



BENEFICIAL OWNERSHIP REGISTER POLICY

A policy outlining the proposed operation and legal framework for a St Helena Beneficial Ownership Register

Version 1.0 01/02/2023

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LIST OF VERSIONS	POLICY MANAGER	REVIEW GROUP	DATE
1.0	Michael Henning – Financial Services Development Manager	Advisory Board – Treasury, Infrastructure & Sustainable Development Portfolio	01/02/2023

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1 Introduction

1.1 Background

Beneficial ownership refers to a person who ultimately owns or controls an asset (i.e. property, securities, land, company, etc.). For the purposes of this document, the asset in question is a company.

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.

There are both lawful and unlawful reasons for wanting to separate the legal and beneficial owners of something. Nonetheless, beneficial ownership registers provide transparency and play an important role in the fight against corruption, tax evasion and money laundering.

1.2 Requirement to establish Beneficial Ownership Register

The U.K. government has issued a Draft Order in Council – *The Overseas Territories (Publicly Accessible Registers of Beneficial Ownership of Companies) Order 20*** – (See Schedule 1 of this policy document for a copy of the Draft Order in Council) which, once enacted, will require St Helena (along with the other British Overseas Territories) to implement a Beneficial Ownership Register. The current Draft Order in Council does not specify a deadline by which implementation must occur, however, discussions with FCDO officials indicates that full implementation will be required by the end of 2023.

The Draft Order in Council specifies the minimum requirements that the Beneficial Ownership Register must meet. These minimum requirements are focused on three main aspects of the prospective register:

- 1) public accessibility of the register;
- 2) a definition of what constitutes a beneficial owner; and
- 3) the information that must be contained on the register with respect to each beneficial owner.

1.3 Development and implementation overview

Development and implementation of the new Beneficial Ownership Register will be undertaken in three general phases:

- 1) Phase 1 – General concept design and strategy (i.e. this policy document)
- 2) Phase 2 – Legislative drafting
- 3) Phase 3 – Development of operational policies and procedures

Phase 1 – General concept design and strategy

Phase 1 will be undertaken by staff from the Sustainable Development Team and will comprise of:

- 1) a review of the requirements set out in the Draft Order in Council;

- 2) the development of a general implementation strategy;
- 3) an initial evaluation of the existing Company Registry processes and staffing resources;
- 4) determining the recommended level of sophistication of the proposed Beneficial Ownership Register;
- 5) conceptualising the general design and functioning of the Beneficial Ownership Register; and
- 6) preparation of legislative drafting instructions.

This document aims to fulfil all 6 of the above objectives.

Estimated duration of phase 1: **3 weeks**

Phase 2 – Legislative drafting

Phase 2 will be the preparation of draft legislation to enable the creation and ongoing operation of the Beneficial Ownership Register. This phase will be completed by a legislative drafter sitting within the Attorney Generals Chambers on the basis of the information contained in this document along with ongoing consultation with the Sustainable Development Team.

Estimated duration of phase 2: **6 weeks**

Phase 3 – Development of operational policies and procedures

Phase 3 will be undertaken by the Sustainable Development Team following the completion of the draft legislation. This phase will entail creating formal policies and procedures to enable the day-to-day functioning of the Beneficial Ownership Register in compliance with the draft legislation.

Estimated duration of phase 3: **6 weeks**

1.4 Current status of Company Register and Beneficial Ownership Register

An assessment of the current status and operations of the Company Registry function along with current practices around the collection of beneficial ownership information has been undertaken and completed by the Sustainable Development Team.

Company Registry

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 8 hours per month to its operation.

There are currently 235 companies listed on the register, of which 131 have either been dissolved, struck off the register or are due to be struck off the register. This means that there are effectively 104 “active” companies on the Company Registry. The Company Registry currently generates approximately £2500 to £3000 per year in revenue through the collection of fees.

A preliminary review of the Company Registry operations and capacity has been conducted. The current operation and procedures of the Company Registry are rudimentary and basic in nature. The Company Registry is administered using a paper based filing system along with an Excel spreadsheet. While the current systems and processes are ad hoc in nature without written procedures and standardised practices, they are adequate to meet the present level of demand on the Company Registry. Systems and processes will need to be overhauled and redesigned in order to modernise the Company Registry and to cope with any future increase in demand.

Beneficial ownership information

There is currently no Beneficial Ownership Register on St Helena, nor is there any existing legal framework that would enable the creation of a Beneficial Ownership Registry that would meet the requirements set out in the Draft Order in Council.

However, it should be noted that for the past several years Company Registry staff have, in certain circumstances, been collecting an enhanced degree of legal ownership information. Beneficial ownership information is sometimes also collected incidentally. The circumstances where this additional information has been collected generally includes:

- 1) applications to incorporate a company on St Helena where the legal ownership appears to be based overseas; and
- 2) applications to register an overseas company on St Helena.

This information is collected on an ad hoc basis without any standardised policies or procedures. The information is collected at the time of the relevant application only, and not kept up to date or reviewed after its initial collection. Company Registry staff have been collecting this limited beneficial ownership information under the auspices of sections 227 and 244 of the Companies Ordinance 2004.

Section 227 of the Companies Ordinance 2004 only gives the Registrar the power to require that a document submitted be verified by affidavit or affirmation. It does not provide the power to require additional documents or information not specifically required by the Companies Ordinance 2004.

Section 244 of the Companies Ordinance 2004 does not in fact give the Registrar or Company Registry staff the authority to require applicants to provide the level of legal and beneficial ownership information that they have been collecting without first obtaining an order from the Court. To date, applicants have effectively been voluntarily providing the requested beneficial ownership information to the Company Registry with no legal power for the Registrar or Company Registry staff to compel such information without first making an application to the Court.

Even if the Registrar or Company Registry staff were to apply to the Court for an order to compel beneficial ownership information, the powers contained in section 244 of the Companies Ordinance 2004 are limited and are not sufficient to meet the requirements set out in the Draft Order in Council.

2 OVERARCHING POLICY FRAMEWORK

2.1 Strategic Objectives

This policy supports the following St Helena Government strategic objective:

“Altogether Wealthier”

Implementation of this policy will contribute to the general modernisation of company law and to St Helena becoming a more attractive jurisdiction to conduct business with/within.

2.2 Sustainable Economic Development Plan

This policy supports the following goals as set out in the St Helena Government Sustainable Economic Development Plan:

- 1) Increase exports; and
- 2) Develop the digital and professional economy.

By 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.

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.

2.3 Scope

This policy is directed at both SHG (in terms of implementation and ongoing administration of the Beneficial Ownership Register) and the St Helena business community (in terms of the requirement for businesses to make additional administrative filings).

3. POLICY OUTLINE

3.1 Funding and staffing

St Helena Government is not providing any additional staffing or budgetary resources to aid in the delivery/implementation of the Beneficial Ownership Register or to support its ongoing operation and administration. As a result, the approach that is being taken is to design and implement the simplest possible system that will comply with the Draft Order in Council while also providing a foundational legislative framework that can be further built upon in the future should additional funding or resources be made available.

The simplicity of the system should be reflected in the relative simplicity of the underpinning primary and secondary legislation in comparison to the complex legislative framework of countries like the U.K.

3.2 Compliance with Draft Order in Council

Consideration has been given as to whether St Helena should exceed the minimum requirements set out in the Draft Order in Council with respect to the substantive obligations contained in the order – these being the definition of what constitutes a beneficial owner and the information that is required to be contained on the register with respect to each beneficial owner.

Exceeding the minimum requirements presents the following issues:

- 1) additional complexity of design, legislation and implementation of the register;
- 2) additional time, cost and resources required to process submissions, operate and maintain the register;
- 3) potential privacy concerns from individuals, companies and organisations with respect to disclosing more information than what is required by the Draft Order in Council;
- 4) additional demands placed on local companies in terms of increased administration and the collection of beneficial ownership information; and

- 5) reduced international appeal and competitiveness as a jurisdiction for off-shore incorporation.

In order to avoid the issues outlined above, St Helena will not exceed the minimum requirements set out in the Draft Order in Council.

Discussions with FCDO officials have indicated that the other British Overseas Territories that are in the process of designing and implementing a Beneficial Ownership Register in order to comply with the Draft Order in Council are taking a similar approach with the intention of meeting, and not exceeding, the minimum requirements set out in the Draft Order in Council. FCDO officials believe that this is primarily driven by a desire for these jurisdictions to remain a competitive and attractive place to incorporate companies.

Note: For further discussion on the benefits and risks associated with the Beneficial Ownership Register as proposed in this policy document please see Schedule 2 (Options for Implementation of a Beneficial Ownership Register). The Options for Implementation of a Beneficial Ownership Register document was brought before the Advisory Board for the Treasury, Infrastructure and Sustainable Development Portfolio on 1 February 2023. The Advisory Board endorsed Option 2 as presented in the Options for Implementation of a Beneficial Ownership Register document. This policy reflects the general principles of Option 2.

3.3 Exemptions permitted by Draft Order in Council

The Draft Order in Council permits a number of exemptions to key requirements of the Beneficial Ownership Register. These exemptions are:

- 1) exemption for companies listed on a regulated market in the U.K. or EEA from being included on the Beneficial Ownership Register;
- 2) exemption for companies who are already subject to disclosure and transparency rules that are equivalent to those of a company listed on a regulated market in the U.K. or EEA from being included on the Beneficial Ownership Register;
- 3) exemption for beneficial owners who are natural persons from being listed on the Beneficial Ownership Register in respect of a company if the register captures a sufficient degree of ownership chain reporting where the ownership chain entity listed is one whose own beneficial ownership is included in the Beneficial Ownership Register; and
- 4) exemption from publically 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.

Provisions for exemptions numbers 1 and 4 will be included in the initial legal framework of the Beneficial Ownership Register. These exemption will be relatively straightforward to incorporate into the legislation and to enforce/verify compliance.

