. This is because it is modelled on a law (believed to be the Companies law in Gibraltar) that is no longer the most appropriate framework for company law matters. It is bulky, outdated and does not contain useful corporate vehicles which could benefit St Helena (see below for some examples). St Helena could look to some of the key changes brought about by the English Companies Act 2006 (which came into force in 2009) which principally boosted shareholder rights and better corporate governance. The 2006 Act made the following changes to the previous Companies Act 1985:

- Codification of directors' duties, including an obligation to promote the success of the company, to consider the community and the environment, the interests of employees, and to be fair to shareholders
- Indirect shareholders acquired far more rights, including the right to sue the company's directors if fraud or negligence is suspected
- Nominee shareholders can elect to receive company information electronically should they wish
- Limited companies are no longer required to have a company secretary - one director can run the company if wished.
- Companies are able to use effective new model Articles of Association
- Share capital rules for private companies were simplified.

Other types of corporate entity which St Helena may consider

(i) PCCS

Other offshore centres provide for other types of company which are attractive to the financial services industries. For example, 'protected cell companies' (PCCs).

A PCC consists of a core company (akin to a holding company) and of separate and distinct cells. Although the PCC is one legal entity, the assets and liabilities of one cell are segregated and protected from those of the other cells. Similarly, the assets and liabilities of the core are segregated and protected from those of the cells.

A PCC is attractive to numerous types of businesses. For example, a PCC is useful for an investment fund as it enables the avoidance of cross-class contagion if a class or portfolio within an umbrella fund becomes insolvent and if creditors attempt to enforce judgments against assets within other classes. Insurance companies also have found the PCC structure to be attractive to segregate insurance captives for multiple purposes. However, there are other potential uses for PCCs in non-financial services business. Digital or technology businesses for example may be attracted to a PCC so that separate investment can be made for discrete projects via separate cells and to safeguard investor monies without the need to set up complex categories of share capital. In other laws, there is also an inbuilt flexibility for PCCs to convert into another type of structure if required, thereby giving the structure more advantages. They are able to convert either into an 'incorporated cell company' (ICC) (these can be used if, for example, title to an asset - typically land - needs to be held in an incorporated entity, but the owner of the ICC still wants to retain separation of assets and liabilities notwithstanding this) or even into a non-cellular company.

This is a good opportunity for St Helena to look at modern new examples of Company law structures to give it an advantage in the offshore world, and to promote its capabilities, including potential uses for financial services businesses. There are several example of PCCs and ICCS across the jurisdictions, including in Bermuda, Jersey and Guernsey.

(ii) Hybrid companies

Another example of a corporate vehicle that could be utilised in a revised Companies Ordinance is a hybrid company.

A hybrid company is a term used to describe a company which is limited both by shares and by guarantee so has two classes of members: shareholders and guarantee members. The shareholders take shares in the usual way, and are limited in their liability only to the extent paid for their shares. The Guarantee member is elected into membership of the company by the directors on condition that the members undertakes to contribute to the debts of the company up to a certain specified maximum amount (typical a maximum of around $2,000). As such, a Guarantee Member holds a contingent liability, which is an obligation and this contrasts with the position of the shareholder who holds an asset - the shares. The rights and obligations which attach to each class of membership can be laid down in the Articles of Association of the company or by the directors in board meetings - thereby keeping the terms and conditions of membership confidential. The arrangements which can be made are infinite and flexible as the different rights and obligations which attach to each class of membership can be arranged to suit and drafting can be used to create structures which are precisely tailored to the different needs of the client.

A key benefit of hybrid companies is that they are often used as quasi trusts particularly by persons resident in civil law countries which do not recognise trusts. Typically the Company will be structured so that the shares are issued on terms that each carries one vote but no rights to dividends or to

participate in the capital or income of the company in any other way. The Guarantee Memberships, on the other hand, would be issued on terms that they carry no rights to vote but all the rights to participate in the income and capital of the Company. Thus all control rests with the shareholders but all the benefits flow to the Guarantee Members (just like Trustees and beneficiaries of a trust). Also, as a Guarantee Member's interest is extinguished on death, there are normally no issues in terms of succession, hence no need to obtain probate and therefore normally no inheritance tax, stamp duty or estate implications.

