



## **ST HELENA**

### **EMPLOYMENT AND COMMERCE**

#### **PREVENTION OF ABUSIVE BUSINESS PRACTICES ORDINANCE 2025**

*Ordinance 10 of 2025*

*In force 1 July 2025*

*No subsidiary legislation made under this Ordinance*

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#### **PREVENTION OF ABUSIVE BUSINESS PRACTICES ORDINANCE 2025**

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**AN ORDINANCE to make arrangements to prevent businesses seeking to exploit the jurisdiction of St Helena for abusive purposes or for purposes that would or would tend to damage the reputation of the St Helena jurisdiction internationally.**

#### **Citation and commencement**

1. (1) This Ordinance may be cited as the Prevention of Abusive Business Practices Ordinance 2025.
- (2) In relation to any trust arrangement, trust corporation, trusteeship, nominee ship involving assets, or the placing of any assets into a trust, trusteeship, trust corporation or nominee ship, this Ordinance comes into force on 1 July 2025.
- (3) In relation to any business entity not provided for in subsection (2), this Ordinance comes into force on a date or dates fixed by the Governor by Order.

#### **Interpretation**

2. (1) In this Ordinance, unless the context otherwise requires,—
  - “**abusive business practices**” has the meaning as provided for in section 4;
  - “**Adopted English Law**” has the same meaning as provided for in section 2 of the English Law (Application) Ordinance 2005<sup>1</sup>;
  - “**authorised officer**” includes Attorney General, Chief of Police, Commissioner of Income Tax, Collector of Customs, Financial Secretary, Registrar of Companies;

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<sup>1</sup> Ordinance 10 of 2025

**“business entity”** and **“business entities”** have the meaning as provided for in section 3;

**“due diligence”** has the meaning as provided for in section 5;

**“higher monetary limit”** means £500,000 or its equivalent in any other currency, including crypto currency;

**“inimical to the interests of St Helena”** means any business practice or arrangement in the jurisdiction of St Helena (whether or not associated with arrangements in other jurisdictions) which would bring or would tend to bring the reputation of St Helena into substantial disrepute;

**“lower monetary limit”** means £50,000 or its equivalent in any other currency , including crypto currency;

**“money”** includes all means of exchange, money or monies, all currencies including virtual or crypto currencies or similar;

**“outside agency”** means any lawfully established agency, authority or regulator established in any jurisdiction outside St Helena with responsibility for taxation or investigating any abusive business practices in or connected to their jurisdiction;

**“professional services”** includes the provision of the following services—

- (a) accountancy,
- (b) book keeping,
- (c) business advice,
- (d) financial advice,
- (e) investment advice,
- (f) legal advice, assistance or representation,
- (g) nomineehips and nominee services,
- (h) transfer of assets,
- (i) trust and trusteeship advice and services, or
- (j) company services including formation, establishment or operation of registered office or other offices, provision of directors or officers, operations, forwarding of message or post, corporate structures, officers etc and advice concerning the paragraphs (a) to (i);

**“reporting period”** means within five days from the date the person or business entity knew or should have known of the state of affairs giving rise to the obligation to report;

**“significant transaction”** has the meaning as provided for in section 6.

- (2) The Governor on the advice of the Executive Council may, by Order—
  - (a) add to or otherwise modify the definitions of “**authorised officer**” and “**professional services**”;
    - (b) change or otherwise modify the definition of “**higher monetary limit**” and “**lower monetary limit**.”

### **Business Entity and Business Entities**

3. (1) For the purposes of this Ordinance the terms “**business entity**” and “**business entities**” can be any form of business, business structure, or group including, but without prejudice to the generality of the foregoing—
  - (a) an individual,
  - (b) a group of individuals,
  - (c) a partnership,
  - (d) a trust,
  - (e) a trust corporation,
  - (f) an incorporated entity, or
  - (g) an unincorporated entity or association.
- (2) For the purposes of this Ordinance, it is immaterial where any business entity or business entities—
  - (a) has or have been formed,
  - (b) are incorporated,
  - (c) are located,
  - (d) have their registered office or registered offices,
  - (e) undertake their business,
  - (f) carry out administration, or
  - (g) hold assets.
- (3) For the purposes of this Ordinance, the manner in which any business entity holds or administers any assets whether for itself or upon trust is immaterial.

