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CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE IMMIGRATION LAW (2006
REVISION) TO INTRODUCE NEW CONCEPTS AND TO REDEFINE
EXISTING ONES; TO WIDEN THE POWERS OF THE CHIEF
IMMIGRATION OFFICER; TO VARY THE COMPOSITION OF THE
BOARDS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

THE IMMIGRATION (AMENDMENT) (NO. 2) BILL, 2006

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Immigration Law (2006 Revision) to widen the powers of the Chief Immigration Officer; vary the composition of the Boards and effect miscellaneous other changes to the Law.

Clause 1 provides the short title of the legislation.

Clause 2 amends section 2 of the principal Law to insert new definitions and to re-define certain existing expressions.

Clauses 3 and 4 respectively amend sections 5 and 7 of the principal Law to increase the powers of the Cayman Brac and Little Cayman Immigration Board, the Work Permit Board and the Business Staffing Plan Board.

Clause 5 amends section 14 of the principal Law to provide additional grounds for appeal to the Work Permit Board against decisions of an immigration officer.

Clause 6 amends section 15 of the principal Law to effect a consequential amendment relating to appeals from decisions of the Boards.

Clause 7 repeals and replaces section 16 of the principal Law to make it clear that an appeal before the Immigration Appeals Tribunal is by way of re-hearing.

Clause 8 amends section 20 of the principal Law to enable a person who believes that he possesses the right to be Caymanian to apply to the Chief Immigration Officer for the formal acknowledgement of that right in his passport.

Clause 9 amends section 22 of the principal Law to vary certain residency requirements for the purposes of the acquisition of the right to be Caymanian by grant of the Caymanian Status and Permanent Residency Board.

Clause 10 amends section 23 of the principal Law to require the Board, when considering an application for the right to be Caymanian, to consider the number of dependants who would be entitled to reside in the Islands by entitlement should the application be granted.

Clause 11 repeals and replaces sections 26 and 27 of the principal Law to make provision for the grant of the right to be Caymanian by entitlement to be made by the Chief Immigration Officer and not by the Board; and to delete the provisions enabling revocation of Caymanian Status on conviction.

Clause 12 amends section 28 of the principal Law to remove the power of the Chief Immigration Officer to grant the right to reside in the Islands to entrepreneurs or investors and to delete the expression “wealthy retirees” and substitute “persons of independent means”.

Clause 13 amends section 29 of the principal Law to provide that in cases where there is a change in the number of dependants of the holder of a Residency and Employment Rights Certificate, the holder shall inform the Board of the fact and the Board shall amend the grant accordingly.

Clause 14 amends section 30 of the principal Law to require the spouse of a Caymanian to produce a medical certificate evidencing good health for the purposes of an application for a Residency and Employment Rights Certificate.

Clause 15 repeals sections 33 to 36 of the principal Law and replaces them with provisions for-

- (a) the acknowledgement of Persons of Independent Means and the granting of Residential Certificates to such persons, their spouses and dependent children; and
- (b) the revocation of the grant to such persons;

Clause 16 repeals section 37 of the principal Law and substitutes new sections 37 and 37A revising the provisions relating to loss of permanent residency.

Clause 17 amends section 39(c) of the principal Law to eliminate the obsolete reference to “Entrepreneurs and Investors”.

Clause 18 repeals and replaces section 40 of the principal Law to enable a self-employed work permit holder to apply for a renewal of a work permit.

Clause 19 repeals and replaces section 41 of the principal Law to correct an error.

Clause 20 repeals and replaces section 42 of the principal Law to prescribe the matters that are to be taken into account by the Work Permit Board and the Business Staffing Plan Board when considering applications for the renewal of work permits.

Clause 21 repeals and replaces section 43 of the principal Law to make new provision in respect of Business Staffing Plans.

Clause 22 amends section 44 of the principal Law to set out the responsibilities of the Business Staffing Plan Board when processing applications relating to professional employees.

Clause 23 amends section 46 of the principal Law to expand the grounds on which the Work Permit Board may revoke a work permit.

Clause 24 repeals and replaces section 47 of the principal Law to enable an employer, at any time, to nominate an employee to be designated as a key employee.

Clause 25 repeals and replaces section 50 of the principal Law to make new provision as to the maximum period of time in respect of which work permits may be granted or renewed for a worker.

Clause 26 amends section 51 of the principal Law to make new provision in respect of temporary work permits.

Clause 27 amends section 52 of the principal Law to amend the law relating to a business visitor's permit.

Clause 28 amends section 54 of the principal Law to vary the penalty relating to the offence of engaging in gainful occupation in contravention of the Law.

Clause 29 amends section 65 of the principal Law to amend the law relating to the entry into the Islands of children other than Caymanians or persons legally and ordinarily resident.

Clause 30 inserts into the principal Law a new section 66A setting out provisions relating to sponsors of persons seeking permission to land in the Islands.

Clause 31 inserts into the principal Law new sections 70A and 70B relating to the removal of persons unlawfully in the Islands.

Clause 32 amends section 73 of the principal Law to in relation to offences relating to illegal landing.

Clause 33 amends section 78 of the principal Law to amend the law relating to student visas.

Clause 34 amends section 79 of the principal Law to make new provision in respect of persons seeking asylum.

Clauses 35 and 36 insert various provisions to strengthen the enforcement of the principal Law.

Clause 37 amends section 100 of the principal Law to amend the law relating to marriages of convenience.

THE IMMIGRATION (AMENDMENT) (NO. 2) BILL, 2006

ARRANGEMENT OF CLAUSES

1. Short title.
2. Amendment of section 2 of the Immigration Law (2006 Revision) - definitions.
3. Amendment of section 5 - Cayman Brac and Little Cayman Immigration Board.
4. Amendment of section 7 - appointment of Immigration Boards Administrator and functions of the Boards.
5. Amendment of section 14 - appeals from decisions of immigration officer.
6. Amendment of section 15 - appeals from the decisions of the Boards.
7. Repeal and substitution of section 16 - conduct of appeals.
8. Amendment of section 20 - categories of Caymanians.
9. Amendment of section 22 - acquisition of the right to be Caymanian by grant of the Board.
10. Amendment of section 23 - matters for Board's consideration.
11. Repeal and substitution of sections 26 and 27 - loss of right to be Caymanian; revocation on conviction.
12. Amendment of section 28 - categories of permanent residence.
13. Amendment of section 29 - persons legally and ordinarily resident in the Islands for at least eight years.
14. Repeal and substitution of section 30 - Residency and Employment Rights Certificate for spouse of a Caymanian.
15. Repeal and substitution of sections 33 to 36- Residential Certificate for Persons of Independent Means; Spouse of the holder of Residential Certificate for Persons of Independent Means; Dependent child of the holder of Residential Certificate for Persons of Independent Means; Revocation of grant of Residential Certificate for Persons of Independent Means.
16. Repeal of section 37 and substitution of sections 37 and 37A - general provisions relating to loss of permanent residency; qualification for legal and ordinary residence.
17. Amendment of section 39 - who may be gainfully employed.
18. Amendment of section 40 - application for work permit.
19. Repeal and substitution of section 41 - application of sections to Cayman Brac and Little Cayman Immigration Board.
20. Repeal and substitution of section 42 - consideration of application for work permit by Board.
21. Amendment of section 43 - Business Staffing Plan.
22. Amendment of section 44 - responsibility of the Board in processing applications for professional employees.
23. Amendment of section 46 - grant or refusal of work permit.
24. Repeal and substitution of section 47 - key employees.

25. Repeal and substitution of section 50 - term limits.
26. Amendment of section 51 –temporary work permit.
27. Amendment of section 52 - business visitor’s permit.
28. Amendment of section 54 - offence to engage in gainful occupation or to employ persons in contravention of this Part.
29. Amendment of section 65 - entry by persons other than Caymanians or persons legally and ordinarily resident.
30. Insertion of section 66A - provisions relating to sponsors.
31. Insertion of sections 70A and 70B - removal of certain persons unlawfully in the Islands.
32. Amendment of section 73 – offences relating to illegal landing and powers of arrest.
33. Amendment of section 78 - student visas.
34. Amendment of section 79 - application for asylum.
35. Insertion of section 80A - helping asylum-seeker to enter the Islands.
36. Insertion of sections 98A to 98E – miscellaneous offences.
37. Amendment of section 100 – offence to enter marriage of convenience.