However, hybrid companies are also used to avoid tax. Anti-avoidance legislation in many onshore countries aims to tax the undistributed or untaxed profits of low tax paying companies as though these profits have been received by the shareholders. Different countries deal with this in different ways, but normally focus on the percentage of shares held or the control of the company if control is achieved otherwise than through the ownership of shares. Using the arrangements involving Guarantee Members, as the Guarantee Members do not have control - as professional managers typically act as shareholders - so the structure is useful in combatting anti-avoidance legislation. The other 'benefit' to these structures is that they do not generally bring about reporting requirements as under CRS etc. they do not have 'control'.

These benefits of tax avoidance and privacy may not necessarily in keeping with what St Helena is trying to achieve, but the benefits of the structure are undeniable.

2. Specific recommended amendments

Irrespective of whether St Helena wishes to take this opportunity to completely revise the Companies Ordinance, the following amendments to the Companies will be required nonetheless to facilitate opportunities for the new Companies Registry:

2.1 Introduction of continuance provisions

'Continuance' or migration of a company from one jurisdiction to another is attractive to global companies, which by their definition, are internationally mobile. There may be a number of reasons such as regulatory, commercial, business environment, taxation, a shift in markets or imposed logistics why a business may wish to move from one jurisdiction to another. The advantage of using a legal continuance process (as opposed to setting up a new legal entity) is that the company being continued retains its legal personality intact and therefore its legal title to assets and its obligations under contracts, for example, remain unchanged and do not require to be assigned.

In order to achieve continuance, it is fundamental that laws regulating and allowing such a cross border movement of a company, are present in both the country of origin and in the country of destination.

St Helena does not have any provisions in its Companies Ordinance permitting continuance. This is therefore an important amendment to make. The amendments will be needed to allow companies to continue into St Helena, but also to continue away from St Helena. New provisions should be inserted at Section 180A of the Companies Ordinance and following. The following should be the requirements:

(i) Continuance of a Company to St Helena

Eligibility

A foreign company should be allowed to continue to St Helena if:

• the laws of its original jurisdiction allow it to do so;

- it is not being wound up or in liquidation and its assets are not subject to any bankruptcy or insolvency procedures in its home jurisdiction
- it is not insolvent (I.e. is able to pay its debts as they fall due)
- no receiver, manager or administrator has been appointed in relation to any of its assets
- there is no compromise or arrangement in force between it and any creditor; and
- there is no application before a court for its winding up or liquidation, to have it declared insolvent or its assets declared bankrupt, to appoint any receiver, manager or administrator or to approve any compromise or arrangement.

Procedure

It should be noted of course that the foreign company will have to comply with the laws relating to continuance under its original jurisdiction. These steps will normally require director and shareholder approvals etc., but is not relevant to the amendments required to the St Helena ordinance of course.

In terms of amendments to the ordinance to facilitate continuance into St Helena, the following amendments should be drafted into the law:

In order to continue to St Helena, the relevant company must:

- Reserve a name with the St Helena Companies Registry which must be acceptable to the St Helena Companies Registry and which must end in Limited, Ltd or, in the case of a public company, end in public limited company, or plc
- File with the FSRA:
  - an application form which includes the foreign company's St Helena registered office address and information about the foreign company's directors, secretary and beneficial owners
  - a certified copy of the foreign company's foreign constitution (translated into English if necessary)
  - a copy of the foreign company's proposed memorandum and articles of association to be used in St Helena
  - a solvency statement signed by the foreign company's directors and any proposed new directors
  - a legal opinion from lawyers in the foreign company's original jurisdiction confirming that:
    - it is authorised by the laws of its original jurisdiction to continue to St Helena
    - any necessary corporate authorization for its continuance to St Helena has been given; and
    - once registered in St Helena, it will cease to be incorporated in its original jurisdiction
  - a certificate from a director of the foreign company certifying that:
    - the interests of its shareholders and creditors will not be unfairly prejudiced by its continuance to St Helena; and
    - it satisfies the solvency conditions referred to in the Eligibility section above; and
  - the application fee (proposed £500)

- If the FSRA is satisfied that the application complies with the Ordinance, it will approve the application and deliver the application documents to the Company Registrar who will:
    - register the application documents
    - issue a certificate of continuance; and
    - send a copy of the certificate of continuance to the regulator in the foreign company's original jurisdiction

Once the Company Registrar has issued a certificate of continuance, the foreign company becomes a company incorporated under the ordinance.