Exemptions 2 and 3 will not be included in the initial legal framework of the Beneficial Ownership Register because of the significant additional complexity that they would require from both a legislative drafting and an operational perspective. However, it is proposed that the primary legislation underpinning the Beneficial Ownership Register would allow for these exemptions to be implemented at some point in the future through secondary legislation.

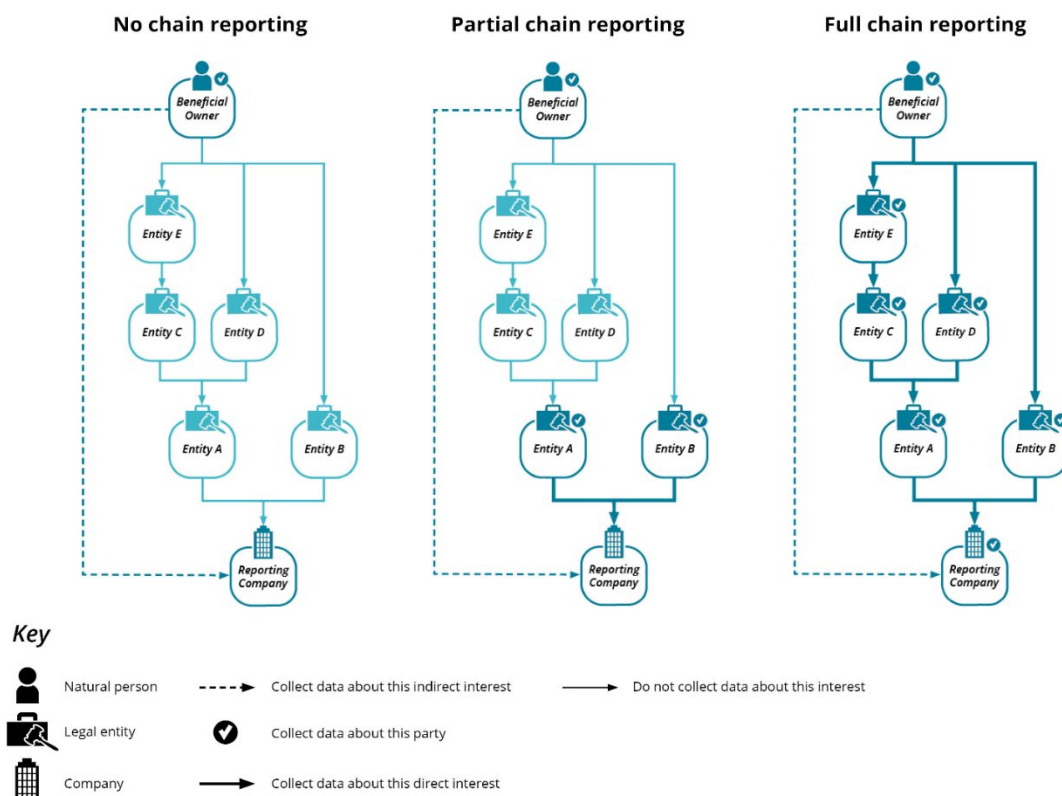
Implementation of exemption 2 would require ongoing evaluation of the continuously changing disclosure and transparency rules in other jurisdictions and on other stock exchanges to ensure that they remain equivalent. This continuous monitoring would be labour and resource intensive. In the short to medium term the likelihood that this exemption would be relevant to a company operating on St Helena is low.

Exemption 3 would require partial ownership chain reporting in order to be implemented. Implementation of this exemption may marginally reduce the level of administration required for a small number of companies in terms of the submission of information to the Registrar. However, it would increase the administration required by registry staff and add complexity to the legislation and register database. From a transparency perspective this exemption serves little benefit as the beneficial owner information will be contained on the register regardless of whether this exemption is implemented.

3.4 No ownership chain reporting

Ownership chain reporting will not be required.

In line with the minimum requirements set out in the Draft Order in Council, only beneficial owners will be required to be listed on the register. Intermediary entities through which a holding or control is exercised will not be collected or shown on the register. This will lead to a register that is simpler to administer and maintain as well as reduce the administrative burden on companies themselves.



4. OPERATIONAL OVERVIEW OF PROPOSED BENEFICIAL OWNERSHIP REGISTER

4.1 Register

The Beneficial Ownership Register will exist as a standalone register legally separate and independent of the existing Company Registry.

However, in practice it will be administered by the judicial services staff who currently administer the Company Registry. Information contained on the Company Registry will be utilised to administer the Beneficial Ownership Registry and to verify and cross-check some details.

4.2 Registrar

The Company Registrar will be the Registrar of the Beneficial Ownership Register.

The Company Registrar (appointed under the Companies Ordinance 2004) will be responsible for administering the Beneficial Ownership Register. There should not necessarily be a need to appoint the Company Registrar separately as the Registrar of the Beneficial Ownership Register, as the definition of Registrar in the Beneficial Ownership Register legislation could simply cross-refer to the Company Registrar appointed under the Companies Ordinance 2004 and deem them to be the Registrar of the Beneficial Ownership Register. Though the Company Registry and the Beneficial Ownership Register will be two separate registers under law, in practice they will administered together.

4.3 Definition of beneficial owner

A beneficial owner will be 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.

The definition of beneficial owner will incorporate a definitive list of the types of legal persons who can be a beneficial owner. This list would include natural persons and legal persons who are not companies, for example, a corporation sole, a government, an international organisation, etc. Though requiring that these specified legal persons who are not companies be considered beneficial owners is not required by the Draft Order in Council, doing so adds practical value to Beneficial Ownership Register (in particular given that a number of companies on St Helena are controlled by the St Helena Government) with little additional complexity.

The specified criteria that would need to be met to be considered a beneficial owner would mirror those used in the U.K. Persons with Significant Control provisions contained in the U.K.'s Companies Act 2006. The level of control which would constitute a person being a beneficial owner will be set by reference to a percentage of a particular interest held. Such percentage will be 25%, which is in compliance with the Draft Order in Council. Additionally, there will be a general catch-all provision that would capture circumstances where a formal interest is not held but control is still exercised.

4.4 Required information to be listed on the register

The information that will be contained on the register with respect to each beneficial owner will be that which is required by the Draft Order in Council.

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).

4.5 Submission obligation

The ongoing obligation to submit information to the Registrar will rest with companies themselves. The legal obligation to provide the Registrar with the required beneficial ownership information in relation to a company will be on the company in question and not on beneficial owners or intermediary entities. This will ensure that registry staff only receive submissions directly from the company in question and not from unknown third parties, intermediary entities or beneficial owners themselves. The intention is that this will lead to more reliable, consistent and accurate information being submitted and that it will reduce the amount of time spent by registry staff on processing submissions and administering the register.

4.6 Obligation to identify beneficial owners

The obligation to identify beneficial owners of a company will rest with companies themselves.

The legal obligation to identify any beneficial owners in relation to a company will be on the company in question. The obligation will be for a company to take “all reasonable steps” to ascertain whether they have any beneficial owners, to identify any beneficial owners and to obtain the required information in relation to any beneficial owners.

The underlying premise is that anyone who is in fact a beneficial owner of a company will, by the nature of them being a beneficial owner, have a financial interest in the company which will incentivise them to report their details so that the company does not receive fines or get struck off.

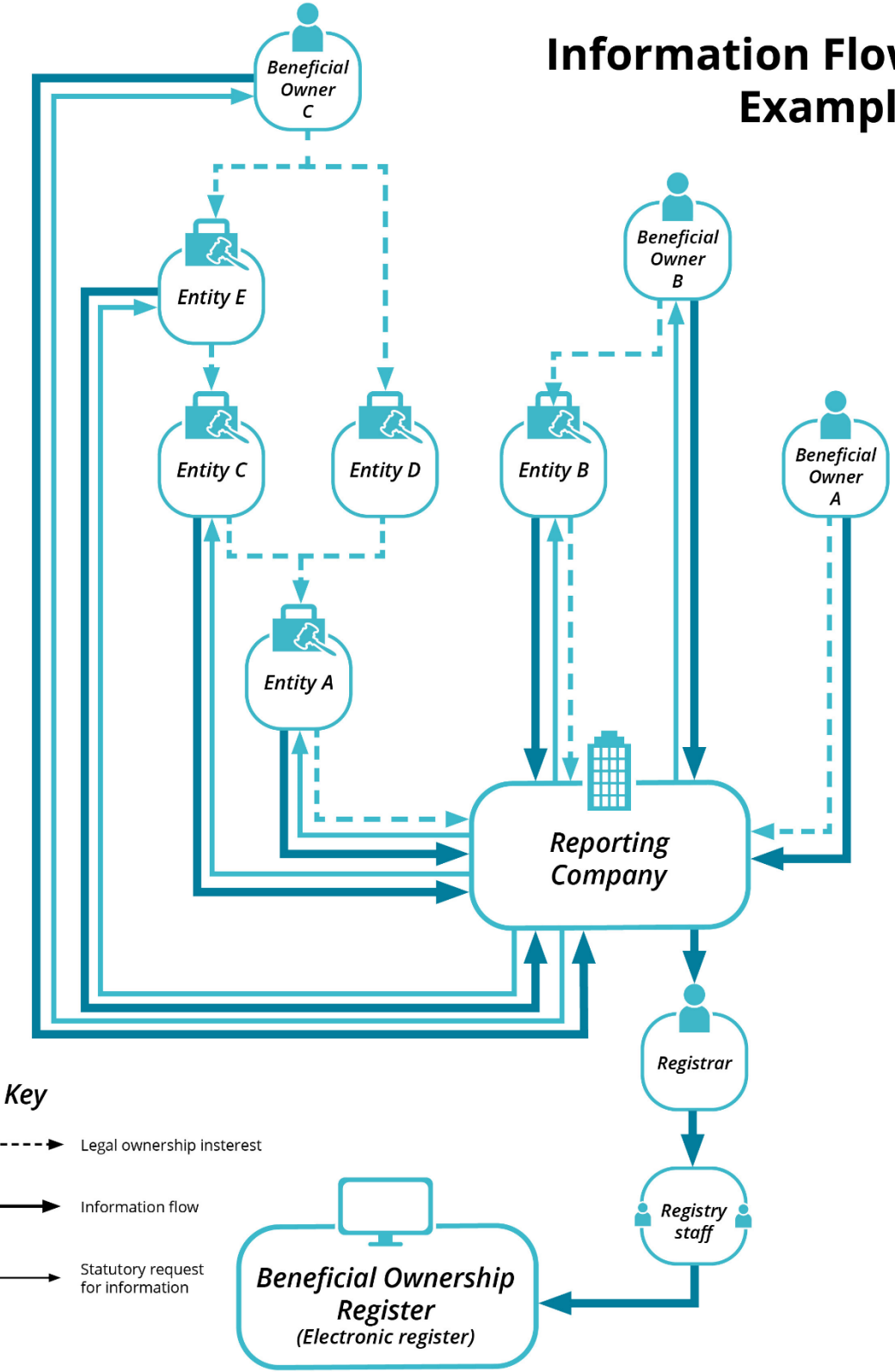
4.7 Request mechanism

A request mechanism will compel persons to supply companies with the information they need to identify beneficial owners and to obtain the required information with respect to beneficial owners.