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE IMMIGRATION LAW (2006 REVISION) TO INTRODUCE NEW CONCEPTS AND TO REDEFINE EXISTING ONES; TO WIDEN THE POWERS OF THE CHIEF IMMIGRATION OFFICER; TO VARY THE COMPOSITION OF THE BOARDS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the Immigration (Amendment) (No. 2) Law, 2006.

Amendment of section 2 of the Immigration Law (2006 Revision) - definitions

2. The Immigration Law (2006 Revision), in this Law referred to as “the principal Law”, is amended in section 2 -

(a) by inserting the following definitions in their appropriate alphabetical sequence:

“ “Business Staffing Plan Certificate” means the certificate that is issued by the Business Staffing Plan Board to the holder of an approved Business Staffing Plan;

“by entitlement” in relation to the right to be Caymanian under section 20(1)(d) means entitlement by a person by virtue only of his being, in the determination of the Chief Immigration Officer:

- (a) the child of a Caymanian;
- (b) under the age of eighteen years; and

- (c) legally and ordinarily resident in the Islands for a period of not less than one year;

“employee” means a person who engages in gainful occupation in the service of himself or an employer;

“fixed-term work permit” means the special work permit that the Chief Immigration Officer may grant under section 50;

“immigration advice” means advice which -

- (a) relates to a particular individual;
- (b) is given in connection with one or more relevant matters;
- (c) is given by a person who knows that he is giving it in relation to a particular individual and in connection with one or more relevant matters; and
- (d) is not given in connection with representing an individual before a court in legal proceedings or matters ancillary to such proceedings;

“immigration function” means a function of an immigration officer under this Law;

“immigration services” means the making of representations on behalf of a particular individual -

- (a) in civil proceedings before a court, tribunal or adjudicator in the Islands; or
- (b) in correspondence with a Government department in connection with one or more relevant matters;

“immigration stamp” means a device which is designed for the purpose of stamping documents in the exercise of an immigration function;

“key employee” means a person who has been identified by his employer and designated by the Work Permit Board or the Business Staffing Plan Board as such for having satisfied any criterion contained in section 47(4);

“levy” means the annual work permit fee applicable to a worker -

- (a) at the date when he first engaged in gainful occupation without a valid work permit; or

- (b) at the date of the first failure to comply with the conditions and limitations of his work permit,

as the case may be; and a certificate issued by the Chief Immigration Officer shall be prima facie evidence of such fee;

“Marriage Officer” means a Marriage Officer under the Marriage Law (1995 Revision);

“overstayer” means a person who resides in the Islands without the specific permission of an immigration officer or the Board;

“relevant matters” means any of the following:

- (a) a claim for asylum;
- (b) an application for a work permit, visa or an extension of permission to enter or remain in the Islands;
- (c) unlawful entry into the Islands;
- (d) an application for the right to be Caymanian;
- (e) an application to reside permanently in the Islands;
- (f) an application for a Residency and Employment Rights Certificate;
- (g) an application for a Residential Certificate for Persons of Independent Means;
- (h) removal or deportation from the Islands;
- (i) an application for bail for an immigration offence; or
- (j) an appeal against, or an application for judicial review in relation to, any decision taken in connection with a matter referred to in paragraphs (a) to (i);

"replica immigration stamp" means a device which is designed for the purpose of stamping a document so that it appears to have been stamped in the exercise of an immigration function;

“sponsor”, in relation to a tourist visitor, means a person who accepts responsibility for the tourist visitor’s care, upkeep and departure from the Islands;

“term limit” means the maximum period of time in respect of which work permits may be granted or renewed for a worker as prescribed in section 50(1) and (4);”;

- (b) by deleting the definition of the terms “Board”, “employer”, “gainful occupation”, “health practitioner”, “legal and ordinary residence”, “offence” and “worker” and substituting, respectively, the following definitions:

“ “Board” means one of the three Boards established under section 4 and includes, for the purposes of section 50, the Cayman Brac and Little Cayman Immigration Board;

“employer” means a person who for reward engages the services of another and includes a prospective employer;

“gainful occupation” means the carrying on of or employment in any profession, trade, business or other avocation in or in relation to the Islands and for the purposes of Part V a person so engaged is deemed to be working for gain or reward unless the contrary is proved;

“health practitioner” has the meaning ascribed to that expression in the Health Practice Law (2005 Revision);

“legal and ordinary residence” means a person’s uninterrupted voluntary physical presence in the Islands for a period of time without legal impediment (other than as a tourist visitor or transit passenger) during which period the Islands are regarded as his normal place of abode for the time being, save that -

- (a) absences abroad of six consecutive months’ duration or less for, *inter alia*, purposes of education, health, vacation or business during such period shall count as residence in the Islands;
- (b) absences abroad of more than six consecutive months but less than one year shall raise the presumption that there has been a break in residence; and
- (c) absences abroad for twelve consecutive months or more shall constitute a break in residence;

“offence” for the purposes of a grant of a work permit, the revocation of a work permit or the refusal to renew a work permit by the Board, under Parts III, (other than sections 22 and 27) IV or V means a contravention against this or any other Law of the Islands in respect of which -

- (a) a term of imprisonment in excess of six months could be imposed otherwise than in default of payment of a fine; or
- (b) lesser terms of imprisonment totalling in excess of six months in the aggregate as a result of multiple convictions could be imposed; and
- (c) no appeal is pending and the time for lodging an appeal has expired;

“worker” means a person in respect of whom a work permit or a fixed-term work permit has been or may be granted or renewed under Part V;”;

- (c) by deleting the definition of “automatic acquisition”; Caymanian by descent” and “exempted employee” and
- (d) in the definition of “points system” by deleting the word “may” and substituting the word “shall”.

Amendment of section 5
- Cayman Brac and
Little Cayman
Immigration Board

3. The principal Law is amended in section 5(6) by repealing paragraph (a) and substituting the following:

“(a) the processing and determination of applications for the grant or renewal of work permits, other than for an employer with a Business Staffing Plan Certificate, applied for by persons who are seeking gainful occupation in Cayman Brac or Little Cayman;”.

Amendment of section 7
- appointment of
Immigration Boards
Administrator and
functions of the Boards

4. The principal Law is amended in section 7(3) -

- (a) in paragraph (a) by repealing subparagraph (i) and substituting the following:
 - “(i) processing, determining and granting of applications for the grant or renewal of work permits other than for an employer with a Business Staffing Plan Certificate; and”; and
- (b) in paragraph (c) –
 - (i) by adding after the word “responsibility” the words “in Grand Cayman, Little Cayman and Cayman Brac”;
 - (ii) in subparagraph (ii) by deleting the word “Authorities” and substituting the word “Certificates”; and
 - (iii) by repealing subparagraph (iii) and substituting the following:
 - “(iii) processing, determining and granting applications for the grant or renewal of work permits applied for by any employer who possesses a Business Staffing Plan Certificate.”

5. The principal Law is amended in section 14 as follows:

Amendment of section
14 - appeals from
decisions of immigration
officer

- (a) in subsection (1) by deleting the words “there from to the Work Permit Board” and substituting the words “therefrom to the pertinent Board”;
- (b) in subsection (2) -
 - (i) by deleting the word “and” at the end of paragraph (d);
 - (ii) by deleting paragraph (e); and
 - (iii) by adding after paragraph (d) the following:
 - “(e) to refuse or revoke a temporary work permit; and
 - (f) to refuse an application for a Residential Certificate for Persons of Independent Means.”;
- (c) in subsection (3) by repealing paragraph (b) and substituting the following:
 - “(b) an appellant under subsection (2)(b) and (d) to (f) shall be allowed to remain in the Islands.”; and
- (d) by adding after subsection (4) the following:

“(5) For the purposes of this section “pertinent Board” means the Work Permit Board or the Business Staffing Plan Board where relevant, except that an appeal in respect of subsection (2)(f) shall be heard by the Caymanian Status and Permanent Residency Board.”.