Effect of continuance

The foreign company's continuance, as a company incorporated under the St Helena ordinance, does not affect its continuity as a body corporate or its assets, rights, obligations or liabilities.

Accordingly, once the foreign company becomes incorporated under the St Helena ordinance, it continues to:

- own all property and rights which it owned
- be subject to all criminal and civil liabilities, and all contracts, debts and other obligations, to which it was subject; and
- be subject to, or entitled to pursue, all actions and other legal proceedings in which it was involved, immediately before it was incorporated under the Ordinance.

It is suggested that these essential effects of continuance be made explicit in the Ordinance.

Solvency statement

It is also proposed that a formal wording of statutory statement be included within the Ordinance or within separate regulations made under the Ordinance if this is deemed to be more appropriate as it will be important for St Helena to receive consistent declarations of solvency in an agreed form. A proposed form of wording would be:

"*Having made full equity into the affairs of the Company, each director and proposed new director (if applicable) reasonably believes that:*

- *the foreign company is and, if the application to continue is granted, will upon the issue to it of a certificate of incorporation be, able to discharge its liabilities as they fall due; and*
- *having regard to the:*
    - *prospects of the Company*
    - *intentions of the Directors with respect to the management of the Company's business; and*
    - *amount and character of the financial resources that will in the Directors' view be available to the Company,*

the Company will be able to:

- *continue to carry on its business; and*

- *discharge its liabilities as they fall due, until the expiry of the period of 12 months immediately following the date on which the solvency statement is signed."*

Offences

Under the Ordinance, it will become an offence for a person to:

- make a solvency statement without having reasonable grounds for the opinion expressed in it; or
- knowingly or recklessly provide the FSRA with any information or document in connection with a continuance which is false, misleading or deceptive in a material respect.

If a person commits either offence, on conviction, the person shall be liable to a fine, imprisonment or both.

(ii) Continuance away from St Helena

Eligibility

In terms of continuance away from St Helena, the Companies Ordinance should expressly permit a company to continue as a body corporate incorporated in a foreign jurisdiction if:

- it is not being wound up or in liquidation and its assets are not subject to bankruptcy procedures in St Helena (see below for further suggested new laws in this regard)
- it is not insolvent (a definition of which is an inability to pay its debts as they fall due).
- No liquidator has been appointed to wind up the Company in accordance with the provisions of the Companies Ordinance or no receiver, manager or administrator has been appointed in relation any of its assets
- there is no compromise or arrangement in force between it and any creditor
- there is no application before a court in St Helena for its winning up or liquidation, to have it declared insolvent or to appoint any liquidator, receiver, manager or administrator to approve any compromise or arrangement with creditors.

Procedure

The company must take any steps necessary for it to continue to the foreign jurisdiction under the laws of that foreign jurisdiction (typically passing board and shareholder resolutions and appointing approved corporate service providers in that jurisdiction), but this is not relevant for the purposes of the amendments to St Helena law.

In terms of amendments to the ordinance to facilitate continuance outside of St Helena, the procedure to be included in the law should protect creditors and not be prejudicial to those with an interest in the company in St Helena. The appropriate procedure should therefore be as follows:

- The directors will approve the proposal to continue the company to the foreign jurisdiction and taking all actions related to it
- The proposal to continue to the foreign jurisdiction must also be approved by:
- a special resolution passed by the shareholders
- (if the company has more than one class of shares) a special resolution passed by the shareholders of each class at a separate meeting of that class

- The notice convening the meeting must:
- include a summary of the proposed continuance application; and
- state that any shareholder who objects to the continuance may apply to the St Helena court for relief on the grounds that it is unfairly prejudicial to the shareholder's interests.

- Unless all of its known creditors agree otherwise in writing, at least 21 days before the company files its continuance application with the Companies Registry, it must:

- give notice to its creditors of its proposed continuance by:
    - publishing the notice at least once in a newspaper circulating in St Helena; and
    - sending a copy to them; and
- state in the notice that:
    - it proposes to apply to apply to the FSRA to continue to the relevant foreign jurisdiction; and
    - any creditor may notify the company that it objects to the continuance within 21 days of the date on which the notice is published.