### **Abusive Business Practices**

4. (1) A business practice is abusive when it is designed to, intended to, seeks to, facilitates, or encompasses any of the following—
  - (a) bribery;
  - (b) concealment of beneficial ownership;
  - (c) concealment of legal ownership;
  - (d) concealment of true identities;
  - (e) concealment of management or control of a business entity;
  - (f) concealment of assets whether from creditors or others;
  - (g) corruption;
  - (h) crime;
  - (i) fraud;

- (j) manufacturing, supply or sale of unlawful drugs; or
  - (k) making assets untraceable or making their traceability materially more difficult;
  - (l) money laundering;
  - (m) modern slavery (including benefitting from or engaging in);
  - (n) sanctions avoidance or the amelioration of the effects of sanctions;
  - (o) tax avoidance (subject to subsections (2) to (4));
  - (p) tax evasion;
  - (q) terrorism, including the financing of terrorism;
  - (r) any other practice or arrangement inimical to the interests of St Helena.
- (2) For avoidance of tax to amount to an abusive business practice it must form, include, facilitate, or encompass contrived or artificial transactions or arrangements intended to produce an advantage to a taxpayer not intended by the tax authorities or legislature of the relevant jurisdiction.
  - (3) An advantage to a taxpayer can include concealment of identities or ownerships or the creation or use of a trust or trust or nominee ships.
  - (4) Any scheme or arrangement expressly approved of by the tax authorities in the jurisdiction in question will not amount to an abusive practice.
  - (5) The Governor on the advice of the Executive Council may, by Order, add to or modify the list of abusive business practices in subsection (1).

### **Due Diligence**

- 5. For the purposes of this Ordinance the exercise of “due diligence” by a person or business entity shall mean the exercise of all reasonable precautions and the taking of all reasonable steps by the person or business entity so as to satisfy that person or business entity reasonably that it knows or has established—
  - (a) the identities of all relevant persons, including their nationalities, countries of habitual residence, home address, contact telephone numbers and contact email addresses;
  - (b) the jurisdiction in which a person or business entity is incorporated or registered;
  - (c) the jurisdiction and full postal address of any registered office;
  - (d) the address of any place of business;
  - (e) the legal and beneficial ownership of all assets (including monies);
  - (f) the nature and extent of any trust arrangements or trusteeships;
  - (g) that the arrangements made or proposed are not abusive business practices.

### **Significant transactions**

- 6. (1) For the purposes of this Ordinance a transaction is a significant transaction if it involves one or more of the following—
  - (a) consideration, money or money’s worth in excess of the higher monetary limit;
  - (b) deposit of money in excess of the lower monetary limit;

- (c) the establishment of any form of trust arrangement, trust corporation or trusteeship or the placing of any assets into a trust, trusteeship or a trust corporation involving assets, consideration, money or money's worth in excess of the lower monetary limit;
  - (d) any person or business entity not habitually resident in or registered in St Helena being a director, trustee or trust corporation of a business entity operating in any guise in St Helena;
  - (e) any person or business entity not habitually resident in or registered in St Helena being able to, or intended to, exercise any form of management or control of a business entity operating in any guise in St Helena.
- (2) To determine whether the higher monetary limit or the lower monetary limit has been exceeded the value of all transactions, or series of transactions, being undertaken or proposed to be undertaken shall be aggregated.