6. The principal Law is amended in section 15(1) by deleting the word “Any” and substituting the words “Save as otherwise provided in this Law, any”.

Amendment of section
15 - appeals from the
decisions of the Boards

7. The principal Law is amended by repealing section 16 and substituting the following:

Repeal and substitution
of section 16 - conduct
of appeals

“Conduct
appeals

of 16. (1) Appeals under sections 14 and 15 shall be by notice in writing addressed to the Secretary of the Board or of the Immigration Appeals Tribunal, as the case may be, and such notice -

- (a) shall set forth -
 - (i) the decision against which the appeal is made;
 - (ii) whether or not the appellant wishes to be heard personally or by a representative; and
- (b) shall be accompanied by a copy of the original application and in the case of an appeal to the Immigration Appeals Tribunal, by the prescribed non-

refundable processing fee.

(2) On receipt of the notice of appeal the Appellate Tribunal shall within fourteen days notify the immigration officer or the Board, as the case may be, of the decision against which the appeal is made.

(3) Within twenty-eight days of receipt of the notice referred to in subsection (2) the immigration officer or the Board, as the case may be, shall deliver to the Board or the Immigration Appeals Tribunal, as the case may be, and the appellant the reasons for his or its decision.

(4) The appellant shall within twenty-eight days of receipt of the reasons referred to in subsection (3), file his grounds of appeal with the Board or the Immigration Appeals Tribunal, as the case may be, and serve a copy thereof on the immigration officer or the Board.

(5) The immigration officer or the Board may within twenty-eight days of the receipt of the grounds of appeal referred to in subsection (4) provide a written defence which shall be filed with the Board or the Immigration Appeals Tribunal, as the case may be, and served on the appellant.

(6) Where the appellant has applied to be heard personally or by a representative, the Appellate Tribunal shall fix a time and a date for such hearing and notify the appellant and, as the case may be, the immigration officer or the Board thereof.

(7) Appeals to the Immigration Appeals Tribunal shall be by way of rehearing.

(8) The Immigration Appeals Tribunal when hearing an appeal may take into account fresh evidence and any change in circumstances that may have arisen in relation to the parties.

(9) At every hearing of an appeal where the appellant or his representative is present, the appellant or his representative shall be given an opportunity to address

the Appellate Tribunal, and the immigration officer or his representative or the representative of the Board, as the case may be, shall be heard in answer but the Appellate Tribunal may, in its absolute discretion, call upon either party further to address it.

(10) Representatives appearing on behalf of either party need not be persons having legal qualifications.

(11) The decision of the Appellate Tribunal shall be notified to the appellant with the least possible delay.”.

8. The principal Law is amended in section 20:

Amendment of section
20 - categories of
Caymanians

- (a) in subsection (1) by repealing paragraph (d) and substituting the following:

“(d) he has obtained the right by entitlement; or”;

- (b) by renumbering subsection (2) as subsection (5) and inserting three new subsections as follows:

“(2) A person who believes that he possesses the right to be Caymanian under subsection (1) may apply in the prescribed form to the Chief Immigration Officer for the formal acknowledgement of that right in his passport and the Chief Immigration Officer shall within fourteen days either provide the acknowledgement or give written reasons for his refusal to do so.

(3) Where by application of law a person loses his right to be Caymanian, the Chief Immigration Officer may cancel the passport acknowledgement referred to in subsection (2).

(4) A person aggrieved by the Chief Immigration Officer’s decision under subsection (2) or (3) may, within seven days of that decision having been communicated to him, appeal to the Caymanian Status and Permanent Residency Board.”; and

- (c) in subsection (5) as renumbered by deleting the words “an illegitimate child” and substitute the words “a child born out of wedlock”.

9. The principal Law is amended in section 22 -

Amendment of section
22 - acquisition of the
right to be Caymanian
by grant of the Board

- (a) in subsection (4)(a) by inserting the words “immediately preceding the application” after the word “years” wherever it appears;

- (b) by repealing subsection (4)(d) and substituting the following:
 “(d) who has not lived apart from his spouse for an aggregate period of three months -
 - (i) out of the five years immediately preceding the application where the marriage took place prior to the commencement of the Immigration Law 2003; or
 - (ii) out of the seven years immediately preceding the application where the marriage took place on or after the commencement of the Immigration Law 2003;”;
- (c) by repealing subsection (5) and substituting the following:
 “(5) The Board, in calculating under subsection (4) the period of time that the applicant and his spouse have spent apart, shall not, where the absences are occasioned by one or other of the spouses having been away from the Islands, take into account those occasions when such absences were temporary for medical, educational, business or similar reasons.”;
- (d) in subsection (6), by repealing paragraph (b) and substituting the following:
 “(b) immediately before the death of the deceased, was not living apart from the deceased -
 - (i) under the decree of a competent court;
 - (ii) under a deed of separation; or
 - (iii) in circumstances where in the opinion of the Board the marriage had irretrievably broken down;”;
- (e) by repealing subsection (11) and substituting the following:
 “(11) Subject to this Part, where a person is the grantee of the right to be Caymanian or of Caymanian status under this or any earlier law, no person shall be entitled to apply for the right to be Caymanian by virtue only of that grant save for those persons acquiring such right by entitlement.”.

Amendment of section 23 - matters for Board's consideration

10. The principal Law is amended in section 23 by deleting the words “by automatic acquisition” wherever they appear and substituting the words “by entitlement”.

Repeal and substitution of sections 26 and 27 - loss of right to be Caymanian; revocation on conviction

11. The principal Law is amended by repealing sections 26 and 27 and substituting the following:

- “Loss of the right to be Caymanian
26. (1) The right to be Caymanian granted by the Board may be lost in any of the following circumstances:
- (a) where the holder has supplied false or misleading information in a material particular to the Board;
 - (b) where the holder has ordinarily resided outside the

Islands for a period of five years and can no longer be said to be settled in the Islands;

- (c) where the marriage of the holder, being the spouse of a Caymanian, is deemed by the Board to have been a marriage of convenience; and
- (d) where within three years of the grant of the right to be Caymanian, or to have Caymanian status, to the spouse of a Caymanian under section 22(4) of the Immigration Law, 2003 or under the Immigration Law (2003 Revision), the marriage of the holder -
 - (i) in the opinion of the Board has irretrievably broken down;
 - (ii) has declined to the point where the parties have separated as a result of a decree of a competent court or a deed of separation; or
 - (iii) no longer subsists.

(2) The holder of the right to be Caymanian by entitlement under this Law or under any analogous provision in an earlier law -

- (a) may lose that right where he has not been legally and ordinarily resident in the Islands for a period of seven years immediately before reaching the age of eighteen years; and
- (b) shall notify the Chief Immigration Officer forthwith of the relevant circumstances involving his legal and ordinary residence in the Islands and wilful failure to do so is an offence.

(3) The Board may, by order, divest any person who has been granted the right to be Caymanian under section 22, or Caymanian status under any earlier law, of such right or status if it is satisfied that the grant was obtained by means of fraud, false representation or the concealment of any material fact; and with respect to such order -

- (a) the Board shall, by notice, inform the person affected, of the order and of his right to appeal to the Immigration Appeals Tribunal as hereinafter provided;
- (b) if the person affected is aggrieved by the order, he may subject to section 15, appeal to the Immigration Appeals Tribunal against the order; and
- (c) in the event of there being no appeal or if an appeal is disallowed, the Board shall notify the Chief

Statistician and the Chief Immigration Officer of the order and shall cause notice thereof to be published in the Gazette.

(4) Any person who, having possessed the right to be Caymanian, ceases by virtue of subsections (1) to (3) to possess or to be deemed to possess the right to be Caymanian shall, for the purposes of this Law, be treated as if he had never acquired, possessed or enjoyed the right to be Caymanian and the provisions of this Law shall thenceforward apply and have effect accordingly.

(5) Nothing in subsection (1) to (4) shall have effect so as to preclude a person who has, by virtue of such subsections, cease to possess the right to be Caymanian from applying to the Board for the grant of that right under section 22.

Revocation

27. Where the grantee of the right to be Caymanian or of Caymanian status under this or any earlier law is convicted of an offence which in the opinion of the grantor was made possible by, facilitated by or connected with the grant, the grantor may revoke the grant on his own motion.”.