- File with the FSRA:

- An application form;
- a certified copy of each special resolution of shareholders approving the continuance;
- evidence that the Head of Income tax in St Helena does not object to the continuance
- a solvency statement signed by the directors and any proposed new directors
- a legal opinion from lawyers in the foreign jurisdiction confirming that under the laws of the foreign jurisdiction
    - the Company is entitled to continue there
    - the Company will continue to own all of its property and rights
    - the company will continue to be subject to all criminal and civil liabilities and all contracts, debts and other obligations and actions and other legal proceedings pending against it.
- a certificate from a director of the Company certifying that:
    - no creditor has applied to the court in St Helena for an order preventing the continuance (or if an application made, it has been determined in a way which does not prevent the continuance); and
    - no shareholder has applied to the St Helena court for relief on the grounds that the continuance is unfairly prejudicial (or, if an application has been made, it has been determined in a way which does not prevent the continuance); and
    - it satisfies the solvency conditions mentioned in the *Eligibility* section above.
- an application fee made payable to the FSRA (proposed £500)

- If the FSRA is satisfied that the application complies with the Companies Ordinance, it will approve the application on the condition that the Company will ensure that the Companies Registry is:
  - informed of the date on which the continuance will be or is approved in the foreign jurisdiction; and
  - provided with a certified copy of the document evidencing the company's continuance to the foreign jurisdiction.
- Once the Company has continued to the foreign jurisdiction, the Registrar of Companies will record that it has ceased to be incorporated under the law in St Helena.

Objections

An objections procedure for creditors and shareholders should also be built into the Ordinance. A proposal would be as follows:

Shareholders

A shareholder who:

- *objects to the continuance; and*
- *did not vote in favour of it,*

may, within 21 days of the special resolution(s) approving the continuance being passed, apply to the St Helena court for relief on the grounds that it is unfair prejudicial to the shareholder's interests.

If the court is satisfied that the complaint is well founded, it may make any order the court thinks fit.

Creditors

A creditor who has notified the Company that it objects to the continuance, may within 21 days of the date on which notice of the continuance was published, apply to the St Helena court for an order preventing the continuance.

If the court is satisfied that the continuance would be unfairly prejudicial to the creditor's interests it may make an order preventing the continuance.

Offences

Under the Ordinance, it will become an offence for a person to:

- make a solvency statement without having reasonable grounds for the opinion expressed in it; or
- knowingly or recklessly provide the FSRA with any information or document in connection with a continuance which is false, misleading or deceptive in a material respect.

If a person commits either offence, on conviction, the person shall be liable to a fine, imprisonment or both.

2.2 Change of responsibilities for the general supervision of the Companies Ordinance

It is proposed that section 212 of the Companies Ordinance be amended such that the Registrar of Companies retains responsibility for administration of the Companies Ordinance, but subject to the general supervision of the FSRA, rather than the Chief Magistrate (as currently drafted). This would be more in keeping with the proposed regulation of the Companies Registry going forward and as set out above at Key Issue 4 and the future remit of the FSRA.

2.3 Provisions relating to Overseas Companies

It is proposed that Sections 179 -183 inclusive of the Companies Ordinance be deleted. As matters stand currently, under section 8 of the income tax ordinance, tax in St Helena is only payable by a person on amounts earned, accused or derived by that person during that tax year **in or from St Helena**. With the change in taxation proposed by this policy, all St Helena companies will be paying tax on a percentage of their worldwide income. Overseas companies should not therefore be able to register with the St Helena Companies Registry and therefore only pay tax on business activities in St Helena given that the changes to taxation will only apply to St Helena companies and not overseas companies.

Obviously, the alternative would be to further amend the income tax ordinance so that Overseas companies who have registered in accordance with section 179 would be taxed in the same way as St Helena companies, however it would seem perverse to have different regimes for registration of overseas companies if we are also going to facilitate continuance provisions and actively developing St Helena as a substantive jurisdiction in its own right.

2.4 Provisions relating to foreign regulatory authorities

It is proposed that section 250 of the Companies Ordinance be deleted. As drafted this states that:

Foreign regulatory authorities

250. (1) The Governor may, at his or her discretion by Order published in the Gazette prescribe foreign regulatory authorities with which the Registrar may exchange information.

(2) In deciding whether to exercise the powers under this section in relation to any country or territory, the Governor may take into account—

(a) whether corresponding assistance would be given in that country or territory to an authority exercising regulatory functions in St Helena; and

(b) whether the enquiries would relate to a possible breach of the laws of St Helena or elsewhere.