### **Duty not to engage in abusive business practices**

7. (1) It is the duty of all persons and business entities in St Helena not to engage in or facilitate any abusive business practice by anyone.
- (2) It is the duty of any person or business entity who has to any extent involvement in the management or control of a business entity in St Helena not to permit, connive in or, through their neglect, allow any business entity in St Helena or elsewhere to engage in or facilitate any abusive business practice.
- (3) It is the duty of any person or business entity supplying professional services not to provide or facilitate the use of abusive business practices by any business entity whether in St Helena or elsewhere.

### **Duty to report suspicions or knowledge of abusive business practices**

8. (1) It is the duty of any person or business entity who—
- (a) has to any extent involvement in the management or control of a business entity in St Helena, and
  - (b) knows or suspects, or would know or suspect if reasonable enquiries were made, that the business entity or any business entity with which it is associated is engaging in abusive business practices,
- to report such matters in writing to the Chief of Police within the reporting period.
- (2) It is the duty of any person or business entity who—
- (a) supplies professional services to a business entity in St Helena, and
  - (b) knows or suspects, or would know or suspect if reasonable enquiries were made, that the business entity or any business entity with which it is associated is engaging in abusive business practices,
- to report such matters in writing to the Chief of Police within the reporting period.

- (3) Nothing in subsection (2) shall require anyone to include in a report anything that would involve breaching any privilege relating to legal advice being sought or given.

### **Duty to exercise due diligence when providing professional services**

9. (1) It shall be the duty of any person or business entity providing professional services involving any transaction or series of transactions in excess of the lower monetary limit to exercise due diligence—
- (a) before engaging with or contracting with or providing any professional services to any other person or business entity;
  - (b) before engaging to, undertaking, facilitating, enabling or providing any advice concerning any significant transaction;
  - (c) periodically and no less a frequency of once every 24 months.
- (2) It shall be the duty of any person or business entity providing professional services required to exercise due diligence to retain the evidence that it has exercised due diligence for at least six years from the date of it carrying out the due diligence.

### **Requisition for Information**

10. (1) Any authorised officer who has reasonable grounds for suspecting that a person or business entity has or may have knowledge of abusive business practices connected in some way to the jurisdiction of St Helena may, in accordance with this section, serve a requisition for information in writing on that person or business entity.
- (2) Any requisition for information must include—
- (a) the business entity or business entities about whom the particulars and information is being sought either by name, or by some other convenient class or description,
  - (b) the particulars and information being sought,
  - (c) the date by which the requested information and particulars must be provided,
  - (d) the contact details (including telephone numbers, physical address and email address) for the person or entity who has served the requisition for information, and
  - (e) a copy of this Ordinance accompanied by a notice highlighting at least the following
    - (i) the duties imposed by this Ordinance,
    - (ii) the criminal offences imposed by this Ordinance,
    - (iii) how any information or particulars provided in response to a requisition for information may be used or supplied to others,
    - (iv) that if further time is needed to respond to the requisition for information that a request can be made to extend the time given,
    - (v) that any information or particulars provided in response to the requisition for information is admissible in court including in proceedings for any offence against the person or business entity required to provide the information or particulars, and

- (vi) that the person or business entity on whom the requisition has been served and any person who has to any extent control or management of the person or business entity about whom the requisition has been served should consider whether they should seek legal advice before responding to the requisition.
- (3) The particulars and information being sought can relate to any matter that the authorised officer deems appropriate, including without prejudice to the generality of the foregoing—
  - (a) other business entities, and
  - (b) the identity or details of—
    - (i) officers, managers and anyone exercising, to any extent management or control,
    - (ii) legal owners,
    - (iii) beneficial owners,
    - (iv) partners or partnerships,
    - (v) banking arrangements,
    - (vi) professional service providers,
    - (vii) trusts or trust arrangements,
    - (viii) trusteeships,
    - (ix) nomineeeships,
    - (x) agency arrangements,
    - (xi) anyone in receipt of profits, dividends or entitled to benefit from any arrangement, and
    - (xii) ownership, management or control of any asset or monies.
- (4) A requisition for information may require any person or business entity to produce the evidence it obtained when it exercised due diligence.
- (5) A requisition for information shall not require information to be provided in any period of less than 28 days.
- (6) The authorised officer may, at any time before the time when the required information is due to be provided,—
  - (a) withdraw or modify the requisition for information, or
  - (b) extend the time within which the required information is due to be provided, providing always that where a modification extends the obligation to provide information and particulars the time within which they must be provided must be extended by at least an additional 28 days.