Amendment of section 28 - categories of permanent residence

12. The principal Law is amended in section 28 -

(a) by repealing subsection (2) and substituting the following:

“(2) Subject to section 33, the Chief Immigration Officer may grant the right to reside in the Islands to persons of independent means.”; and

(b) in subsection (3)(d) by deleting the word “and” at the end of the paragraph and substituting the word “or”.

Amendment of section 29 - persons legally and ordinarily resident in the Islands for at least eight years

13. The principal Law is amended in section 29 -

(a) by repealing subsections (1) to (4) and substituting the following:

“(1) The following persons who have been legally and ordinarily resident in the Islands for a period of eight years, other than the holder of a Residential Certificate for Persons of Independent Means, may apply in the prescribed form and manner to the Board for permission for himself and his dependants, if any, to reside permanently in the Islands, namely a person who -

(a) continues to be so resident; or

(b) having ceased to be so resident, submits his application within ninety days of such cessation.

(1A) For the purpose of assessing the suitability of an applicant for permanent residence a points system shall be prescribed by the Governor.

(2) In considering an application for permanent residence under subsection (1) the Board shall grant or refuse the application in accordance with the score attained by the applicant when the criteria set out in the points system are applied.

(3) Where an application under subsection (1) has been refused and the applicant has appealed against such refusal and lost his appeal, he is debarred from re-applying under the provisions of that subsection and shall leave the Islands upon the expiration of any period during which he was allowed to work under section 50(6), unless he is entitled to remain by virtue of any other provision of this Law.

(4) Upon the grant of permanent residence, the Board shall issue to the successful applicant a Residency and Employment Rights Certificate, which certificate shall entitle the holder -

- (a) to accept employment from any employer of his choice; and
- (b) to have reside with him within the Islands such of his dependants as were listed in his application and were approved by the Board,

but the certificate shall restrict him to working within the particular occupation or occupations specified by the Board; and such certificate may be varied by the Board.”;

- (b) by inserting after subsection (4), the following subsections:

“(4A) Where there is a change in the number of children who are dependants of the holder of a Residency and Employment Rights Certificate born subsequent to the issue thereof, the holder shall so inform the Board of the fact and the Board shall amend the certificate to include any additional children subject to such conditions as the Board may in its absolute discretion determine.

(4B) Where any person possesses permanent residence granted under any Law that has been repealed, the Caymanian Status and Permanent Residency Board shall have the power to vary or amend the terms of the grant to add or remove

dependants; but a dependant so removed shall have the right to apply to the Board for the grant of a Residency and Employment Rights Certificate in his own right.”; and

(c) by repealing subsection (10).

Repeal and substitution
of section 30 -
Residency and
Employment Rights
Certificate for spouse of
a Caymanian

14. The principal Law is amended by repealing section 30 and substituting the following:

“Residency and
Employment Rights
Certificate for spouse of
a Caymanian

30. (1) The spouse of a Caymanian may apply to the Chief Immigration Officer and thereafter to the Caymanian Status and Permanent Residency Board for permission to reside in the Islands and if such application is successful the Chief Immigration Officer or the Board, as the case may be, shall grant to the applicant a Residency and Employment Rights Certificate for a period of six months or seven years, respectively; and a Residency and Employment Rights Certificate –

- (a) when granted by the Board, shall be renewable at the discretion of the Board; and
- (b) when granted by the Chief Immigration Officer, shall not be renewable.

(2) The application shall be accompanied by evidence as to the stability of the marriage and a statement as to the number of dependants, if any, of the spouse.

(3) In considering the application, the Chief Immigration Officer or the Board shall satisfy himself or itself that -

- (a) the spouse of the applicant is Caymanian;
- (b) the marriage is not a marriage of convenience;
- (c) the applicant is of good character;
- (d) that the applicant is in good health as evidenced by a recent medical certificate;
- (e) the marriage is stable; and
- (f) the applicant and his spouse have sufficient financial means to support himself and his dependants listed on the application as accompanying him.

(4) A person to whom a Residency and Employment Rights Certificate is granted under this section shall, as long

as the marriage remains stable, be entitled-

- (a) to remain and work in the Islands in any occupation without the need to possess a work permit; and
- (b) to have such of his dependants as were listed on the application and were approved by the Board reside in the Islands-
 - (i) until they have attained the age of eighteen years; or
 - (ii) if they are pursuing full-time tertiary education, until they have attained the age of twenty-four years or completed such education, which ever happens earlier.

(5) The spouse of a Caymanian shall have no right to be gainfully occupied in the Islands unless he is the holder of a Residency and Employment Rights Certificate granted under this section and he shall not be entitled to apply for, or to be granted, a work permit or the renewal of a work permit but where, at the date of commencement of the Immigration (Amendment) (No. 2) Law, 2006, a work permit is in force in relation to the spouse of a Caymanian, such spouse may continue to work under the terms and conditions of the permit until its expiration.

(6) Notwithstanding subsection (5)-

- (a) where the spouse of a Caymanian is the holder of a Residency and Employment Rights Certificate granted by the Chief Immigration Officer, he may, if application is made to the Board for a Residency and Employment Rights Certificate prior to the expiration of the certificate granted by the Chief Immigration Officer, continue working until such time as his application is determined by the Board; and
- (b) where the holder of a Residential and Employment Rights Certificate granted by the Board applies prior to its expiration to have it renewed, he may continue working after it has expired until such time as his application is determined by the Board.”.

Repeal and substitution
of sections 33 to 36 –
Residential Certificate
for Persons of
Independent Means;
Spouse of the holder of a
Residential Certificate
for Persons of
Independent Means;
Dependent child of the
holder of a Certificate
for Persons of
Independent Means;
Revocation of
Residential Certificate
for Persons of
Independent Means

15. The principal Law is amended by repealing sections 33 to 36 and substituting the following:

“Residential Certificate
for Persons of
Independent Means

33. (1) A person of independent means who has attained the age of eighteen years and who satisfies the requirements of this section may apply to the Chief Immigration Officer for a Residential Certificate for Persons of Independent Means.

(2) An applicant under this section shall be granted a Residential Certificate for Persons of Independent Means, without the right to work, valid for twenty-five years and renewable thereafter at the discretion of the Chief Immigration Officer, if he satisfies the Chief Immigration Officer that-

- (a) he has a clean criminal record;
- (b) he is in good health and possesses adequate health insurance coverage; and
- (c) he has attained the financial standing required by subsection (3).

(3) The applicant will be deemed to have attained the financial standing referred to in subsection (2) if, as a minimum, he can show that-

- (a) he has a continuous source of annual income in the prescribed amount without the need to engage in employment in the Islands;
- (b) he has invested the prescribed sum in developed residential real estate in the Islands; and
- (c) he has made other local investments in the prescribed amount.

Spouse of holder of the
holder of a Residential
Certificate for Persons

34. (1) The spouse and such dependants of the

Dependent child of the
holder of a Residential
Certificate for Persons
of Independent Means

35. (1) The right of a child to reside in the Islands as a dependant shall cease upon completion of his full-time tertiary education or when he reaches the age of twenty-four years, whichever happens earlier.

(2) Where a certificate was issued under this section, the Chief Immigration Officer may-

- (a) vary it, if it was granted between 1st January, 2004 and the commencement of the new Law; or
- (b) amend it to add or delete dependent children, if it was

granted after the commencement of the new Law.

(3) A dependant child of the holder of a Residential Certificate for Persons of Independent Means who-

- (a) was listed in the original application for the certificate;
- (b) has attained the age of eighteen years; and
- (c) is of proven good character and conduct,

may apply for permanent residence under section 29.

(4) In this section “the new Law” means the principal Law as amended by the Immigration (Amendment) (No. 2) Law, 2006.

Revocation of
Residential Certificate
for Persons of
Independent Means

36. The holder of a Residential Certificate for Persons of Independent Means may at the discretion of the Chief Immigration Officer have his right to reside in the Islands revoked if-

- (a) he fails to maintain his financial standing stipulated in section 33;
- (b) he was not physically present in the Islands for a minimum period of thirty days in aggregate in any calendar year, or
- (c) in the opinion of the Chief Immigration Officer any of the matters referred to in section 37(a) to (j) applies to the holder.”.