For reasons that will hopefully be apparent from the above, St Helena Government should negotiate DTAs and TIEAS so as to obtain mutual assistance provisions regarding AOI and exchange of information on taxpayers in these governmental ways, for example by adoption of CRS, rather than rely on individual Governor powers under the existing provisions of section 250 of the Companies Ordinance.

2.5 Provisions relating to the publication of beneficial ownership information

In line with FATF recommendations as well as FCO and HMG policy, all British overseas territories and Crown Dependencies will now be required to publish details of beneficial owners of all legal entities which are incorporated in the jurisdiction by 2023.

Section 216 of the Companies Ordinance currently allows public inspection of the Companies Registry records. It states as follows:

216. (1) A person who has paid the prescribed fee is entitled during normal business hours to examine, and to make copies of or extracts from, any document required by this Ordinance or the regulations to be sent to the Registrar, except a report sent to the Registrar under subsection section 239(2).

(2) The Registrar must upon request and payment of the prescribed fee provide any person with a copy or certified copy of any document received by the Registrar under this Ordinance, except a report received by the Registrar pursuant to section 239(2).

(3) If the records maintained by the Registrar are prepared and maintained in other than a written form—

(a) the Registrar must provide any copy required to be furnished under this Ordinance in an intelligible written form; and

(b) a report reproduced from those records, if certified by the Registrar, is admissible in evidence to the same extent as the original written records would be.

Although therefore St Helena technically 'publishes' its records, it is nonetheless in return for payment of a fee and somewhat at odds with the international requirements for such information to be available online. St Helena has been introduced to openownership.org who are able to assist with the digitisation and publication of St Helena's register of beneficial ownership (although we do not yet know what fee they may charge).

As a consequence of this, section 216 should be deleted but that the FSRA issue a Directive in due course signalling its acceptance of the UK and FCO requirements by announcing the publication of beneficial ownership information online, probably in accordance with the open ownership partnership.

2.6 Additions of acceptable corporate suffixes - Section 15 of the Ordinance

It is proposed hat Section 15 of the Ordinance be amended to include other internationally recognised designations of limited liability (such as 'Limited", "Ltd" or "Incorporated" etc.). This will be particularly useful if entities are able to benefit from continuance to St Helena as they will then not be required to change their known names or designations with which their investors and shareholders will be familiar. A list of the suggested acceptable suffixes is enclosed in the following table:

Legal Suffix	Full form	Description
Ltd, Ltd.	Limited	Company Limited by Shares - standard type of companies where members' liability is limited to the share capital. Limited companies can be Ltd or LLC companies - the difference depends on the jurisdiction
S.A., SA	Société Anonyme	SA is the equivalent to a Ltd company in French
S.A., SA	Sociedad Anonima	SA is the equivalent to a Ltd company in Spanish
A.G., AG	Aktiengesellschaft	A.G., AG is the equivalent to a Ltd company in German

Legal Suffix	Full form	Description
N.V., NY	Naamloze vennootschap	NV., NV is equivalent to Ltd in Dutch
Ltee	Limitee	Ltee is the equivalent to a Ltd company in Creole
B.V., BV	Besloten vennootschap met beperkte aansprakelijkheid	BV is the equivalent to a Ltd company (LLC) in Dutch
GmbH	Gesellschaft mit beschränkter Haftung	GmbH is equivalent to a Ltd company (LLC) in German
L.L.C., LLC	Limited Liability Company	This refers to a Limited Liability Company. They are similar to a Ltd company but is a specific legal form often used by smaller companies. They often include characteristics of other structures such as partnerships and due to their low cost and speed of incorporation are often operated by single members
SIA, Sia	Sabiedriba ar ierobežotu atbildibu	SIA, Sia is equivalent to a Ltd company in Latvian
Inc., Inc	Incorporated	This is one of the admissible references to a company (corporation) in the US in particular and is generally regarded as equivalent in form to Inc or Ltd.
Corp., Corp	Corporation	This is one of the admissible references to a company (corporation) in the US in particular and is generally regarded as equivalent in form to Inc or Ltd
Pte. Ltd	Private Limited Company	In Singapore in particular, this is a type of company limited by shares intended for entities which will not have more than 50 members.