In all but the most simple ownership structures companies themselves may not be aware of who their beneficial owners are. To assist and enable companies to identify beneficial owners and to obtain the required information from beneficial owners a statutory request mechanism will be included in the legislation. This mechanism will allow companies to deliver a written request, in a standard prescribed form, to persons it believes may be beneficial owners or persons it believes may themselves know who the beneficial owners of the company are. Persons who receive such a request from a company would be under a legal obligation to confirm whether they are beneficial owners, and if so to provide their required details, and/or identify persons who they know or believe are beneficial owners.

There will be statutory timeframes within which a person who receives such a request must respond to the request.

Information Flow Example



4.8 Obligation to keep records

Companies will be under a legal obligation to keep and maintain records of their beneficial owners.

Companies that are required to submit their beneficial ownership information to the Registrar will also be required to keep records of their beneficial owners and the information that they collect from them. These records will not need to be kept in any specific form to allow companies flexibility. These records will not need to be open to public inspection as the pertinent information will be publically available on the register. The Registrar would have the power to inspect these records if need be. It is not envisaged that such an inspection would be a normal or regular occurrence.

4.9 Obligation to keep records

Persons who are beneficial owners and that know or believe they are beneficial owners will have a legal obligation to notify a company of their status and provide the company with their required information.

This obligation will only apply if the person is not listed on the register with respect to the company, or are listed on the register but the required information listed is incorrect. This obligation would apply to a person who becomes a beneficial owner or is already a beneficial owner. It would effectively put an obligation on a person to notify a company when they become a beneficial owner and to notify a company when their required information contained on the register is not accurate (i.e. a change in their required information has occurred).

4.10 Obligation for companies to keep information up to date

Companies will be under a legal obligation to keep information contained on the register up to date. Companies will be under an ongoing obligation to confirm and/or obtain correct and complete information of beneficial owners as soon as they believe, know or ought to know that any information contained on the register is incorrect or incomplete. This obligation will also apply to circumstances where a company believes, knows, or ought to know that a person has ceased to be a beneficial owner.

The separate and ongoing obligation for a company to submit the information to the Registrar would require any updated information collected by the company to then be submitted to the Registrar.

4.11 Obligation for persons to keep information up to date

Persons who are (or have ceased to be) beneficial owners will be under a legal obligation to notify a company of any changes to their required information or status as a beneficial owner.

Persons who believe, know or ought to know that they are a beneficial owner or have ceased to be a beneficial owner will be required to notify the company of any change in their status or required information. This obligation will capture persons who have ceased to be beneficial owners but are still listed on the register, ensuring that the company (and subsequently the Registrar) are promptly notified of a person ceasing to be a beneficial owner.

4.12 Mechanism for persons to rectify information contained on the register

Persons who are incorrectly listed in the register as a beneficial owner of a company will have the ability to apply to the court to have their name removed from the register.

This mechanism would give persons who are incorrectly listed in the register as a beneficial owner of a company a way to have their name removed from the register without needing the cooperation or support of the company that they are listed as being a beneficial owner of. In the vast majority of

cases it is envisaged that a person in such a circumstance would be able to rectify the issue by contacting/notifying the company directly. The company would then be under a legal obligation to take reasonable steps to determine/confirm whether or not that person is a beneficial owner and to then update the Registrar accordingly.

In instances where a company is not fulfilling their legal obligations, or where there is a dispute between a company and a person listed as a beneficial owner, then this mechanism would serve to resolve the issue.

4.13 Penalties for non-compliance

The penalty for failing to comply with an obligation will be a fine of up to £5,000 for individuals and a fine of up to £50,000 for companies.

In addition to fines, the Registrar will have the ability to remove from the Companies Register (i.e. strike off) any company that fails to comply with an obligation.

4.14 Non-disclosure applications

An exemption will exist to allow beneficial ownership information to be excluded from the register in cases where making such information public would present a serious risk of harm to the beneficial owner.

This exemption will allow beneficial owners who face a serious risk of harm to have their information withheld from the public. The grounds on which this exemption may be granted will be explicitly defined as those permitted by the Draft Order in Council. The power to approve applications will rest with the Registrar and will be entirely discretionary. Exemptions that are granted will be time limited.

4.15 Power of Registrar to require documents and information

The Registrar will have the power to require that companies and beneficial owners provide any information or documents necessary to verify or confirm beneficial ownership information that is submitted to the Registrar.

The broad power for the Registrar to require companies and beneficial owners to provide documents or information is necessary for the effective verification and auditing of information that has been submitted to the Registrar. The ability to request documents such as government issued ID or detailed ownership structure information will ensure a sufficient degree of accuracy and confidence in the information contained on the register. It is anticipated that this power will not be used routinely and would instead be utilised in high risk cases or in instances where there is reason to suspect the accuracy of the information received.

4.16 Submission forms

The submission of information to the Registrar will be done using specified forms and will not be accepted in any other format.

Standard forms will be designed for the submission of information. The forms that will be required are the following:

- 1) Notice of Beneficial Owner – Natural Person
- 2) Notice of Beneficial Owner – Other Registrable Person
- 3) Notice of Change of Details of Beneficial Owner – Natural Person

- 4) Notice of Change of Details of Beneficial Owner –Other Registrable Person
- 5) Notice of Ceasing to be a Beneficial Owner – Natural Person or Other Registrable Person
- 6) Notice of No Beneficial Owner

4.17 Standard form of written request by a company

A standard form will be developed for companies to use when requesting beneficial ownership information from persons.

This standard form will be required to be used to make a request of information under the statutory request mechanism. By requiring the use of this standard form it will standardise and simplify the process of formally requesting information for both companies and persons subject to the request. It will also make it easier to enforce contraventions of the statutory request mechanism.

5. PROPOSED LEGISLATIVE FRAMEWORK

5.1 Proposed Ordinance

It is proposed that the legal framework establishing the Beneficial Ownership Register and underpinning the ongoing operation of the register be in the form of a new standalone piece of primary legislation that will contain the essential definitions and provisions necessary to meet the requirements of the Draft Order in Council. This piece of primary legislation should, on its own, be sufficient to support the implementation and ongoing operation of the register.

By implementing the requirements of the Draft Order in Council through a new standalone Ordinance the existence and operation of the Beneficial Ownership Register is compartmentalised. This makes it less likely to be inadvertently amended in a way that would be incompatible with the Draft Order in Council and protects the integrity of the Beneficial Ownership Register from future amendments as part of any general company law reform. Additionally, the commencement section of the Ordinance can make reference to the fact that the Ordinance was brought in to comply with the requirements of the Draft Order in Council and thus act as a reminder and warning that any amendments need to be compatible with the Draft Order in Council.

The primary legislation may be supported by secondary regulations that serve to provide additional clarification, powers and functionality where necessary. It is proposed that initially these regulations will be relatively short and concise but with the express scope to add additional provisions in the future.

5.2 Proposed structure of Ordinance

It is proposed that the Ordinance be structured in the following way:

PART I – CONSTRUCTION AND DEFINITIONS

1. *Definitions*
2. *Beneficial owner of a St Helena company*

PART II – DUTY TO ASCERTAIN, KEEP RECORDS AND SUPPLY INFORMATION

3. *Duty of a St Helena company to determine beneficial owners and retain records*
4. *Duty of person to supply information and keep information up to date*
5. *Duty of a person to notify when ceasing to be a beneficial owner*
6. *Duty of St Helena company to keep information up to date*

PART III – DUTY TO FILE INFORMATION WITH REGISTRAR

7. *Duty of a St Helena company to file beneficial ownership information*

PART IV – ADMINISTRATION AND ESTABLISHMENT OF REGISTER

8. *Rectification of the register by the Court*
9. *Establishment of Beneficial Ownership Register*
10. *Public accessibility of register*

PART V – PENALTIES

11. *Penalties for individuals*
12. *Penalties for persons other than individuals*

PART VI – REMOVAL FROM COMPANIES REGISTER

13. *Removal from Company Register*

PART VII – NON-DISCLOSURE APPLICATIONS

14. *Application for non-disclosure of beneficial owner*
15. *Determination of application for non-disclosure*
16. *Revocation of determination*

PART VIII – REGISTRARS POWER TO REQUIRE INFORMATION AND DOCUMENTS

17. *Registrars power to require information and documents*

PART IX - REGULATIONS

18. *Regulations*

5.3 Provisions of Ordinance

This section outlines key definitions and provisions of the proposed Ordinance. It is not meant to be an exhaustive list of all of the definitions and provisions required, but aims to set out specific key definitions and provisions that are required to implement St Helena’s Beneficial Ownership Registry strategy in compliance with the Draft Order in Council.

