

## FEATURE

# New immigration regime explained

Daniel Priestley, a lawyer with Ogier, explains the complexities of the Cayman Islands' immigration system

The Cayman Islands is approaching the climax of a process of reform which will complete the implementation of a sea change in the laws relating to immigration control. The rapidity of the economic development of the Cayman Islands has in the past led to the urgent demand for foreign labour, drawn here not only by the pleasant working conditions and friendly and stable environment but also by a relatively relaxed immigration system, which has seen thousands of expatriates become Caymanians over the last three-and-a-half decades, on the principal basis of demonstrating a reasonable commitment to the Cayman Islands.

Although the day of the expatriate worker in the Cayman Islands is far from over, the intention has always been to grow and train the Caymanian population to fill positions occupied by expatriate workers. This policy has had its successes (the Cayman Islands Law School is a good example) and those successes can be seen today in increasing competition locally for certain quality positions. Social and political factors have placed considerable pressure on the government to make more stringent the requirements in connection with expatriates wishing to make the Cayman Islands home.

The result was the Immigration Law 2003. The effects of Hurricane Ivan, a change in government and certain drafting inadequacies of the law led to calls for a significant amendment almost immediately after it was enacted. These problems exacerbated and continued a period of uncertainty, which, for some considerable time, has left expatriates and Caymanians alike wondering what the immigration position of the expatriate will be, going forward. With the publication of the Immigration (Amendment) (No. 2) Law 2006, this period of uncertainty looks to be coming to an end.

## Term limits

Up until the enactment of the Immigration Law 2003, there was generally no limit to the number of years that a worker could seek to renew his work permit and, indeed, there were (and maybe still are) examples of such workers having been granted permits over a period of two decades or more. There is now a system whereby the maximum term of years over which permits may be granted to any individual expatriate worker is seven years. Generally speaking, after the expiry of the seventh one-year work permit, the expatriate worker must leave the Cayman Islands and may not return here to work for a period of at least one year.

There is one salient exception to this term limit rule, which is that the term limit of any expatriate worker who has been designated as a "key employee" is increased to nine years. The most important consequence of this increased term limit is obviously postponing the date upon which that expatriate worker must leave the Cayman Islands.

However, in order to be put in a position where an expat might lawfully work in the Cayman Islands beyond the nine-year term limit, a key employee must be granted a Residency and Employment Rights Certificate (an R/ER Certificate). Generally speaking, an R/ER Certificate is now only open for application by expatriate workers who have been legally and ordinarily resident in the Cayman Islands for at least eight years. Obtaining "key employee" designation is thus a vital step for an expatriate worker who wishes to settle here indefinitely.

In order to succeed in an application for the "key employee" designation, the Board must satisfy itself that the individual concerned fulfils one or more of the following criteria:

- They are recognised as having particular



expertise in their field of practice, trade or employment and the Board recognises that there is difficulty in attracting and retaining such persons in the Cayman Islands;

- The expat is or will be directly involved in training Caymanians or developing their skills in the field in which the expat is employed or practises and his or her expertise in this regard is important to the continuation of such training or development;

- The expat is a professional employee whose expertise and skills are in short supply globally and are not available in adequate measure in the Cayman Islands and it is of economic and social benefit to the business or the Cayman Islands to attract such skills to the Cayman Islands;

- His or her absence from the Cayman Islands will be detrimental or cause serious hardship to his employer, to Caymanians or to the Cayman Islands;

- Their business contacts are, or will be, of importance to the continued success of the business or its contribution to the Cayman Islands;

- There exists other economic or social benefits to the Cayman Islands by virtue of securing or retaining his specialist skills or expertise; or

- The circumstances of his particular case are considered by the Board to be exceptional and justify a special reason to employ the individual or to allow him or her to be designated as a key employee.

Although the Board has wide latitude under the above criteria, it should be noted that even if the Board is satisfied that one or more of the above criteria is fulfilled, it is not required to



- Showing significant investment in the Cayman Islands (for example in real property or a business);

- Demonstrating that the applicant's means are such that he or she will not be a financial burden to the people of the Cayman Islands;

- Contributions to the local community;

- Knowledge of Cayman culture and history;

- Close connections to a Caymanian or Caymanians;

- Adding to the cultural diversity of the Cayman Islands.