2.7 Possible introduction of explicit provisions allowing corporate directors

One of the considerations that has been raised with regard to company administration is whether or not St Helena should allow corporate directors under the Companies Ordinance. It is common in some of the other financial services centres for this to be allowed, although the practice varies from one jurisdiction to another. The advantage is that this allows a corporate service provider to act as a director on its client entities through its own internal governance procedures and signing authorities.

However, several jurisdictions do not permit the use of corporate directors as it may be seen as essentially watering down the personal responsibility and accountability of directors who should be approved and tasked with governance in each instance; it being remembered that acting as a Director of an entity comes with long established principles of fiduciary responsibility and accountability under common law.

This policy does not recommend the use of corporate directors, except on a board of Co-Operatives.

2.8 Number of shareholders

SHG does not have a reason to limit the shareholders of a Private Limited Company to a restrictively small number. Up to 100 shareholders in a Private Limited Company would be acceptable.

4. Amendment to anti-money laundering law in respect of financial services businesses registered under the FS Ordinance

While the St Helena Money Laundering Ordinance sets out a good framework which encapsulates the main money laundering offences (arranging, possessing, concealing, disguising, converting, transferring, removing or importing criminal property within, or in or out from St Helena), it will be necessary for there to be further provisions particularly with regard to financial services entities regulated under the FS Ordinance. While the MLRA has power to enter premises and investigate issues where a "relevant activity" is carried on (as defined in the schedule to the law - principally financial type activities), there need to be more direct anti-money laundering regulations specifically for regulated financial entities.

The principal requirements that are needed to be put on a statutory footing to comply with FATF requirements are for a relevant person (i.e. anyone registered under the FS Ordinance) to "maintain appropriate policies and procedures relating to:

(a) customer due diligence measures;

(b) reporting;

(c) record-keeping;

(d) screening of employees;

(e) internal control;

(f) risk assessment and management; and

(g) the monitoring and management of compliance with, and the internal communication

of, such policies and procedures,

in respect of that person's financial services business in order to prevent and detect money laundering."

The detail under these requirements will then be laid out in the anti-money laundering handbook referred to above. So while the Handbook does not have legal effect, the basic requirements to implement these measures must be set out in law.

It is proposed that an amendment be made to the Money Laundering Ordinance - perhaps simply by passing a new set of Regulations underneath the ordinance for application to entities registered under the FS Ordinance - with the above requirements with regard to entities carrying out a "Relevant Activity".

5. New St Helena anti-terrorism financing ordinance

Further to the above amendments/new regulations issued under the Money Laundering ordinance, it will be important for St Helena to also demonstrate that it is also aware of the potential for international businesses to be involved in the facilitation of terrorism. St Helena should therefore enact its own anti-terrorist financing ordinance enabling local authorities to deal with any issues in a robust and internationally recognised way.

Most of the Anti-terrorism laws around the world are generally similar. Mauritius has enacted the Terrorism Law 2002. The following area are covered:

1. PART I - INTRODUCTION
2. PART II - ACTS OF TERRORISM AND RELATED OFFENCES
3. Prohibition of acts of terrorism - declaration of specific acts which are made specific criminal offences in their own right
4. Proscribed organisations (i.e. restrictions on dealing with international known terrorist organisations which are declared by the Act - e.g. ISIS etc.)
5. Terrorist meetings
6. Support of terrorists
7. Harbouring terrorists
8. Information about acts of terrorism
9. Obstruction of terrorist investigation
10. International terrorism
11. Suppression of financing of international terrorism
12. Hostages
13. PART III - TERRORIST CASH AND TERRORIST PROPERTY (relevant sections for financial services providers and creation of offences and investigatory powers specifically for terrorist related offences)
14. Seizure and detention of terrorist cash
15. Terrorist funding
16. Dealing in terrorist property
17. Attachment of property
18. Property tracking
19. PART IV - MUTUAL ASSISTANCE AND EXTRADITION
20. Requests from foreign States
21. Requests to foreign States
22. Evidence pursuant to a request
23. Form of requests
24. Extradition
25. PART V - INVESTIGATION
26. Power of investigation
27. Power of investigation in cases of urgency
28. Intelligence gathering

29. Detention of aircraft or vessel
30. Detention for offences related to terrorism
31. Custody record and video recording
32. PART VI - PROSECUTION
33. Prosecution for offence
34. Extra-territorial jurisdiction
35. Competent Court
36. Penalties
37. PART VII - MISCELLANEOUS
38. Regulations
39. Consequential amendments
40. Commencement

6. Data protection law for St Helena

A key consideration for effectively managing administration of international entities will be a reassurance for international businesses that data transferred to, and then administered by, St Helena, is governed by adequate data protection considerations.