### **Duty to respond appropriately to a requisition for information**

- 11. (1) It is the duty of any person or any business entity on whom a requisition for information has been served to—
  - (a) provide the particulars and information sought within the period specified in the requisition or otherwise agreed, and



- (b) provide true and complete particulars and information.
- (2) It is the duty of any person or any business entity on whom a requisition for information has been served not to—
  - (a) provide false or misleading information, or
  - (b) provide any information that the person providing the information does not believe to be true.
- (3) It is the duty of any person or any business entity who has to any extent the control or management of a person or business entity on who a requisition has been served to ensure that the duties specified in subsections (1) and (2) are complied with.
- (4) It is the duty of any person or any business entity providing professional services on whom a requisition for information has been served concerning a person or business entity they have provided professional services to—
  - (a) provide the particulars and information sought within the period specified in the requisition or otherwise agreed, and
  - (b) provide true and complete particulars and information.

**Protection and use of the information and particulars provided in response to a requisition for information**

- 12.** (1) An authorised officer in receipt of a response to a requisition shall keep the information provided securely and confidentially.
- (2) Nothing in subsection (1) prevents the sharing of the information with—
- (a) any other authorised officer;
  - (b) any outside agency that the authorised officer considers to be properly interested in the information;
  - (c) any person or entity in any jurisdiction properly involved or concerned in the suppression of or tracing or investigating of any abusive business practices including those involved in—
    - (i) detection or suppression of crime,
    - (ii) collection of customs or taxes,
    - (iii) administration or registration of businesses,
    - (iv) administration or registration of trusts,
    - (v) tracing of assets,
    - (vi) winding up of businesses, and
    - (vii) insolvency, bankruptcy or making arrangements with creditors.

**Admissibility of reports and responses to requisitions for information**

- 13.** (1) Any report made pursuant to section 8 and within the reporting period—
- (a) shall not be admissible in evidence against the person making the report other than with regard to proceedings for an offence pursuant to section 18(3), but

- (b) will otherwise be admissible in evidence against any other person or for use in relation to the registration of businesses entities and their particulars.
- (2) Any report made pursuant to section 8 outside the reporting period may be admissible in evidence in proceedings against the person making the report where the court determines that admitting such evidence is, in all the circumstances, just and reasonable.
- (3) Where a requisition for information was lawfully made and complied with the requirements of section 10, any response to that requisition (or none) shall be admissible in evidence against any person or entity in all proceedings, including criminal proceedings against or involving the person or entity who replied to or made the return or should have replied or made the return in respect of the requisition.

### **Court Orders**

14. (1) The Supreme Court may, on the application of any authorised officer, and upon being satisfied that a person or business entity is engaged in or is intending to engage in, facilitate or enable any abusive business practices, by Order—
  - (a) prohibit the commencement or continuation of any business practice,
  - (b) prohibit any person engaged in the control or management of a person or business entity from carrying on in the control or management of the person or business entity in question or any other person or business entity for a period of up to 10 years,
  - (c) freeze any or all assets of that person or business entity until further Order,
  - (d) confiscate any or all assets of that person or business entity;
  - (e) require the compulsory winding up of the person or business entity in question, or
  - (f) make any other Order as the court deems necessary or appropriate.
- (2) In making any Order pursuant to subsection (1) the Supreme Court shall specify the date or dates—
  - (a) from which the Order or any aspect of the Order shall take effect, and
  - (b) where necessary or appropriate the date or dates by which the Order or any aspect of the Order shall have been completed or finalised.
- (3) In addition to making any of the Orders specified in subsection (1) the Supreme Court may make such other incidental orders, including orders as to costs, as it deems necessary including Orders intended to frustrate the avoidance of the effects of any Order.
- (4) The Supreme Court may require the attendance in court of any authorised officer whether or not they are the authorised officer having made the application in subsection (1).
- (5) Any person with an interest in the person or business entity in question before the Supreme Court, or who has served a requisition for information, has a right to be heard

in any proceedings before the Supreme Court seeking any of the Orders listed in subsections (1) or (3).