In general, points are deducted (or not awarded where they otherwise may be) if:

- There are enough qualified Caymanians to meet the demands of the labour market in the applicant's field;

- Criminal convictions;

- Health issues.

There is the right to appeal in the case of a refusal to grant an application for an R/ER Certificate.

## Caymanian Status

An individual who is successful in obtaining an R/ER Certificate is in a good position to go on and eventually become a Caymanian by grant. The route which may be taken to do so requires

liquidation where creditors have been adversely affected;

- The applicant is of good character and conduct, supplies three character references from Caymanians attesting to his or her good character and conduct, and has a clean criminal record;

- The applicant is of good health and does not suffer from any form of communicable or mental disease that would make him a danger to the community;

- The applicant has not been involved in organising or engaging in any subversive political activity, nor has he organised, caused or promoted racism or any other illegal activity in the Cayman Islands;

- The continued residence of the applicant and his family will contribute to the well being of the Cayman Islands;

- The economic situation of the Cayman Islands and the protection of persons already engaged in similar gainful occupations have been duly considered;

- Adequate consideration has been given to the desirability of the granting of the right to be Caymanian to applicants with different backgrounds and from different geographical areas so that a suitable balance in the social and economic life of the Cayman Islands may be maintained; and

- Adequate consideration has been given to the desirability of retaining the economic resources of the Cayman Islands in the control of existing Caymanians.

## Residential Certificate

The only other area of the new immigration regime which is likely to be of general interest is obtaining the right permanently to reside in the Cayman Islands as a person of "independent means", which would allow the applicant to reside in the Cayman Islands for a period of 25 years, and is renewable. As the title suggests, the main criteria for the grant of a Residential Certificate are financial and, specifically:

- In the case where the applicant wishes to reside in Grand Cayman, the applicant must have a continuous source of annual income in the amount of \$150,000 without the need to engage in employment in the Cayman Islands and he or she must have invested the sum of at least \$750,000 in Grand Cayman of which \$250,000 is invested in developed real property; and

- In the case where the applicant wishes to reside in one of the Sister Islands, the applicant must have a continuous source of annual income in the amount of \$75,000 without the need to engage in employment in the Cayman Islands and he or she must have invested the sum of at least \$250,000 locally of which \$125,000 is invested in developed real property.

In addition, the applicant must have a clean criminal record, he must be in good health and possess adequate health insurance.

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grant the application for the "key employee" designation. Furthermore, there is no right to appeal a decision to refuse to grant such an application.

## Permanent Residency

Any expatriate worker legally and ordinarily resident in the Cayman Islands for eight years may now apply for an R/ER Certificate which, if granted, allows the applicant to accept employment from any employer of his choice and permits his dependents to reside with him.

The only significant restriction is that the applicant must work within the occupation specified by the Board, which will be his or her occupation at the time the application is made. In considering the application, the Board must grant or refuse the application by application of the points system. There are a maximum of 200 points available and the applicant must achieve at least 100 such points in order to oblige the Board to grant the application.

In general, points will be awarded for:

- Demonstrating that the applicant has skills/experience in a field which are in demand in the Cayman Islands at the time of the application;

that the applicant first be granted British Overseas Territories Citizenship (BOTC) by the government of the UK. Eligibility for BOTC is determined strictly on objective criteria and may be applied for no less than 12 months after the applicant has been granted a right to reside indefinitely in the Cayman Islands and following a period of five years of residence in the Cayman Islands. Therefore, almost all applicants who meet the eligibility criteria will be granted BOTC. So long as the BOTC has been legally and ordinarily resident in the Cayman Islands for at least 15 years or at least five years after the grant of BOTC, they may apply for Caymanian status.

In order to grant such an application, the Board must satisfy itself that:

- Such a grant would be in the public interest;

- Adequate consideration has been given to the number of dependents who would be entitled to live in the Cayman Islands or become Caymanian should the application be granted;

- The applicant has not committed an act of insolvency or bankruptcy, or been involved as a shareholder or director of any company or other entity which has been the subject of