Repeal of section 37 and substitution of sections 37 and 37A - general provisions relating to loss of permanent residency; qualification for legal and ordinary residence

16. The principal Law is amended by repealing section 37 and substituting the following:

“General provisions relating to loss of permanent residency

37. Without prejudice to the rights of the Board to revoke permanent residency under this Law, the Board may declare that any person who has been granted permission to remain permanently in the Islands has ceased to enjoy such permission where-

- (a) he organises or engages in subversive political activity, or organises, causes or promotes racialism within the Islands;
- (b) the Board is satisfied that information given in his application for permission to remain permanently in the Islands was false in a material particular or concealed a material fact;
- (c) he has been convicted of an offence against the laws of the Islands;
- (d) he was convicted of an offence under the laws of another country, the nature of which offence would, in the opinion of the Board, make his continued presence in the Islands contrary to the public interest;
- (e) he becomes destitute;
- (f) he becomes mentally disordered or mentally defective as defined in the Mental Health Law (1997 Revision);
- (g) he is medically certified to be suffering from a communicable disease that makes his continued residence in the Islands dangerous to the community;
- (h) he is reasonably believed -
 - (i) to be a prostitute and to have come to the Islands for the purposes of prostitution; or
 - (ii) to be living on, or receiving the proceeds of prostitution; or
- (i) he is deemed by the Governor to be an undesirable inhabitant of the Islands; or
- (j) he has been ordinarily resident outside the Islands continuously for a period of one year.

Qualification for legal
and ordinary residence in
Part IV

37A. In relation to the qualification for legal and ordinary residence referred to in this Part -

- (a) where any question arises as to whether a person was or was not, during any material period, legally and ordinarily resident in the Islands, such questions shall be decided by the Board or where applicable, the Chief Immigration Officer; and
- (b) nothing in this subsection shall have effect

so as to preclude any person from appealing to the Immigration Appeals Tribunal, under section 15, on the grounds that the Board or where applicable, the Chief Immigration Officer came to the wrong decision on the question of whether during any material period he was or was not legally and ordinarily resident in the Islands.”.

Amendment of section 39 - who may be gainfully employed

17. The principal Law is amended in section 39(c) by deleting the words “or a Residential Certificate for Entrepreneurs and Investors”.

Amendment of section 40 - application for work permit

18. The principal Law is amended by repealing section 40 and substituting the following:

“Application for work permit

40. (1) A person who seeks to be self-employed or a prospective employer of any person may apply for a work permit or the renewal thereof -

- (a) to the Work Permit Board or the Business Staffing Plan Board, as the case may be, where the application is for gainful occupation in Grand Cayman; or
- (b) to the Cayman Brac and Little Cayman Immigration Board where the application is for gainful occupation in Cayman Brac or Little Cayman.

(2) An application for a grant or renewal of a work permit shall be in the prescribed form, accompanied by the prescribed fee and such documentary evidence as may be prescribed.”.

Repeal and substitution of section 41 - application of sections to Cayman Brac and Little Cayman Immigration Board

19. The principal Law is amended by repealing section 41 and substituting the following:

“Application of sections to the Cayman Brac and Little Cayman Immigration Board

41. In performing the functions of granting or renewing work permits, sections 42, 46, 53 and 54 with necessary amendments shall be construed as applying also to the Cayman Brac and Little Cayman Immigration Board.”.

20. The principal Law is amended by repealing section 42 and substituting the following:

Repeal and substitution of section 42 - consideration of application for work permit by Board

"Consideration of application for work permit by Board

42. (1) The Work Permit Board or the Business Staffing Plan Board, as the case may be, in considering an application under section 40 -

- (a) shall, in respect of an application for a grant; or
- (b) may, in respect of an application for a renewal,

subject to any general directions which the Governor may, from time to time give in respect of the consideration of such application, take into account the matters listed in subsections (2) to (4).

(2) In relation to the prospective employer, that -

- (a) he has demonstrated his genuine need to engage the services of the prospective worker;
- (b) he has, unless he has been exempted by the Governor or by the Board, sought, by advertising in at least two issues for two consecutive weeks in a local newspaper, to ascertain the availability of any one or more of the following in the order in which they are listed:
 - (i) a Caymanian;
 - (ii) the spouse of a Caymanian;
 - (iii) the holder of a Residency and Employment Rights Certificate; and
 - (iv) a person legally and ordinarily resident in the Islands who is qualified and willing to fill the position; and
- (c) in the case of an application in respect of a professional, managerial or skilled occupation,

the Board is satisfied as to the extent to which he has established adequate training or scholarship programmes for Caymanians.

- (3) In relation to the worker -
 - (a) his character, reputation and health, and where relevant, the character, reputation and health of his dependants;
 - (b) his professional and technical qualifications and his experience and competence to undertake the position applied for;
 - (c) the economic and social benefits which he may bring to the Islands;
 - (d) the sufficiency of the resources or the proposed salary of the worker and, where his spouse is employed within the Islands, those of his spouse, and his or their ability to adequately maintain his or their dependants;
 - (e) his facility in the use of the English language; and
 - (f) the location, type and suitability of the accommodation available for the worker and his dependants, if any, throughout the term of the work permit.
- (4) Generally -
 - (a) the protection of local interests and in particular of Caymanians;
 - (b) the availability of the services of a suitable person already legally and ordinarily in the Islands; and
 - (c) the requirements of the community as a whole, the demographics referred to in section 23(j) and such other matters that may arise from the application.
- (5) General directions given under this

section shall be published in the Gazette.”.

21. The principal Law is amended by repealing section 43 and substituting the following:

Amendment of section
43 - Business Staffing
Plan

“Business Staffing
Plan

43. (1) Every company, firm or other business enterprise which -

- (a) has carried on business for six months or more on or after 1 January, 2004; and
- (b) employs fifteen or more persons on work permits,

shall, no later than 31 December, 2006, submit to the Business Staffing Plan Board, a Business Staffing Plan in accordance with the Third Schedule to the Regulations.

(2) Every company, firm or other business enterprise, other than those referred to in subsection (1), carrying on business within the Islands shall, as of the date they commence employing fifteen or more persons on work permits, submit to the Business Staffing Plan Board, a Business Staffing Plan in accordance with the Third Schedule to the Regulations within six months of such date.

(3) Every company, firm or other business enterprise which has no or fewer than fifteen persons on work permits, may submit to the Business Staffing Plan Board, a Business Staffing Plan in accordance with the Third Schedule to the Regulations.

(4) Where a Business Staffing Plan Certificate is about to expire, its holder shall apply in the prescribed manner and form for the renewal of his Business Staffing Plan and he shall not be regarded as being in breach of subsection (1) or (2) if the application for the renewal of his Plan was submitted before the date of the expiration of the certificate; and, where the certificate expires prior to the renewal of his Plan, he shall be entitled to operate under the terms and conditions of his Plan pending the renewal.

(5) Neither the Work Permit Board nor the Chief Immigration Officer may entertain an application for a

work permit or a temporary work permit, by way of grant or, in the case of the Work Permit Board, renewal, where the applicant is in breach of subsection (1) or (2); and, where the application is in respect of a worker who was employed on a work permit or a temporary work permit on the date of the application, the worker's right to be engaged in gainful occupation shall cease upon the expiration of the work permit or temporary work permit, as the case may be, notwithstanding section 54(2).

(6) The Business Staffing Plan Board may, upon the written application of the holder of a Business Staffing Plan Certificate, vary or amend the Business Staffing Plan to which the certificate relates.”.

Amendment of section 44 - responsibility of the Board in processing applications for professional employees

22. The principal Law is amended in section 44 by inserting after the words “Work Permit Board” the words “or the Business Staffing Plan Board, as the case may be,”.