- (6) Nothing in subsection (5) precludes or prevents the Supreme Court from proceeding in the absence of any person or party if satisfied that it is reasonable and appropriate in the circumstances to do so.
- (7) Any authorised officer or person or business entity affected by any Order made by the Supreme Court may apply to the Supreme Court to have the Order in question modified or discharged.
- (8) Any person aggrieved by an Order or decision of the Supreme Court may appeal to the Court of Appeal within 28 days of the date of the Order or decision.

### **Confiscation**

- 15.** In any case where the Supreme Court orders the confiscation of any assets, such assets (or the proceeds of sale of such assets) shall be paid into the Consolidated Fund.

### **Reverse burden of proof**

- 16.** In any circumstances where a court is considering whether a business practice is abusive, once the court is satisfied there are reasonable grounds for suspecting that the business practice in question could amount to an abusive business practice then it will be for the person or entity contending that the business practice is not abusive to demonstrate that to the court's satisfaction on the balance of probabilities.

### **Assistance to outside agencies**

- 17. (1)** Any outside agency may request any authorised officer to serve a requisition for information on any person or business entity connected with or in St Helena.
- (2) The authorised officer receiving the request from an outside agency to serve a requisition for information must be satisfied that there is a proper basis for serving such a requisition under this Ordinance before doing so.
- (3) The authorised officer receiving the request to serve a requisition for information from an outside agency may, by application, seek the assistance of the Supreme Court to determine any relevant question or uncertainty that may arise.
- (4) It is for the Supreme Court to determine whether it will permit a representative of any outside agency to be heard in any of its proceedings.

### **Offences**

- 18. (1)** Any person who fails to discharge any duty imposed by this Ordinance shall be guilty of an offence.

PENALTY: in the case of a business entity a fine of £250,000 or 20% of its assets within St Helena whichever is the greater;

In the case of an individual a fine of £250,000 and a term of imprisonment of 2 years.

- (2) It is an offence for any person on whom a requisition for information is served, or who has to any extent control of the business entity on whom the requisition for information has been served—
- (a) to fail to provide the particulars and information required within the time period specified in the requisition or as may otherwise have been agreed or extended,
  - (b) to provide false or misleading particulars and information in response to a requisition for information, or
  - (c) to provide particulars and information in response to a requisition for information that the person providing the particulars and information does not believe to be true.

PENALTY: in the case of a business entity a fine of £250,000 or 20% of its assets within St Helena whichever is the greater;

In the case of an individual a fine of £250,000 and a term of imprisonment of 2 years.

- (3) It is an offence for any person to make a report pursuant to section 8 which contains information that the person making the report knows to be false, or does not believe to be true.

PENALTY: in the case of a business entity a fine of £250,000 or 20% of its assets within St Helena whichever is the greater;

In the case of an individual a fine of £250,000 and a term of imprisonment of 2 years.

- (4) It is an offence for any person, without reasonable excuse, to fail to comply with any Order of the Supreme Court made pursuant to section 14.

PENALTY: in the case of a business entity a fine of £250,000 or 20% of its assets within St Helena whichever is the greater;

In the case of an individual a fine of £250,000 and a term of imprisonment of 2 years.

### **Application of Adopted English Law**

- 19.** Pursuant to section 4 of the English Law (Application) Ordinance 2005—

- (a) nothing in this Ordinance affects or is intended to affect any Adopted English Law;
- (b) this Ordinance shall be construed as being consistent with any Adopted English Law that applied immediately before the commencement of this Ordinance.

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