While this has been the subject of ongoing debate within St Helena for the last two years or so, if this policy is to be advanced, adequate date protection will be a key factor for businesses looking to set up in St Helena. In some cases, in the absence of any data protection provisions, some countries may be legally prohibited from remitting data to St Helena if it does not have any laws regulating the use of such data.

While St Helena Government has internally, via its Code of Management, undertaken to implement the core principles of data protection as enshrined in the UK's Data Protection Act, it must be noted that this is not on a statutory basis. Furthermore, there are also General Data Protection Regulation (GDPR) considerations to now take account. GDPR is a European Union Directive which the UK (alongside several other offshore jurisdictions) has agreed to implement. While St Helena is not subject to GDPR generally, it is possible that there are certain transfers of data that may be covered by GDPR given that this EU law has extra-territorial affect. Notwithstanding this, there remains a commercial reality that global businesses will not feel comfortable having their affairs managed in a jurisdiction that does not have any basic data protection laws. SHG should therefore advance its initiatives with developing a suitable data protection law.

7. Revisions to the Cooperative Societies Ordinance

It is also proposed that the legislation and regulations pertaining to Cooperative Societies in St Helena should be reviewed and potentially amended. This is because the existing regulations under the 1932 Ordinance (the Regulations date back to 1951) may be at odds with the corporate structures that St Helena wishes to offer as part of its future strategy. If a cooperative structure is still desired, then SHG should look to regulate such societies in accordance with updated principles within a revised Companies Ordinance.

The regulations are restrictive for a number of reasons. The main issues are:

- In St Helena, members are currently not allowed to have varying shares (it is strictly one vote per member).

- Of around 7,000 Co-Operatives in the UK, most of them work because some members have larger roles than others. For example in the John Lewis Partnership, there are around 80,000 partners. Rather than one vote per member, within their constitution there is a democratic network of elected councils, committees and forums which enables Partners to participate in decision making, challenge management on performance and have a say in how the business is run. St Helena's Ordinance should be more flexible to allow these innovative types of Co-Operatives.

- In St Helena, companies and other organisations are not allowed to be members of Cooperatives – only individuals are.
    - The Housing Finance Corporation Limited in the UK is used as a vehicle to loan finance to its members, which are housing associations. Allowing for companies and other organisations to be members of a Cooperative could help facilitate these kind of vehicles.

The revisions should allow for:

- members to have varying shares (as opposed to strictly one vote per member),
- Voting majority should be defined in by-laws, whether one vote per member or vote by shares. Voting majority should be at least 50% of those in attendance, or 75% of those in attendance if the vote is to change the by-laws.~~and~~
- ~~for~~ companies to be members of Cooperatives.
- membership to be no less than 3 adult persons, corporations, government departments or not for profit entities who are members. The quorum of that Committee will be set out in the by-laws and must be no less than 2 members.
- Select members and expel members as per the by-laws of the Co-Operative Society. Restrict number of members to a certain numbers, if outlined in by-laws.
- Move fees to regulations
- Remove section 15 regarding loans from Governor in Council as it is now antiquated.

8. Trusts

Internationally, the incorporation and administration of trust structures is something which operates alongside the incorporation and administration of companies. It is common for many international businesses which are not public limited companies (plcs) to be ultimately owned by Trustees of a trust, often set up for the benefit of the family members of the founder of the business.

It will be necessary for SHG to consider a new trusts law to enable this business as there is law at present. To maximise revenue opportunities, however, it is highly recommended that SHG look at doing this over the next 12 months as many opportunities concerning company administration could operate in conjunction with trust administration. Therefore, SHG shall, through appropriate policy and legislation drafting, consider including reference to Inter Vivos Trusts, Testamentary Trusts, Special Trusts, Charitable Trusts, Discretionary Trusts and Non-discretionary Trusts in the Company Registry Policy.

~~8.~~9. Permitting

If taken forward, this policy will require the Companies Registry and its new key personnel to be explicitly approved by the FSRA.

If a corporate administrator is to be engaged, then this business will also need to be approved by the FSRA under the FS Ordinance.

Aside from the other changes to the laws as set out above, no other permits will be required.