Amendment of section 46 - grant or refusal of work permit

23. The principal Law is amended in section 46 as follows:

(a) by repealing subsection (9) and substituting the following:

“(9) An application for the grant or renewal of a work permit may be refused and a work permit may be revoked on any of the following grounds:

- (a) that there is refusal or inability on the part of the applicant and his spouse, if relevant, to properly support his dependants;
- (b) that there are reasonable grounds for suspecting that the applicant uses or is involved in illegal drugs;
- (c) that the applicant has a background of subversive political activity, racialism or any other illegal activity;
- (d) that the applicant has committed an act of insolvency or bankruptcy or been as a shareholder or director of any company or other entity that has been the subject of liquidation especially where the creditors have been adversely affected;
- (e) that the applicant has been convicted of an offence or has been fined by an immigration

officer of the rank of Assistant Chief Immigration Officer or above;

- (f) that the work permit holder has been promoted or re-designated by his employer without the prior approval of the Board;
- (g) that the applicant is in the Islands as a tourist visitor;
- (h) that the Board considers that the applicant has not fully met any of the requirements of section 42; or
- (i) for any of the matters referred to in section 42(2) or (3) that the Board in its discretion considers appropriate.”; and

(b) in subsection (10) by inserting after paragraph (a) the following:

“(aa) the applicant shall be given notice of all objections and allegations relating to him and he shall be afforded an opportunity to make written representation to the Board in respect thereof or, at the discretion of the Board, to appear before the Board to address such objections and allegations;”.

24. The principal Law is amended by repealing section 47 and substituting the following:

Repeal and substitution
of section 47 – key
employees

“Key
employees

47. (1) An employer may make an application pursuant to subsection (4) to the Board to nominate a worker as a key employee either on the grant or in the case of an existing worker, at any time prior to the expiration of his final work permit as prescribed under section 50(1) or (4) or his fixed-term work permit.

(2) Where applicable, the worker nominated by his employer under this section to be a key employee may, upon the expiration of his final work permit issued pursuant to section 50(1) or (4) or his fixed-term work permit, continue to work on the terms and conditions of his final work permit or his fixed-term work permit unless and until such time as the Board denies his employer’s application to designate the worker as a key employee under subsection (4).

(3) Any time spent by a worker within the Islands after the expiration of his final work permit under section

50(1) or (4) or his fixed term work permit pending the decision of the Board pursuant to subsection (4) shall not be taken into account by the Board in determining his length of legal and ordinary residence in respect of an application for permission to reside permanently in the Islands under section 29 in the event the Board denies the employer's application to designate the worker as a key employee.

(4) Before the Board can designate a worker as a key employee, the employer shall at the time of such application provide such particulars as to satisfy the Board that the worker fulfils one or more of the following requirements and if so satisfied the Board may designate the worker as a key employee after taking into account such particulars, if any, under section 42(3) or (4) as relate to the application:

- (a) he is recognised as having particular expertise in his field of practice, trade or employment and the Board recognises that there is difficulty in attracting and retaining such persons within the Islands;
- (b) he is or will be directly involved in training Caymanians or developing their skills in the field in which he is employed or practises and his expertise in this regard is important to the effective continuation of such training or development;
- (c) he is a professional employee whose expertise and skills are in short supply globally and are not available in adequate measure in the Islands and it is of economic and social benefit to the business or the Islands to attract such skills to the Islands;
- (d) his absence from the Islands will be detrimental or cause serious hardship to his employer, to Caymanians or to the Islands;
- (e) his business contacts are, or will be, of importance to the continued success of the business or its contribution to the Islands;
- (f) there exists other economic or social benefits to the Islands by virtue of securing or retaining his specialist skills or expertise; or
- (g) the circumstances of his particular case are

considered by the Board to be exceptional and justify a special reason to employ him or to allow him to be designated as a key employee.

(5) Where a worker is designated as a key employee by the Board pursuant to subsection (4), upon application by his employer for renewal of his work permit a presumption shall exist in favour of renewals until that worker has been legally and ordinarily resident in the Islands for a period of nine consecutive years to enable him to apply for permanent residence save that such a presumption may be rebutted-

- (a) by any findings under section 42(4)(a) or (b), or section 46(9) and (10); or
- (b) where the key employee is in breach of any obligation or he no longer meets the criteria upon which he was so designated as a key employee.

(6) The Governor may determine from time to time by way of policy directions to the Board that any workers employed in certain professions or vocations, or any categories thereof, are to be designated as key employees; and the Board -

- (a) upon receiving an application to designate a worker on the basis that he falls within the provisions of this subsection; and
- (b) if satisfied that the worker falls within the terms of the relevant direction,

shall designate the worker as a key employee and afford him such benefits as are prescribed in subsection (5).

(7) Notwithstanding section 15, any decision of the Board under subsection (4) or (6) to deny the designation of an employee as a key employee shall be final and binding and no appeal shall lie from a decision of the Board.”.

25. The principal Law is amended by repealing section 50 and substituting the following:

Repeal and substitution
of section 50 - term
limits

“Term
limits

50. (1) Subject to subsections (4), (6), (7), (9) and (11), the term limit of a worker who is a key employee is nine

years and the term limit of a worker who is not a key employee is seven years, in either case commencing with-

- (a) the date on which the worker first entered the Islands, if the worker first entered the Islands as a work permit holder; or
- (b) the date on which the worker is granted a work permit, if the worker first entered the Islands as a tourist visitor,

whether such permits are granted and held continuously or not; and upon the expiration of his term limit, the worker shall leave the Islands and neither the Board nor the Chief Immigration Officer shall grant or renew a work permit for him until he has ceased to hold a work permit for not less than one year thereafter.

(2) A worker who leaves the Islands before the expiration of his term limit and who has ceased to hold a work permit for not less than one year, may apply for and be granted a new work permit and shall thereupon have a new term limit as provided for in subsection (1).

(3) Where a worker has left the Islands prior to the expiration of his term limit and has ceased to hold a work permit but either he or his employer wishes to apply for a new work permit prior to his having ceased to hold a work permit for a year or more, then the worker or his employer may apply for and be granted a new work permit for the unexpired period only of his term limit that remained on the date he left the Islands and, upon the expiration of his term limit, he shall be subject to the provisions of subsection (1).

(4) Where at 1st January, 2004 a worker has worked in the Islands continuously for any of the periods referred to in this subsection or did subsequently complete such period after 1st January, 2004 taking into account the last work permit granted to him prior to that date to the extent not cancelled or sooner determined and any period of time he may have spent as an employee of the Government of the Islands, then he may, if application is made for the grant or renewal of further work permits for or by him, and at the discretion of the Board or the Chief Immigration Officer, be granted work permits for the following additional periods to commence immediately upon the expiration or sooner

determination of the work permit in force on 1st January, 2004:

- (a) where the period was five years or more but less than six years, a period not exceeding three years;
- (b) where the period was six years or more but less than seven, a period not exceeding two years;
- (c) where the period was seven years or more but less than eight years, a period not exceeding one year;
- (d) where the period was eight years or more, a period expiring no later than 31st December, 2006.

(5) For the purposes of determining the length of time a worker has worked continuously in the Islands under subsection (4), he shall be treated as having so worked notwithstanding any break in his employment or absence from the Islands for any reason prior to 1st January, 2004 if such break or absence did not exceed six consecutive months at any one time in the period.

(6) Where a worker either falls within subsection (4) or has been designated as a key employee and in either event has applied for permission to reside permanently in the Islands under section 29 prior to, or within ninety days of, the expiration of his final work permit he shall be entitled to continue working upon the same terms and conditions as applied to his final work permit.

(7) Where a worker has been granted a fixed-term work permit and prior to such grant had been qualified to apply for permission to reside permanently in the Islands but had not done so, he may prior to the expiration of his fixed-term work permit so apply and thereupon he shall be entitled to continue working upon the same terms and conditions as applied to his fixed term work permit save that no time spent working thereon shall be taken into account by the Board when considering his application under section 29.

(8) A person who intends to work by operation of law under subsection (6) or (7) shall first attend before the

Chief Immigration Officer and pay to him annually all fees that were applicable to his final work permit and thereupon the Chief Immigration Officer shall endorse his passport acknowledging him to be working by operation of law and he may continue working until his application for permission to reside permanently in the Islands is heard and determined by the Board, or any appeal or proceeding arising out of a refusal of such application by the Board has been finally determined.