The below definitions and provisions are meant to demonstrate, clarify and address the more technical points of the desired legal framework that cannot easily be communicated in the above general design overview. They are not meant to be draft legislation.

This section will follow the proposed order outlined in paragraph 5.2 (Proposed structure of Ordinance).

PROVISIONS

PART I – CONSTRUCTION AND DEFINITIONS

Definitions

1. In this Ordinance–

“Approved form” means a form that has been approved for the purpose by the Registrar.

“Other registrable person” means:

(a) a corporation sole;

(b) a government or government department of a country or territory (or part of a country or territory);

(c) an international organisation whose members include two or more countries or territories (or their governments); or

(d) a local authority or local government body.

“Person” means an individual, corporate body, firm or other entity that is a legal person under the law by which it is governed.

“Registrar” means the person appointed as the Registrar of Companies under a power to make such an appointment.

“Required particulars” means, in relation to a beneficial owner who is:

COMMENTARY/RATIONALE

The definition of “approved form” should be flexible to allow for the approved forms to easily be updated and changed as the Beneficial Ownership Register processes are developed and refined over time. A deliberate choice has been made to not schedule the approved forms to the Ordinance or the Regulations.

The definition of “other registrable person” needs to capture legal persons who are not companies but whose characteristics are akin to a natural person. The definition should be a definitive list of such legal persons.

The definition of “person” must be as wide as possible to capture all legal persons regardless of what jurisdiction or governing law they exist under. A definition of “person” that fails to be all encompassing would create legal loopholes that would potentially allow beneficial owners to avoid registration as a result of the legislation not capturing them. The term “person” will be used in, and form an integral part of, further key definitions.

The definition of “Registrar” should avoid the need to appoint a separate Registrar of the Beneficial Ownership Register and instead make clear that Company Registrar will also act in this role.

The definition of “required particulars” sets out the information that must be submitted to the registrar with respect to various legal persons who are beneficial owners.

(a) an individual, the individuals:

- (i) full legal name;*
- (ii) country or territory of usual residence;*
- (iii) nationality;*
- (iv) month and year of birth; and*
- (v) manner in which they are a beneficial owner of the relevant St Helena company;*

(b) an other registrable person, the persons:

- (i) full legal name;*
- (ii) principal office address;*
- (iii) legal form;*
- (iv) governing law; and*
- (v) manner in which they are a beneficial owner of the relevant St Helena company.*

“St Helena company” means a company or corporate body incorporated or formed under the Companies Ordinance 2004 other than a company or corporate body that:

(a) has voting shares admitted to trading on a U.K. regulated market or an EU regulated market; or

(b) is a not for profit association.

Beneficial owner of a St Helena Company

2. *(1) A person is a beneficial owner of a St Helena company if the person is:*

(a) an individual; or

(b) an other registrable person,

Limb (a) of the definition is meant to comply with the minimum requirements as set out in section 4(6) of the Draft Order in Council.

Limb (b) captures other legal persons not contemplated by the Draft Order in Council who are neither an individual nor a company. The existence of limb (b) is in line with current U.K. legislation.

In practice, there will be a separate submission form for legal persons if they fall within limbs (a) or (b).

The definition of “St Helena company” needs to comply with section 4(1)(a) of the Draft Order in Council.

Limb (a) contains a carve out for the exemption permitted by section 4(2)(a) of the Draft Order in Council.

Limb (b) contains a carve out for not for profit associations. The carve out for not for profit associations is included on the basis that the objects of such associations are sufficiently restricted by existing company law to negate the practical need for their inclusion on the Beneficial Ownership Register. The intention of this carve out is to avoid placing additional administrative burdens on not for profit associations when they are performing functions for the benefit of the community, often with very limited financial and staffing resources.

This provisions sets out who is considered a beneficial owner of a St Helena company under the Ordinance and needs to comply with section 4(4) of the Draft Order in Council.

who meets one or more of the conditions specified in subsection (2).

(2) The conditions specified for subsection (1) are that the person—

(a) holds, directly or indirectly, more than 25% of the shares in the company;

(b) holds, directly or indirectly, more than 25% of the voting rights in the company;

(c) holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company;

(d) has the right to exercise, or actually exercises, significant influence or control over the company;

(e) has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm that, under the law by which it is governed, is not a legal person and the trustees or members of such trust or firm meet any of the conditions set out above in subsections (a), (b), (c) or (d) (in their capacity as trustees or members) in relation to the company, or would do so if they were individuals.

PART II – DUTY TO ASCERTAIN, KEEP RECORDS AND SUPPLY INFORMATION

Duty of a St Helena company to determine beneficial owners and to retain records

3. (1) A St Helena company must take all reasonable steps to—

(a) ascertain and identify all persons who are beneficial owners of the company and the nature of such persons' beneficial interest in the company; and

(b) obtain the required particulars for each beneficial owner.

(2) A St Helena company must make and retain a written record of the required particulars it obtains for each beneficial owner which is available for inspection by the Registrar.

The conditions specified in subsection (2) mirror those contained in the equivalent U.K. legislation and comply with sections 4(4)(a) and 4(4)(b) of the Draft Order in Council in terms of both the manner that control may be exercised and the percentage threshold.

Subsection 2(d) serves as a catch-all provision to capture all other manners in which control may be exercised to avoid any loopholes that may arise from attempts at creating a definitive list of ways in which beneficial ownership may be held.

Subsection (2)(e) is meant to capture the exercise of control through non-legal persons such as trusts, partnerships and other firms.

This provision places an obligation on St Helena companies to “take all reasonable steps” to identify beneficial owners. It is accepted that there may be circumstances where complex ownership structures spanning multiple jurisdictions make it effectively impossible for a St Helena company to determine its beneficial owners. To mitigate this risk a separate obligation will be placed on beneficial owners in a different provision.

The requirement for written records to be maintained is necessary to allow for effective enforcement and investigations. The specific form that these records take

(3) For the purposes of ascertaining and identifying persons who are beneficial owners, a St Helena company is entitled to rely, without further enquiry, on the response of a person to a written request sent by the company requesting that the person–

(a) confirms whether they are a beneficial owner;

(b) identify any persons which they–

(i) know or believe are beneficial owners; and/or

(ii) have reason to believe may be able to identify beneficial owners; and

(c) if the person is a beneficial owner, to provide their required particulars,

unless the company has reason to believe that the response is misleading or false.

(4) A person who receives a request pursuant to subsection (3) must, within 30 days of receipt–

(a) confirm to the St Helena company whether or not they are a beneficial owner and identify any persons which they–

(i) know or believe are beneficial owners; and/or

(ii) have reason to believe may be able to identify beneficial owners; and

(b) if they are a beneficial owner, provide to the St Helena company their required particulars,

unless a claim to legal privilege could be maintained in any legal proceedings in respect of such information.

(5) A written request sent by a St Helena company pursuant to this section must be in the approved form.

will be left for companies to determine to allow flexibility and reduce administration.

The statutory request mechanism will assist companies in determining their beneficial owner by enabling them to compel information from certain persons. Companies will be able to rely on the information compelled from persons unless they have reason to believe the information is false. It is accepted that this request mechanism will not result in 100% success and accuracy in identifying beneficial owners. It is envisaged that proper and thorough use of the request mechanism would, in most instances, likely constitute a company having taken all reasonable steps to identify beneficial owners.

Persons who receive a statutory request for information will be required to provide a response within the specified timeframe.

Written requests under the statutory request mechanism are required to be in a standard form. This is to ease the administrative burden on companies and to provide clarity to persons receiving such requests.

Duty of person to supply information and keep information up to date

4. (1) This section applies to a person if–
- (a) the person believes, knows, or ought reasonably know, that they are a beneficial owner with respect to the St Helena company;
 - (b) the required particulars concerning the person are–
 - (i) not listed on the register; or
 - (ii) are listed on the register but are inaccurate; and
 - (c) the circumstances described in paragraphs (a) and (b) have continued for a period of at least 30 days.
- (2) If this section applies to a person, the person must notify the St Helena company–
- (a) that they are a beneficial owner in relation to the company;
 - (b) the date, to the best of the person’s knowledge, which they became a beneficial owner; and
 - (c) the required particulars of the person.
- (3) The duty under subsection (2) must be complied with within the period of 30 days from the date on which this section became applicable to the person.

Duty of a person to notify when ceasing to be a beneficial owner

5. (1) This section applies to a person if–
- (a) the person believes, knows or ought to know that they have ceased to be a beneficial owner in relation to a St Helena company; and
 - (b) the person is listed on the register as a beneficial owner of the company.
- (2) A person to which this section applies must notify the St Helena company–

This provision places an obligation on persons who are beneficial owners of a company to supply the company with the required information if they are not already listed on the Beneficial Ownership Register (or their details contained on the register are incorrect).

Subsection 1(b) places this obligation only on persons who “believe, know, or ought reasonably know” that they are beneficial owners and not those who have become beneficial owners without reasonably knowing (most likely as a result of complex ownership structures).

Section 4 intentionally does not apply to persons who have ceased to be beneficial owners, which are addressed in a separate provision.

This provisions places an obligation on persons who cease to be beneficial owners and are still listed on the register as beneficial owners to notify the company of their change in status.

(a) that they have ceased to be a beneficial owner in relation to the company; and

(b) the date, to the best of the persons knowledge, which they ceased to be a beneficial owner.

(3) The duty under subsection (2) must be complied with within 30 days of the date on which the person first became aware that they ceased to be a beneficial owner of the company.

Duty of St Helena company to keep information up to date

6. *(1) This section applies to a St Helena company if the company believes, knows or ought to know that, in relation to a person whose required particulars are listed on the register—*

(a) the person ceases to be a beneficial owner; or

(b) the required particulars listed on the register are incorrect or incomplete.

(2) If this section applies to a St Helena company, that company must take all reasonable steps to, as soon as reasonably practicable—

(a) confirm such person has ceased to be a beneficial owner; or

(b) obtain the correct and complete required particulars,

as applicable.

