

Issues for liberalisation

This paper was written by the President in response to a request for such information from the Members of Legislative Council in preparation for the compilation of the MOU (Memorandum of Understanding) - i.e. St.Helena's promise to DfID to fulfil its side of the bargain for the building of an airport on St.Helena.

The major issues for the Chamber relate to liberalisation of the conditions for private sector development, and cover clarity of law, easing of restrictions on immigration and landholding, fair taxation and such like.



Issues for Liberalisation

The Chamber's position, in terms of liberalising the economy for tourists and inward investors, focuses on the following points:

Law

The law of the land, enshrined in Ordinances, Regulations and Legal Notices, plus any referred documents such as Standards, Procedures etc, **MUST BE CLEAR**. I cannot stress this enough.

In the main, of course, I am referring to laws that will effect the investor, entrepreneur and employer, whether from overseas (Saint or otherwise) or on-island, but really, there is no excuse for having unclear laws. (I know that lawyers earn their unseemly high salaries by finding alternative ways of interpreting laws, but I am talking here about real lack of clarity - often this comes from the fact that St.Helena does not have a complete set of Ordinances, and that reliance is placed on UK law, but nobody, including the Attorney General, can predict what parts of the UK law apply until **AFTER** it has been tested in court. This is no way for a business to make predictions about its financial future). The test is easy - if an investor were to ask a question of the Attorney General, (or the Public Solicitor) regarding a particular circumstance on which the law impinges, the answer cannot be simply "We don't know". This happens frequently at the moment.

A lot of what follows is covered by the above, but specific areas to consider are what follows.

Note that mere explanation of a discrepancy of the handing of entities based on status may not be enough - rectification of iniquities may very well be a requirement.

Taxes and fees

The tax liability for a company and procedures for dealing with tax **MUST** be well-specified. This point covers all taxes, whether they be Corporation Tax, Income Tax, Customs duties, any indirect taxes (such as Sales Tax or Value-added Tax), Capital Gains Tax, etc, plus any onerous provisions such as Withholding Tax. In addition, any tax-like fees will sometimes be of similar interest, such as National Pension payments (not an issue at the moment), Wharfage, Stamp Duty, Insurances, other accepted commitments to employees (such as transport, clothing, compassionate leave, long leave (RMS-based), etc), a lot of which is a throwback to Government-employee thinking, but which is still prevalent in the private sector.

Note also, that investors will primarily be predicting futures. If you have **ANY** thoughts about the way that any laws, but particularly tax and fees provisions are concerned, it is your **DUTY** to give such investors forewarning, The Chamber will **NOT** support a Government that keeps such likely changes secret.



Employment

Most investors will require the engagement of employees. What are the commitments one is REQUIRED to make when taking on an employee, and what commitments are accepted as normal? How liberal is the employment market? (The expectations of the indigenous work-force itself is a different issue, which cannot be legislated for, although interested parties would welcome your realistic insights)

Most off-shore investors will probably prefer to use local work-force. This is a well-documented assertion. The costs involved with bringing in a non-local workforce are considerable. Of course, specific people with specific skills will always be required from off-shore - the investor MUST NOT be penalised for engaging such talent. The chances are that St.Helena will benefit from the presence of an expert. Nevertheless, it MUST be left to the investor to decide whether there is sufficient skill on-island to employ locally, or there is a need to import the skills. This decision MUST NOT be regulated by people (i.e. Councillors) who cannot possibly know.

Referring somewhat to the previous point, an investor will want to know the financial implications of employing local workforce (or contracting with local companies) as compared to the financial implications of importing his own workforce. Note: it is entirely UNLIKELY that a foreign investor will underestimate the social costs of importing labour. Not only does he have to consider the social costs of splitting families at the source, but he will most certainly recognise the financial costs associated with social problems of integration of a foreign workforce within the local community. (For an investor, it may not be wholly monetary costs, but even if they were, they would contra-indicate importation of other than highly-skilled labour)

Note: Problematic procedures EQUALS costs. What I mean by this is, that if the procedures required to employ someone or to assert that a foreign employee is needed, are cumbersome and long-winded or require the use of legal representation, then real costs are involved. The procedures must be simple, clear, efficient, equitable and incorrupt.

Status

An investor from abroad will, in the current environment, be completely put off by the protectionist distinctions between Saint and non-Saint. In most other countries, this is simply a predilection of the populace and not a Government position enshrined in law, which is definitely the case here. This is unacceptable to a free market economy.

The Chamber recognises that the local populace may have rights that immigrants do not enjoy, but this has to be reduced to sensible proportions. Mostly, the distinction should be made between private rights and corporate rights (that is, It is more important to recognise the rights and expectations of people, whether they be Saints or otherwise, than the rights and expectations of



companies, whether they be Saints or otherwise). If foreign investors were seen to be treated in the same way as local investors, then foreign people will more likely to be treated as local people.

Nevertheless, the Chamber does understand that there are expected differences between the rights of indigenous Saints and others. However, the difference is far from clear and the reasons for the different treatments are far from clear. The Chamber would advocate a distinction which is based on logic and not simply on genetics (or worse).

The reason why Status is an issue, is course, that opportunities and responsibilities depend on the distinction. An investor that is unclear about the distinction, or who is unhappy about the distinction, may very well curtail his interest.

The question of Status also brings up the difference in handling in other arenas, e.g. in health (where non-Status-holding civilians are treated differently to Status-holding civilians, although they pay the same taxes). Please consider EVERY area where such a distinction is made.

Land

Part of the distinction defined by Status is the ability to buy or otherwise have an interest in Land.

No-one, including the Chamber of Commerce, advocates a free-for-all, wherein the person/organisation with the most money can obtain rights to any land on St.Helena.

Nevertheless, the law has identified a number of areas of land on St.Helena for commercial exploitation. There is absolutely no reason why this land should be restricted in ownership rights based on Status. If this remains the case, then investor interest will be significantly diminished,

Further, the question of rights to buy domestic (i.e. non-commercial) property must be reviewed. If investors are expected to invest commercially in St.Helena in the long term, then they must expect that their experts and other long-term ex-patriot employees can settle in St.Helena in the long term, which means that their employees (and others) must be allowed to acquire title to domestic properties on St.Helena, and there is no way that this can be segregated from the open property market.

This issue may be erroneously construed as opening the domestic market to all-comers. This is not the case. The suggestion is that personal (non-commercial) land-holding rights be restricted to legitimate interests, but that the range of legitimate interests be extended to those intending to contribute to St.Helena's economy, either through capital investment or through contracted long-term employment. I am sure than provisions can be envisioned to prevent abuse of such a system, while making the system acceptable to bona fide interested buyers.



There is much wrong with the land-holding provisions at the moment (w.r.t. non-Saint ownership) but the opening of the market to investors requires a significant change from the current situation.

General

The above constitutes, I feel, the major concerns for investors (Saints or otherwise, on-island or otherwise) in considering putting their investment capital into St.Helena's future. Any one of the above may be enough to dissuade a potential investor if not addressed.

Personally, I would add that I question whether it is accepted universally (at least within SHG, within LegCo or even within ExCo) that inward investment (who insist on a Return of Investment, which is essentially Profit) is completely embraced by those who make decisions,

If it is not, then St.Helena has no future.

Stuart Moors

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