(9) A person working by operation of law under subsection (6) or (7) shall, in the event his application for permission to reside permanently in the Islands has been unsuccessful and no appeal has been filed within the time allowed for doing so or having been filed has been unsuccessful and all further appeals have been exhausted, be entitled to one additional final non-renewable work permit with any employer not exceeding twelve months in duration from the date of the communication to him of such refusal or the determination of any appeal or proceedings arising therefrom, whichever shall be the later, and after such work permit expires he shall leave the Islands and neither the Board nor the Chief Immigration Officer shall grant or renew a work permit for him until he has ceased to hold a work permit for not less than one year thereafter.

(10) A person who, as an approved dependant, accompanies to the Islands a worker or an employee -

- (a) of the Government of the Islands; or
- (b) of the Government of the United Kingdom, in the Islands,

may himself become a worker but his term limit shall be deemed to have commenced on the date on which he was first within the Islands as an approved dependant and he shall be thereafter subject to the provisions of this section as if he had first entered the Islands as a worker.

(11) A person-

- (a) who is married to -
 - (i) a worker;
 - (ii) a person employed by the Government of the Islands;

- (iii) a person employed by the Government of the United Kingdom, in the Islands;
or
- (iv) a person who is working by operation of law under subsection (6) or (7),

and whose work permit by reason of subsection (1) or (4) will expire before that of his spouse;

- (b) whose marriage is in the opinion of the Board not a marriage of convenience;
- (c) who is not living apart from his spouse under a decree of a competent court or under a deed of separation; and
- (d) who has not lived apart from his spouse for an aggregate period of three months out of the twelve months immediately preceding the application for the grant in circumstances which, in the opinion of the Board, have led it to conclude that the marriage has broken down,

may, during the currency of his spouse's work permit or contract of employment with the Government of the Islands or with the Government of the United Kingdom in the Islands or in the period during which his spouse is working by operation of law under subsection (6) or (7), apply for the grant of a work permit or the renewal of an existing work permit; and the Board may grant the application -

- (i) for a period not exceeding that of the spouse's work permit or any renewal thereof or of his contract of employment as aforesaid or of the period for which his spouse is working by operation of law; or
- (ii) in the case of a person whose spouse's right to be granted work permits is subject to a term limit of seven years as provided for in subsection (1), for a period not exceeding nine years from the commencement of his term limit;

but the period of any work permit granted or renewed under this subsection shall not be taken into account by the Board

in considering an application under section 29 for permission to reside permanently in the Islands.

(12) Where a work permit has been granted to a worker under subsection (11) and his spouse ceases to have the right to work and is required to leave the Islands under the provisions of this section, the work permit so granted shall automatically terminate on the date on which his spouse ceases to have such right and the worker shall himself leave the Islands and not be entitled to the grant or renewal of any further work permits until he has ceased to hold a work permit for not less than one year from that date.

(13) The Board, in calculating under subsection (11)(d), the period of time that an applicant has spent apart from his spouse, shall not take into account those occasions when either spouse's absences were because of medical, educational, business, vacation or other analogous circumstances.

(14) Where a person appeals against the decision of the Board in respect of this section, the relevant Board having determined that by virtue of the expiration of his term limit, it had no power to grant or renew his work permit, any period that he spends in the Islands thereafter while awaiting the outcome of his appeal shall not be taken into account by the Caymanian Status and Permanent Residency Board in determining the length of time for which he is considered to have been legally and ordinarily resident in the Islands for the purposes of an application under section 29 for permission to reside permanently in the Islands save and except to the extent that his appeal is wholly or partially successful.

(15) Where a worker has been granted a final work permit under this section other than under subsection (6) which work permit has expired, his employer may apply to the Chief Immigration Officer for a fixed-term work permit and the Chief Immigration Officer may, in his absolute discretion, grant such a permit for a maximum period of nine months.

(16) A fixed-term work permit granted under

subsection (15) -

- (a) shall be non-renewable and non-extendable; and
- (b) shall confer upon the worker the right to have reside with him in the Islands for the duration thereof such of his dependants as were previously approved under the last work permit held by him.

(17) The Chief Immigration Officer's decision in relation to the grant or refusal of the application for, or the revocation of, a fixed-term work permit is final and binding.

(18) Section 54(2) shall not apply to a grantee of a fixed-term work permit.

(19) No worker who has applied for a grant of permanent residence upon or prior to the expiration of a work permit granted pursuant to subsection (4) shall be entitled to apply for or obtain a fixed-term work permit.

(20) On the grant or renewal of a work permit, the Board or the Chief Immigration Officer shall notify the work permit holder of his term limit for the purposes of this section.

(21) Subsection (15) shall remain in force until 31 December, 2006.”.

26. The principal Law is amended in section 51 as follows:

Amendment of section
51 –temporary work
permit

- (a) by repealing subsection (1) and substituting the following:

“(1) The Chief Immigration Officer, or his designate at or above the level of Assistant Chief Immigration Officer, may on application in the prescribed form, accompanied by such documentary or other evidence as may be prescribed, by or on behalf of a person who desires to enter and remain in the Islands temporarily for the purposes of any gainful occupation –

- (a) grant to such person a temporary work permit in the prescribed form upon payment of the prescribed fee;
- (b) vary or modify the terms of such permit upon payment of the prescribed fee; or

- (c) refuse the application for the permit.”;
- (b) by repealing subsection (6) and substituting the following:

“(6) It shall be the duty of the prospective employer or, where the application is in respect of a person who wishes to be self-employed, the applicant, to satisfy the Chief Immigration Officer that there has been compliance with paragraphs (a) and (b) of subsection (4).”; and
- (c) in subsection (7), by inserting after the words “prospective employer” the words “or an applicant”.

Amendment of section
52 - business visitor's
permit

27. The principal Law is amended in section 52 as follows:

- (a) in subsection (1) by deleting the words “A local company registered under the Companies Law (2004 Revision) or a local partnership or firm working in the Islands which” and substituting the words “Any person duly carrying on business in or from within the Islands who”; and
- (b) by repealing subsection (5) and substituting the following:

“(5) The Chief Immigration Officer, in considering an application under this section, shall take into account such of the matters set out in section 42(1) as he considers relevant and, when granting business visitors’ permits may impose such conditions and limitations as he thinks fit.”.

Amendment of section
54 - offence to engage in
gainful occupation or to
employ persons in
contravention of this
Part

28. The principal Law is amended in section 54 as follows:

- (a) by repealing subsections (1) to (3) and substituting the following:

“(1) Subject to subsection (2), a person who in contravention of this Part engages in gainful occupation or fails to comply with any condition or limitation contained in a work permit is guilty of an offence and is liable on summary conviction in respect of a first offence to a fine of five thousand dollars and to imprisonment for one year and in respect of a second or subsequent offence to a fine of ten thousand dollars and to imprisonment for two years.

(1A) Where an offence is committed under this Law, any Immigration Officer at or above the rank of Assistant Chief Immigration Officer may, subject to such conditions as he thinks fit, stay or compound any proceeding for that offence or for the forfeiture of anything liable to forfeiture under this Law or to restore anything seized as forfeited under this Law; and the said

conditions may include, but are not limited to, payment of a levy, being not less than twice and not more than five times the amount of any fees that would have been payable had the provisions of this Law been observed; and in the event that no fees are payable or would have been payable under this Law, any immigration officer at or above the rank of Assistant Chief Immigration Officer may impose a fine of up to five thousand dollars.

(2) Where during the currency of a work permit, other than a temporary work permit granted under section 51, an application has been made to the Board for the renewal of the work permit for a period to commence immediately upon its expiration, then if such application-

- (a) has not yet been determined by the Board; or
- (b) has been refused by the Board and that refusal has been appealed under section 15 to the Immigration Appeals Tribunal,

notwithstanding the fact that the original work permit has expired, it shall not be an offence for the worker to continue to be engaged in gainful occupation of the same kind and on the same terms and conditions of the original work permit while he awaits a notification of the determination of his application or his appeal, save that no worker shall be entitled to work under the provisions of this subsection beyond the date of his term limit.