PART III – DUTY TO FILE INFORMATION WITH REGISTRAR

Duty of a St Helena company to file beneficial ownership information

7. *(1) A St Helena company must, within 30 days of this Ordinance coming into force or, in the case of a St Helena company that comes into existence after the date that this Ordinance comes into force, within 30 days of the company coming into existence, file a notice with the Registrar in the approved form—*

(a) setting out the required particulars with respect to each person who is a beneficial owner in relation to the company; or

(b) stating that no beneficial owners have been identified in relation to the company.

This provision places an obligation for companies to take “all reasonable steps” to ensure that the information contained on the Beneficial Ownership Register is up to date and accurate.

The obligation would be triggered in cases where a company independently becomes aware that the register is inaccurate as well as cases where the company becomes aware by virtue of receiving notification from a person pursuant to the above provisions.

Subsection (1) requires a company to make an initial filing to the Registrar setting out its beneficial ownership information within 30 days of this Ordinance coming into effect or 30 days of its incorporation using the approved form.

(2) A St Helena company must, within 30 days of section 5 becoming applicable to the company, file notice with the Registrar in the approved form–

(a) any change in the persons who are beneficial owners in relation to the company; and

(b) any change in the required particulars with respect to a beneficial owner.

(3) The Registrar must, on receipt of a notice under subsection (1) or (2), enter the information in the register unless they have reason to believe that the information contained in the notice is misleading or false.

PART IV – ADMINISTRATION AND ESTABLISHMENT OF REGISTER

Rectification of the register by the Court

8. *(1) If–*

(a) the name of any person as a beneficial owner is, without sufficient reason, entered in or omitted from the register; or

(b) a St Helena company fails to notify the Registrar of the fact that a person has ceased to be a beneficial owner in relation to that company within the timeframe specified in section 7(2),

the person aggrieved may apply to the Court for rectification of the register.

(2) On an application under subsection (1), the Court may–

(a) refuse the application; or

(b) order rectification of the register, and:

(i) shall direct the notification of the rectification be given to the Registrar; and

(ii) may order the company to pay damages to the aggrieved party.

Establishment of Beneficial Ownership Register

9. *The Registrar must establish and maintain a Register of Beneficial Ownership and must keep in it–*

Subsection (2) requires a company to notify the Registrar of any updates or changes to the information contained on the register. This obligation ensures that the information contained on the register is accurate in compliance with section 4(1)(b) of the Draft Order in Council.

This section gives persons the ability to apply to the court to have their name and information removed from, or placed on, the register.

It enables persons to rectify any mistakes on the register in situations where the company in question refuses or fails to file the required notice with the Registrar or where there is disagreement between a company and the person whether or not the person is a beneficial owner.

Subsection (2) empowers the Court to order rectification of the register and to award damages. The ability to award damages acts as an incentive for companies to comply with their obligations and to resolve disputes.

This provision requires the Registrar to establish and ensure the going operation of the Beneficial Ownership Register that

(a) the required particulars of beneficial owners in relation to St Helena companies; or

(b) where the Registrar has received notification pursuant to section 7(1)(b), a statement specifying that no beneficial owners have been identified by the company.

Public accessibility of register

10. *(1) The register (or a copy thereof) shall be available for inspection on request by any member of the general public.*

(2) Requests to inspect the register may be, but need not be, made to the Registrar through the internet.

(3) Providing a digital copy of the register to a person or making a digital copy of the register available through a publically accessible website shall be deemed to comply with subsection (1).

PART V – PENALTIES

Penalty for individuals

11. *(1) An individual who contravenes a section of this Ordinance or the regulations commits an offence and is liable to a fine up to £5,000.*

Penalty for persons other than individuals

12. *(1) Persons other than individuals who contravene a section of this Ordinance or the regulations commit an offence and are liable to a fine up to £50,000.*

PART VI – REMOVAL FROM COMPANIES REGISTER

Removal from Company Registry

contains the information required by section 4 of the Draft Order in Council.

This provisions satisfies the requirements set out in section 4(8) of the Draft Order in Council.

The financial penalty for individuals is limited to a level that reflects that the main obligations will be on the reporting company and not individuals. Individuals with obligations under the Ordinance would in most cases be beneficial owners who by their nature would have a significant financial interest in the reporting company. This interest (and the significant penalties that a reporting company can face for non-compliance) would serve as a substantial deterrent.

The penalty for companies is substantial to reflect that the main reporting obligations are on them. By setting the penalties by reference to the entity type and not by reference to specific sections or obligations it encourages companies at all levels of an ownership structure to fully comply with their obligations.

13. (1) A notice or document that is required to be submitted by a St Helena company to the Registrar under this Ordinance or regulations shall, for the purposes of section 231 of the Companies Ordinance 2004, be considered to be a notice or document required by the Companies Ordinance 2004.

The ultimate penalty for persistent non-compliance would be the removal of a St Helena company from the Company Register (i.e. striking off). Because of the inherent financial interest that companies within the ownership chain and beneficial owners would have in the St Helena company this penalty should act as a significant deterrent.

This provision allows the Company Registrar to be able to treat the non-submission or a notice or document required under the Beneficial Ownership Ordinance to be treated as a non-submission of a notice or document under the Companies Ordinance 2004. This in turn gives the Company Registrar the power to strike off a company that fails to provide the required notice or document under the Beneficial Ownership Ordinance.

PART VII – NON-DISCLOSURE APPLICATIONS

Application for non-disclosure of beneficial owner

14. (1) An individual who is, or proposes to become, a beneficial owner (or such persons legal representative) may make a written application to the Registrar requesting that some or all of their required particulars are not listed on the register on grounds that–

(a) the beneficial owner is a minor or lacks legal capacity; or

(b) public access to their some or all of their required particulars would expose the beneficial owner to serious risk of–

- (i) fraud;
- (ii) kidnapping;
- (iii) blackmail;
- (iv) extortion;
- (v) harassment;
- (vi) violence;
- (vii) intimidation; or
- (viii) other similar harm.

This provision implements the exemption permitted by article 4(9) of the Draft Order in Council. It provides a mechanism for current or prospective beneficial owners to apply for their detail to not be made public.

The grounds set out in limbs (a) and (b) of subsection (1) are those that are permitted by articles 4(9)(a) and (b) of the Draft Order in Council.

(2) A person who makes an application under subsection (1) must notify the Registrar in writing of any change to any information or evidence provided to the Registrar in connection with such application within 1 week of becoming aware of any such change.

Determination of application for non-disclosure

- 15.** *If the Registrar is satisfied (in their sole discretion) that an individual who is the subject of an application made under section 14(1) would be at serious risk of one or more of the harms specified in section 14(1)(b) the Registrar may grant the application for non-disclosure for a maximum period of 12 months.*

Revocation of determination

- 16.** *(1) The Registrar may revoke a determination made under section 15 if they are no longer satisfied (in their sole discretion) that an individual who is the subject of an application made under section 14(1) would be at serious risk of one or more of the harms specified in section 14(1)(b).*

(2) Prior to revoking a determination under this section the Registrar must send a notice to the applicant, and, if different, the individual to whom the determination relates, stating the Registrar's intention to revoke the determination following a period of 30 days from the date of the notice.

(3) The Registrar may revoke the determination only after the expiration of the time specified in the notice provided under subsection (2).

PART VIII – REGISTRARS POWER TO REQUIRE INFORMATION AND DOCUMENTS

Registrars power to require information and documents

- 17.** *The Registrar may require a St Helena company, or any person identified by a St Helena company as being a beneficial owner, to, within 30 days of a request, supply such information or documents as, in the sole opinion of the Registrar, may be necessary*

Subsection (2) places an obligation on applicants (and by extension persons who are granted the non-disclosure exemption) to notify the Registrar if there is any change in the circumstances that supported their application.

The granting of this exemption does not negate the obligations on companies and beneficial owners to supply the required particulars to the Registrar. It is only relevant to the public disclosure of the information.

An exemption shall only be granted for a maximum period of 12 months to ensure that the circumstances which supported the granting of the exemption are regularly reassessed by the Registrar.

The Registrar has the ability to unilaterally revoke an exemption that has been granted if they are no longer satisfied that the risk of serious harm exists.

Before the Registrar may revoke an exemption they will be required to notify the person concerned.

The Registrar must wait a period of 30 days from the notice before revoking the exemption. This provides the opportunity for the person concerned to potentially submit a further application/evidence to support their continued need for the exemption.

This power is intentionally broad to allow a wide range of documents and information to be required by the Registrar. Failure to provide any documents or information that is

for the effective confirmation or verification of the required particulars in relation to a beneficial owner.

required by the Registrar would constitute an offence.

PART IX - REGULATIONS

Regulations

18. *(1) The Governor in Council may make any regulations generally for giving effect to this Ordinance or required for the efficient administration of this Ordinance.*

The ability for the Governor in council to make regulations should be unrestricted.

(2) Without limiting subsection (1) regulations may be made:

Providing an indicative and non-exhaustive list of areas where regulations may be made may offer clarity and assist in the future drafting of regulations.

[indicative list of areas where regulations may be made to be included]

5.4 Areas where future regulations may be made

The following list is meant to serve as a guide for areas where regulations may be made and is not intended to be an exhaustive list limiting what regulations may be made.

- Scope of ordinance
 - Type of companies the Ordinance applies to
 - Exemption for companies subject to disclosure/transparency rules deemed equivalent to U.K. / EEA regulated markets
 - Exemption for foreign registered companies
- Non-disclosure of required information
 - Applications for non-disclosure of beneficial owner
 - Determination of application for non-disclosure of beneficial owner
 - Registrar not to disclose details concerning an application for non-disclosure
 - Duration of non-disclosure determination
 - Revocation of non-disclosure determination
 - Appeal against determination of non-disclosure application
 - Non-disclosure by Registrar
 - Fees for making non-disclosure application
- Fee for access
 - Fees for inspecting register
- Determination of Beneficial Owners (i.e. further clarification on technical matters relating to interests in a company)
 - Holding an interest in a St Helena company
 - Majority interests
 - Interests held through a legal entity
 - Joint interests and arrangements
 - Calculating shareholdings
 - Voting rights
 - Rights to appoint or remove directors
 - Holding a share or right indirectly
 - Shares held by a nominee

- Rights treated as held by person who controls their exercise
- Rights exercisable only in certain circumstances
- Rights attached to shares held by way of security
- Significant influence or control
- Limited partnerships
- Beneficial ownership information
 - Additional beneficial ownership information (required particulars)
 - Retention of beneficial ownership information
- General
 - Requirements for member of public to inspect register (i.e. identification, verifying identity, notifying the company that register was examined, notifying company of the name of examiner)
 - Criteria for recognition of regulated exchanges
 - Persons considered not to exercise significant influence or control (i.e. accountants, lawyers, advisers, company employees, etc.)

6. POLICY APPRAISAL

6.1 Policy Impacts

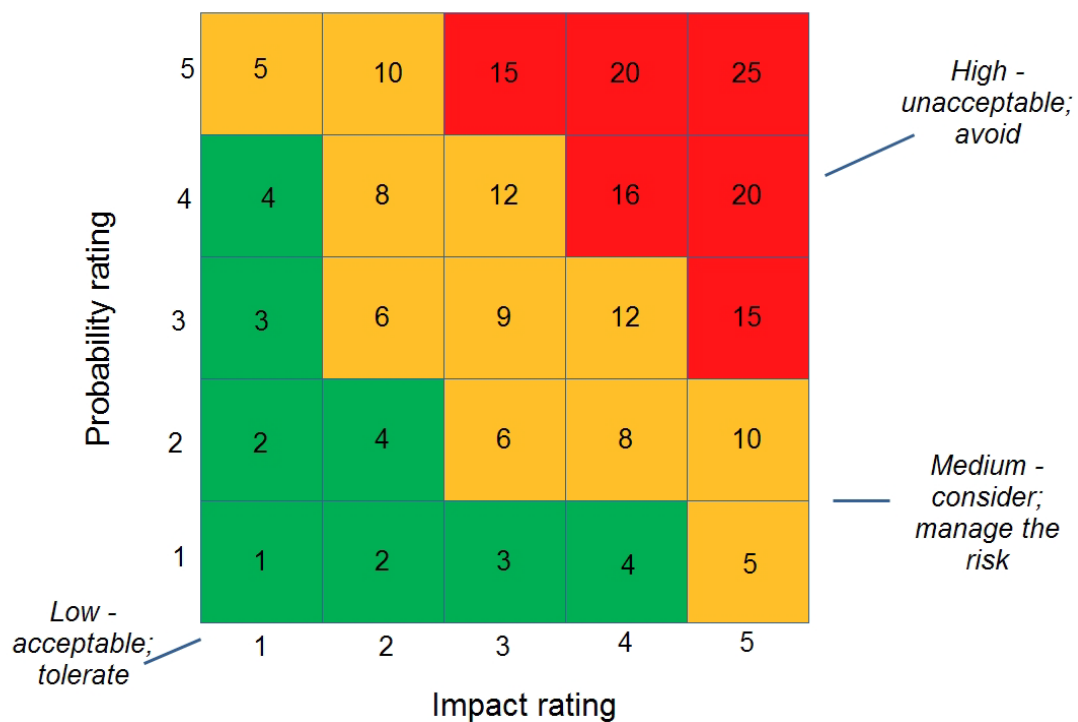
Potential impacts of this policy are outlined in the below table:

Factor	Potential Impact
Political	There is the potential that this policy will face some minor resistance from the St Helena business community due to the small increase in administrative filings that local companies will be legally required to make. Any resistance can likely be satisfied by communicating that implementation of this policy is a U.K. legal requirement and that the additional administrative burden will be kept to a minimum.
Economic	Unlikely to be any economic impact as a result of implementation of this policy.
Social	There is likely to be a positive overall social impact following the implementation of this policy resulting from a decreased risk of St Helena being utilised for the purposes of money laundering, tax evasion and terrorist financing. St Helena's international reputation is also likely to benefit from the implementation of this policy as it will be seen as a reputable jurisdiction that values transparency.
Health, safety and well-being	No anticipated impacts.
Technological	Implementation of this policy will require SHG IT resources in order to develop a suitable electronic database to store beneficial ownership information. However, the proposed Beneficial Ownership Register is deliberately simple enough that it could effectively be administered using a paper filing system.
Environmental	No anticipated impacts
Legal	Implementation of this policy will require the drafting and passing of a new Ordinance and related Regulations. Resources within the Attorney General's will be required to draft the new legislation.

Organisational	Implementation of this policy can be achieved by SHG without any additional financial costs or resources. The ongoing administration of the Beneficial Ownership Register can be achieved using existing staffing resources within the Judicial Services Department.
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6.2 Summary of Impact and Risk

The overall impact and risk assessment associated with implementation of the proposed Beneficial Ownership Register as set out in this policy document falls within the “Low/acceptable/tolerable” range of the below evaluation matrix:



See Schedule 3 (Impact and Risk Assessment) for full details.

SCHEDULE 1 – Draft Order in Council

**The Overseas Territories (Publically Accessible Registers of Beneficial Ownership of Companies)
Order 20****

DRAFT STATUTORY INSTRUMENTS

20** No.

OVERSEAS TERRITORIES

The Overseas Territories (Publicly Accessible Registers of Beneficial Ownership of Companies) Order 20**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - ***

At the Court at Buckingham Palace, the *** day of ***

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred on Her by section 51 of the Sanctions and Anti-Money Laundering Act 2018(a), section 1(2) of the Anguilla Act 1980(b), the British Settlements Acts 1887 and 1945(c), section 2(1)(b) of the Cyprus Act 1960(d), section 112 of the Saint Helena Act 1833(e), sections 5 and 7 of the West Indies Act 1962(f), and in exercise of all the other powers vested in Her, is pleased, by and with the advice of Her Privy Council, to make the following Order:

Citation, commencement and extent

1.—(1) This Order may be cited as the Overseas Territories (Publicly Accessible Registers of Beneficial Ownership of Companies) Order 20** and comes into force on ***.

(2) This Order extends to each British overseas territory listed in the Schedule.

Interpretation

2. In the application of this Order to any particular British overseas territory listed in the Schedule, the expression "Territory" means that Territory.

(a) 2018 c. 13.
(b) 1980 c. 67. There are amendments, but none relevant to these Regulations.
(c) 1887 c.54 and 1945 c.7. There are amendments, but none relevant to these Regulations.
(d) 1960 c.52. There are amendments, but none relevant to these Regulations.
(e) 1833 c.85.
(f) 1962 c.19. There are amendments, but none relevant to these Regulations.

Requirement for Territory governments to introduce compliant publicly accessible registers of beneficial ownership of companies

3.—(1) The government of a Territory to which this article applies must bring into existence, or cause to be brought into existence, a compliant publicly accessible register of beneficial ownership of companies for that Territory as soon as reasonably practicable for it to do so.

(2) This article applies to a Territory if—

- (a) a compliant publicly accessible register of beneficial ownership of companies for that Territory does not exist, and
- (b) there exists one or more companies in relation to which information would be included in a compliant publicly accessible register of beneficial ownership of companies, if such a register did exist.

(3) For the purposes of this Order, a compliant publicly accessible register of beneficial ownership of companies is a register that complies with article 4.

Minimum requirements for compliant publicly accessible registers of beneficial ownership of companies

4.—(1) A register complies with this article if, and only if—

- (a) subject to paragraph (2), it comprises, or is part of, a single collection of information concerning the beneficial ownership of companies incorporated in the Territory,
- (b) it is established and maintained such that, so far as reasonably practicable, the information contained in it is accurate and complete, and
- (c) it is publicly accessible.

(2) A register is not prevented from complying with this article by reason only of exemptions that may be made to exclude from the scope of the register companies—

- (a) with voting shares admitted to trading on a regulated market that is situated in the United Kingdom or European Economic Area, or
- (b) which are subject to disclosure and transparency rules which are contained in international standards and are equivalent to those applicable to companies referred to in subparagraph (a).

(3) For the purposes of this article, and subject to paragraph (5), “information concerning the beneficial ownership” of a company must include, as a minimum, such relevant information as that company can reasonably ascertain about any individual that exercises a significant degree of control over that company.

(4) For the purposes of this article—

- (a) “control” may be either direct or indirect and includes, but is not limited to, control exercised through shareholdings, voting rights or the right to appoint or remove a majority of directors, and
- (b) to the extent that the question whether an individual exercises a significant degree of control over a company may be determined by reference to the maximum percentage of a particular interest that may be held without such holding amounting to a significant degree of control, such maximum percentage must be set at no higher than 25%.

(5) The “information concerning the beneficial ownership” of a company need not include information about an individual that exercises a significant degree of control over that company if—

- (a) such control is exercised only indirectly through the exercise of a significant degree of control over a second company that would, if it were an individual, be considered to exercise a significant degree of control over the first company,
- (b) the information contained in the register concerning the beneficial ownership of the first company includes relevant information in relation to the second company, and

- (c) the second company is either one in respect of which information concerning its beneficial ownership is included in the register, or it is a company that is excluded from the register under paragraph (2).

(6) For the purposes of this article, the “relevant information” that a register contains in relation to an individual, must include, as a minimum—

- (a) name,
- (b) the country in which the individual is usually resident,
- (c) nationality,
- (d) month and year of birth, and
- (e) the nature of his or her control over the company concerned.

(7) For the purposes of this article, the “relevant information” that a register contains in relation to a company in order to satisfy the requirements of paragraph (5)(b), must include, as a minimum—

- (a) name,
- (b) registered or principal office,
- (c) the legal form of the entity and the law by which it is governed,
- (d) if applicable, the register of companies in which it is entered (including details of the country) and its registration number in that register, and
- (e) the nature of its control over the company concerned.

(8) For the purposes of this article, a register is “publicly accessible” if, and only if—

- (a) subject to paragraph (9), the information contained in it may be accessed by any member of the general public,
- (b) the means by which such information may be accessed include through a request submitted through the Internet,
- (c) any delay in accessing such information is no more than is necessary for the transmission of that information, and
- (d) any conditions to which access to such information is made subject are limited only to those reasonably justifiable in order to ensure the efficient management and maintenance of the register.

(9) A register is not prevented from complying with this article by reason only of restrictions imposed on the ability for information contained within it to be accessed by a member of the general public—

- (a) for so long and to the extent necessary for the protection of an individual who reasonably believes that the disclosure of that information would place himself or herself at serious risk of fraud, kidnapping, blackmail, extortion, harassment, violence, intimidation or other similar harm, or
- (b) where that information relates to a child or to an individual otherwise lacking legal capacity.

(10) The requirements at paragraphs (6) and (7) are without prejudice to any provision that may be made to include in a register additional information that may be made available only to a specified authority or class of individuals, or for a specified purpose, including, but not limited to, law enforcement.

Name
Clerk of the Privy Council

SCHEDULE

Article 1(2)

British overseas territories to which this Order extends

Anguilla
Bermuda
British Antarctic Territory
British Indian Ocean Territory
Cayman Islands
Falkland Islands
Montserrat
Pitcairn, Henderson, Ducie and Oeno Islands
St Helena, Ascension and Tristan da Cunha
South Georgia and the South Sandwich Islands
The Sovereign Base Areas of Akrotiri and Dhekelia
Turks and Caicos Islands
Virgin Islands

EXPLANATORY NOTE

(This note is not part of the Order)

This Order creates a requirement for the government of a British overseas territory to introduce a publicly accessible register of beneficial ownership of companies, to the extent that it has not already done so and to the extent that there are any companies within that overseas territory that would be included in such a register. The Order extends to all British overseas territories with the exception of Gibraltar, which already has a publicly accessible register of beneficial ownership of companies.

SCHEDULE 2 – Options for Implementation of a Beneficial Ownership Register

Options regarding St Helena’s implementation of a Beneficial Ownership Register in response to U.K. legal requirements



OPTIONS FOR IMPLEMENTATION OF A BENEFICIAL OWNERSHIP REGISTER

Options regarding St Helena's implementation of a Beneficial Ownership Register in
response to U.K. legal requirements

Version 1.0 - 10/01/2023

DOCUMENT PROCESS

STATE IF NEW POLICY OR AN UPDATE OF EXISTING POLICY (TITLE OF POLICY)	New Policy
VERSION NUMBER	1.0
NEXT STEPS – ACTION TO BE TAKEN AND BY WHOM	Advisory Board – Treasury, Infrastructure and Sustainable Development to complete section 4 of this document to record their decisions and reasoning
TARGET IMPLEMENTATION DATE	01/09/2023

VERSION MANAGEMENT

LIST OF VERSIONS	POLICY MANAGER	REVIEW GROUP	DATE
1.0	Michael Henning – Financial Services Development Manager	Advisory Board – Treasury, Infrastructure & Sustainable Development Portfolio	01/02/2023

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1 Introduction

1.1 Background

- a) This document sets out options being considered in relation to St Helena Governments implementation of a Beneficial Ownership Register in compliance with upcoming legal requirements of the U.K. Government.
- b) A Beneficial Ownership Register is similar to a Company Register in that it contains official information regarding the ownership of companies registered within a jurisdiction. Company Registers include information with respect to the legal owners of a company, whereas a Beneficial Ownership Register would contain information with respect to the person(s) that ultimately controls and benefits from a company (which is not necessarily the legal owner(s)).
- c) St Helena does not currently have a Beneficial Ownership Register.
- d) The U.K. Government has issued a Draft Order in Council which, once passed in to law (the U.K. Government anticipates this Draft Order will become law at the end of 2023), will legally require St Helena to have a functioning Beneficial Ownership Register that meets certain minimum requirements.

1.2 Identification of Challenge / Opportunity

- a) St Helena is legally required to have a functioning Beneficial Ownership Register that meets certain minimum legal requirements prior to the end of 2023. SHG needs to design, implement and administer a legally compliant Beneficial Ownership Register in order to meet its legal obligations.
- b) SHG has the opportunity to deliberately design a Beneficial Ownership Register which is simple, cost-effective, attractive/competitive internationally, and places as little additional administrative burden on companies as possible.
- c) The key challenges faced in designing and implementing a Beneficial Ownership Register are set out below:

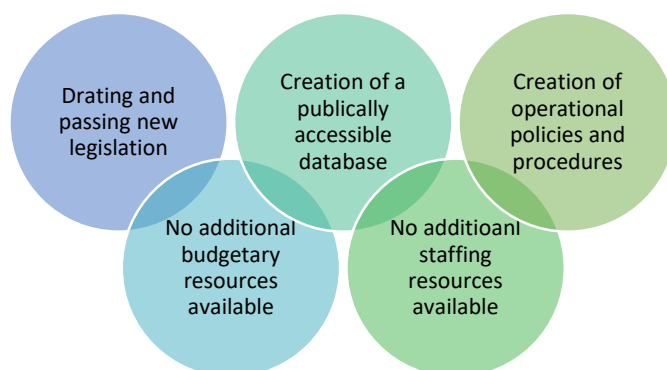


Figure 1 – Key challenges identified to implement Beneficial Ownership Register

Drafting and passing new legislation

New legislation will need to be drafted by the Attorney Generals Chambers and passed by Legislative Council. New legislation is necessary to create the Beneficial Ownership Register, appoint a Registrar, provide the necessary powers to the Registrar and staff, place the necessary registration obligations on companies and relevant individuals, set out how the register will function, and establish statutory penalties for non-compliance.

Resources and capacity within the Attorney General's Chambers are limited. The more complex the design of the Beneficial Ownership Register is the more time and resources will need to be allocated to the drafting of the necessary legislation.

Creation of a publically accessible database

The Beneficial Ownership Register is required to be publically accessible. Existing SHG IT resources will need to be utilised to design and create a functional electronic database that will contain the information that will comprise the register.

Resources and capacity within the SHG IT team are limited. The more complex the design of the Beneficial Ownership Register is the more time and resources will need to be allocated to the designing, creating and maintaining a suitable database system.

Creation of operational policies and procedures

The Beneficial Ownership Register will likely be administered by existing staff within the Judicial Services team. These staff currently administer the existing Company Registry as part of their duties. Detailed operational policies and procedures will need to be written which outline how staff are to administer the Beneficial Ownership Register on a day-to-day basis.

Resources and capacity within the Judicial Services team are limited. The more complex the design of the Beneficial Ownership Register is the more time and resources will need to be allocated to both writing the operational policies and procedures and administering the register on an on-going basis.

No additional budgetary resources available

SHG has not allocated any additional budget to design, implement or administer the Beneficial Ownership Register.

No additional staffing resources available

SHG has not allocated any additional staffing resources to design, implement or administer the Beneficial Ownership Register.

2 OPTIONS ANALYSIS

2.1 Option 1 – Do nothing / status quo

- a) Maintain the current status quo by not implementing a Beneficial Ownership Register.

Risks

- b) St Helena would be in breach of its legal obligations once the U.K. Draft Order in Council is passed into law at the end of 2023. It is unclear what consequences would result from St Helena being in breach of these legal obligations.
- c) St Helena would be an outlier amongst British Overseas Territories. All British Overseas Territories are legally required to implement a Beneficial Ownership Register prior to the end of 2023. It is anticipated that all other British Overseas Territories will comply with this legal requirement.
- d) St Helena's relationship with the U.K. Government and FCDO would likely be damaged as a result of deliberately not complying with U.K. legal requirements.
- e) St Helena's international reputation would likely be tarnished. Not implementing a Beneficial Ownership Register is likely to damage any international reputation St Helena has as a reputable, safe and stable jurisdiction to conduct business in/with. It is likely that a decision not to implement a Beneficial Ownership Register would receive some degree of negative international media attention.
- f) The risk of St Helena being used for the purposes of money laundering and terrorist financing would increase. One of the overarching objectives of a Beneficial Ownership Register is to increase transparency in order to discourage and reduce the risk of money laundering and terrorist financing.

Benefits

- g) No SHG budgetary or staffing resources would need to be allocated to this project.
- h) St Helena would be a more attractive jurisdiction for companies and individuals that value secrecy and privacy to incorporate or establish themselves in.
- i) No increase in administrative burden on local companies. Local companies would not be required to make statutory filings to report their beneficial ownership details or make further filings to update this information when it changes.

2.2 Option 2 – Implement a legally compliant Beneficial Ownership Register

- a) Design, implement and administer a simple Beneficial Ownership Register that complies with (but does not exceed) the legal requirements set out in the Draft Order in Council.

Risks

- b) Existing SHG staffing resources will need to be allocated to the design, implementation and on-going administration of the Beneficial Ownership Register. These staffing resources will be across a number of government departments including the Sustainable Development team, the Attorney Generals Chambers, the IT team and the Judicial Services team.
- c) Local companies will face a small increase in administration. The majority of local companies will face a small increase in administration as a result of the new requirement for them to file beneficial ownership information and to keep this information up-to-date. Companies with more complicated or overseas ownership structures will face a moderate increase in administration.
- d) Overseas companies and individuals who value secrecy and privacy will be less likely to set up operations in St Helena when compared to the environment that would result from pursuing Option 1.

Benefits

- e) St Helena would be in compliance with its legal obligations.
- f) Implementation can likely be achieved within 6 to 9 months.
- g) Minimum staffing resources required to implement the Beneficial Ownership Register.
- h) Little or no budgetary resources required.
- i) The additional administrative burden placed on local companies would be kept to an absolute minimum.
- j) The risk of St Helena being utilised for the purposes of money laundering and terrorist financing would be reduced as compared to Option 1.
- k) St Helena would, from a legal perspective, remain an attractive jurisdiction to incorporate a company. This would be particularly true when compared to other British Overseas Territories who have implemented, or are planning to implement, more complex Beneficial Ownership Registers.

2.3 Option 3 – Implement a Beneficial Ownership Register in line with the U.K. regime

- a) Design, implement and administer a more complex Beneficial Ownership Register that is in line with the U.K. Beneficial Ownership Register and exceeds the legal requirements of the Draft Order in Council.

Risks

- b) Significant additional staffing resources within the Attorney Generals Chambers and the IT team would be temporarily required to design and implement the Beneficial Ownership Register as compared to Option 2.
- c) Additional staffing resources would need to be allocated to the Judicial Services team on a permanent basis to effectively administer the register as compared to Option 2.
- d) Implementation can likely be achieved within 12 to 18 months. There is a significant risk that implementation would not be completed by the current end of 2023 deadline.
- e) External IT specialists would likely be required to assist in developing a more sophisticated electronic database system to support the additional complexity of the Beneficial Ownership Register.
- f) Additional budgetary resources would be required in order to deliver a more complex Beneficial Ownership Register as compared to Option 2. The additional cost would be needed to procure external IT specialists.
- g) Local companies would face a moderate increase in administrative requirements as compared to Option 1 and Option 2.
- h) Overseas companies with complex international ownership structures would be less likely to set up operations in St Helena because of the additional administrative burden as compared to Option 1 and Option 2.
- i) St Helena would, from a legal perspective, become a less attractive jurisdiction to incorporate companies in, particularly for companies and individuals who value privacy, secrecy and low administrative burdens as compared to Option 1 and Option 2.

Benefits

- l) St Helena would be in compliance with, and exceed, its legal obligations.
- j) St Helena would establish a reputation for being a leading jurisdiction in terms of transparency.
- k) The risk of St Helena being utilised for the purposes of money laundering and terrorist financing would be notably reduced as compared to Option 1 and slightly reduced as compared to Option 2.

3. RECOMMENDED OPTION AND RATIONALE

- a) The recommended option is Option 2.
- b) Option 2 is legally compliant and can be achieved within the required timeframe by utilising existing resources.
- c) Option 2 presents no additional cost to SHG and no additional staffing resources would be required.
- d) Option 2 presents the most benefits and the fewest risks.

4 DECISION REACHED BY THE REVIEW GROUP AND RATIONALE

- a) [Use this section to record the decision reached by the review group.]
- b) [Set out the reasoning for the decision.]

SCHEDULE 3 – Impact and Risk Assessment

Impact and Risk Assessment in relation to options presented in Options for Implementation of a Beneficial Ownership Register

Name of Policy and Date: Beneficial Ownership Register Policy - 01/02/2023													
AREAS OF IMPACT (PESHTELO)													
POLITICAL					ECONOMIC			SOCIAL			HEALTH		
Option Number	Dates of Initial Assessment and Updates	Brief Description (for suggestions see list in Instructions)	Level of Impact (drop down list)	Scope +ve or -ve (drop down list)	Brief Description	Level of Impact (drop down list)	Scope +ve or -ve (drop down list)	Brief Description	Level of Impact (drop down list)	Scope +ve or -ve (drop down list)	Brief Description	Level of Impact (drop down list)	Scope +ve or -ve (drop down list)
1	01/02/2023	Breach of U.K. legal requirement	Major	Negative	Potential degradation of SHG relationship with U.K. Government/FCDO which could have a negative impact on U.K. aid funding levels	Moderate	Negative	Potential for small negative impact resulting from decreased international reputation as a result of non-compliance with international legal obligation	Minor	Negative	No anticipated impacts	Insignificant	Positive
2	01/02/2023	Resistance from local business community due to small increase in required administrative filings	Minor	Negative	Unlikely to be any economic impact as a result of implementation of this policy.	Insignificant	Positive	Insignificant positive impact resulting from increased business transparency and decreased risk of money laundering, etc.	Insignificant	Positive	No anticipated impacts	Insignificant	Positive
3	01/02/2023	Resistance from local business community due to moderate increase in required administrative filings	Moderate	Negative	Potential small negative economic impact resulting from required budget resources to implement option and potential decrease in local business registrations due to increase in required administrative filings	Insignificant	Negative	Minor positive impact resulting from increased business transparency and decreased risk of money laundering, etc.	Minor	Positive	No anticipated impacts	Insignificant	Positive
AREAS OF IMPACT (PESHTELO)													
TECHNOLOGICAL					ENVIRONMENTAL			LEGAL			ORGANIZATIONAL TO SHG		
Option Number	Dates of Initial Assessment and Updates	Brief Description (for suggestions see list in Instructions)	Level of Impact (drop down list)	Scope +ve or -ve (drop down list)	Brief Description	Level of Impact (drop down list)	Scope +ve or -ve (drop down list)	Brief Description	Level of Impact (drop down list)	Scope +ve or -ve (drop down list)	Brief Description	Level of Impact (drop down list)	Scope +ve or -ve (drop down list)
1	01/02/2023	No anticipated impact	Insignificant	Positive	No anticipated impacts	Insignificant	Positive	Major impact resulting from breach of international legal obligations	Major	Negative	Major impact resulting from breach of international legal obligations, degraded relationship with U.K./FCDO and negative international perception	Major	Negative
2	01/02/2023	Insignificant impact relating to use of internal SHG IT resources to develop electronic data base	Insignificant	Negative	No anticipated impacts	Insignificant	Positive	Minor positive impact resulting from strengthening of St Helena legal framework to combat money laundering, tax evasion, etc.	Minor	Positive	Insignificant positive impact from strengthening legal framework and internal policies	Insignificant	Positive
3	01/02/2023	Minor impact relating to the use of external IT specialist to develop electronic data base	Minor	Negative	No anticipated impacts	Insignificant	Positive	Moderate positive impact resulting from notable strengthening of St Helena legal framework to combat money laundering, tax evasion, etc.	Moderate	Positive	Minor positive impact from notably strengthening legal framework and internal policies	Minor	Positive

Name of Policy and Date: Beneficial Ownership Register Policy													
AREAS OF RISK (PESHELO)													
POLITICAL					ECONOMIC			SOCIAL			HEALTH		
Option Number	Date of Initial Assessment and Updates	Brief Description of risk (for suggestions see list in Instructions) and mitigation measures adopted	Level of Risk (drop down list) after mitigation	Probability of Risk (drop down list) after mitigation	Brief Description of risk and mitigation measures adopted	Level of Risk (drop down list) after mitigation	Probability of Risk (drop down list) after mitigation	Brief Description of risk and mitigation measures adopted	Level of Risk (drop down list) after mitigation	Probability of Risk (drop down list) after mitigation	Brief Description of risk and mitigation measures adopted	Level of Risk (drop down list) after mitigation	Probability of Risk (drop down list) after mitigation
1	01/02/2023	Breach of U.K. legal requirement	Major	Probable	Potential degradation of SHG relationship with U.K. Government/FCDO which could have a negative impact on U.K. aid funding levels	Moderate	Possible	Potential for small negative impact resulting from decreased international reputation as a result of non-compliance with international legal obligation	Minor	Possible	No anticipated impacts	Insignificant	Rare
2	01/02/2023	Resistance from local business community due to small increase in required administrative filings	Minor	Unlikely	Unlikely to be any economic impact as a result of implementation of this policy.	Insignificant	Rare	Insignificant positive impact resulting from increased business transparency and decreased risk of money laundering, etc.	Insignificant	Rare	No anticipated impacts	Insignificant	Rare
3	01/02/2023	Resistance from local business community due to moderate increase in required administrative filings	Minor	Possible	Potential small negative economic impact resulting from required budget resources to implement option and potential decrease in local business registrations due to increase in required administrative filings	Insignificant	Unlikely	Minor positive impact resulting from increased business transparency and decreased risk of money laundering, etc.	Insignificant	Unlikely	No anticipated impacts	Insignificant	Rare
AREAS OF RISK (PESHELO)													
TECHNOLOGICAL					ENVIRONMENTAL			LEGAL			ORGANIZATIONAL TO SHG		
Option Number	Date of Initial Assessment and Updates	Brief Description of risk (for suggestions see list in Instructions) and mitigation measures adopted	Level of Risk (drop down list) after mitigation	Probability of Risk (drop down list) after mitigation	Brief Description of risk and mitigation measures adopted	Level of Risk (drop down list) after mitigation	Probability of Risk (drop down list) after mitigation	Brief Description of risk and mitigation measures adopted	Level of Risk (drop down list) after mitigation	Probability of Risk (drop down list) after mitigation	Brief Description of risk and mitigation measures adopted	Level of Risk (drop down list) after mitigation	Probability of Risk (drop down list) after mitigation
1	01/02/2023	No anticipated impact	Insignificant	Rare	No anticipated impacts	Insignificant	Rare	Major impact resulting from breach of international legal obligations	Major	Probable	Major impact resulting from breach of international legal obligations, degraded relationship with U.K./FCDO and negative international perception	Major	Probable
2	01/02/2023	Insignificant impact relating to use of internal SHG IT resources to develop electronic data base	Minor	Unlikely	No anticipated impacts	Insignificant	Rare	Minor positive impact resulting from strengthening of St Helena legal framework to combat money laundering, tax evasion, etc.	Insignificant	Rare	Insignificant positive impact from strengthening legal framework and internal policies	Insignificant	Rare
3	01/02/2023	Minor impact relating to the use of external IT specialist to develop electronic data base	Minor	Probable	No anticipated impacts	Insignificant	Rare	Moderate positive impact resulting from notable strengthening of St Helena legal framework to combat money laundering, tax evasion, etc.	Insignificant	Rare	Minor positive impact from notably strengthening legal framework and internal policies	Insignificant	Rare