(3) A person who employs another without a work permit in contravention of this Part or in contravention of any condition or limitation contained in a work permit is guilty of an offence and is liable on summary conviction in respect of a first offence to a fine of twenty thousand dollars and to imprisonment for one year and in respect of a second or subsequent offence to a fine of thirty thousand dollars and to imprisonment for two years.”;

- (b) in subsection (4)-
 - (i) by deleting the words “under this subsection” and substituting the words “under this section”; and
 - (ii) by adding after subsection (4) the following:

“(4A) For the purposes of subsection (4), a defendant who is charged with an offence under this section shall be deemed not to have made reasonable enquiries and not to have had reasonable grounds for believing that he was not in contravention of this Part unless he-

- (a) had inspected the work permit or permission to remain in the Islands, issued to the person concerned;
 - (b) had checked the work permit or the permission-to-remain stamp in the passport of the person concerned to ensure that the particulars materially corresponded with those set out in the work permit or the permission to remain; and
 - (c) had checked with-
 - (i) a named employee of the Immigration Department to determine that the work permit or permission to remain was valid at the material time and that the person concerned was not, and would not be, in breach of this Law: or
 - (ii) the employer to verify that the person concerned was employed by the employer and that the particulars of the person concerned corresponded with the records of the employer, where the name of the employer of the person concerned was specified in the work permit.”;
- (c) in subsection (6) by deleting the words “or of being about to so act”; and
- (d) by adding after subsection (7) the following:

“(8) Whoever, not being authorised to engage in gainful occupation is found in the Islands, in any place of work, or on or within the vicinity of any place where work is in the process of being done or is intended to be done and at the time has in his possession or under his control any article for use in the course of or in connection with any gainful occupation, without reasonable excuse, shall be deemed to have such article with

him for the purpose of work in connection with some gainful occupation unless the contrary is proved.

(9) For the purposes of this section-

- (a) “place of work” includes any construction site, cleared land, woodland, field, private dwelling, commercial building, vessel or vehicle; and
- (b) “vehicle” means any instrument used in or, reasonably suspected to be intended for use in connection with any gainful occupation, in a manner and in any place referred to in subsection (8).”.

29. The principal Law is amended in section 65 -

Amendment of section 65 - entry by persons other than Caymanians or persons legally and ordinarily resident

(a) by inserting after subsection (1) the following subsection:

“(1A) In furtherance of section 20(1)(d) where documentary evidence is produced to the Chief Immigration Officer to establish that a child is the child of a Caymanian, the child shall be allowed to enter, remain and attend school in the Islands.”;

(b) in subsection (2) by deleting the word “Board” and substituting the words “Caymanian Status and Permanent Residency Board”;

and

(c) by inserting after subsection (6) the following subsections:

“(7) A dependant of a Caymanian may be granted permission to reside in the Islands for a period of up to three years, subject to extension, from time to time, for further periods not exceeding three years on each occasion upon application made to the Chief Immigration Officer in the prescribed manner.

(8) In considering an application under subsection (7), the Chief Immigration Officer shall satisfy himself:

- (a) that the applicant is a dependant of a Caymanian;
- (b) as to the character and health of the dependant;
- (c) as to the ability of the Caymanian to adequately support the dependant;
- (d) that the dependant is covered by health insurance; and
- (e) such other matters as he shall consider relevant.

(9) An application submitted under this section shall be accompanied by the prescribed administrative fee and the prescribed repatriation fee.

(10) Any permission granted under subsection (7) or any extension thereof may, at any time, be revoked by the Chief Immigration Officer acting in his discretion.

(11) In this section “dependant”, in relation to a Caymanian, means the Caymanian’s parent, grandparent, brother or sister being in each case, wholly or substantially dependent upon the Caymanian.”.

Insertion of section 66A
- provisions relating to
sponsors

30. The principal Law is amended by inserting after section 66 the following:

“Provisions
relating to
sponsors

66A. (1) A sponsor of a tourist visitor seeking permission to land in the Islands or seeking an extension of the permission, may at the discretion of an immigration officer be required to give an undertaking in writing to be responsible for that tourist visitor's maintenance and accommodation during the period of his stay in the Islands.

(2) Where a sponsor has given an undertaking under subsection (1) in respect of any tourist visitor, the sponsor shall, within twenty-four hours of the expiration of the grant of permission, inform the Chief Immigration Officer in the prescribed manner of any failure by that tourist visitor to depart from the Islands on or before the expiration of the permission granted or any extension thereof.

(3) A sponsor who acts in contravention of subsection (2) is guilty of an offence.”.

Insertion of sections
70A and 70B - removal
of certain persons
unlawfully in the Islands

31. The principal Law is amended by inserting after section 70 the following:

“Removal
of certain
persons
unlawfully
in the
Islands

70A. (1) A person who is not a Caymanian, a permanent resident, a work permit holder, nor the holder of a Residency and Employment Rights Certificate, a Residential Certificate for Persons of Independent Means or a student visa, may be removed from the Islands, in accordance with directions given under this section by an

immigration officer not below the rank of Assistant Chief Immigration Officer, if -

- (a) having been granted permission to enter or remain, the person does not observe a condition attached to the permission or remains beyond the time limited by the permission;
- (b) the person has obtained permission to enter or remain by deception; or
- (c) the person is a dependant of a person who is being or has been removed from the Islands under the provisions of this section.

(2) Directions may not be given under subsection (1)(a) if the person concerned has made an application for an extension of his permission to remain in the Islands in accordance with this Law.

(3) Where a person has overstayed his time in the Islands or is otherwise in the Islands illegally, the Chief Immigration Officer shall cause to be served upon the person concerned written notice in which shall be specified a time, not being more than fourteen days, within which he shall be removed from the Islands.

(4) If such a notice is sent by the Chief Immigration Officer by post, addressed to the last known address of the person concerned, it is to be taken to have been received by that person on the third day after the day on which it was posted.

(5) Directions for the removal of a person under subsection (1)(c) cease to have effect if he ceases to be a dependant of the other person.

(6) Directions for the removal of a person given under this section invalidate any permission to enter or remain in the Islands given to him before the directions are given or while they are in force.

(7) The Governor may apply any money or property of a person against whom an order under this section has been made in payment of the whole or any part of the

expenses of or incidental to the journey from the Islands and of the maintenance until departure, of such person and his dependants, if any.

Escorts for persons removed from the Islands under directions

70B.(1) Directions under section 70A for, or requiring arrangements to be made for, the removal of a person from the Islands may include or be amended to include provision for the person who is to be removed-

- (a) to be detained for a reasonable period prior to removal; and
- (b) to be accompanied by an escort consisting of one or more persons specified in the directions.

(2) The Governor may by regulations make further provision supplementing subsection (1).

(3) The regulations may, in particular, include provision –

- (a) requiring the person to whom the directions are given to provide for the return of the escort to the Islands;
- (b) requiring the Government to bear such costs in connection with the escort (including, in particular, remuneration) as may be prescribed;
- (c) as to the cases in which the Government is to bear those costs; and
- (d) prescribing the kinds of expenditure which are to be included in calculating the costs incurred in connection with escorts.”.

Amendment of section 73 – offences relating to illegal landing and powers of arrest

32. The principal Law is amended in section 73 -

- (a) in subsection (2)-
 - (i) by inserting after the word “assists” the words “or causes”; and
 - (ii) by inserting before the words “in circumstances” the words “whether or not that other person knew that there was a contravention of this Part,”;
- (b) by inserting after subsection (2) the following:

“(2A) The court before which a person is convicted of an offence under subsection (2) may order the forfeiture of a vehicle or vessel used or intended to be used in connection with the offence if the convicted person -

- (a) owned the vehicle or vessel at the time the offence was committed;
- (b) was at that time a director, secretary, manager or other responsible officer of a company which owned the vehicle or vessel;
- (c) was at that time in possession of the vehicle or vessel under a hire-purchase agreement;
- (d) was at that time a director, secretary, manager or other responsible officer of a company which was in possession of the vehicle or vessel under a hire-purchase agreement;
- (e) was at that time a charterer of the vessel; or
- (f) committed the offence while acting as master of a vessel.”; and

(c) by deleting subsection (4) and substituting the following:

“(4) The Chief Immigration Officer may, if he intends to recommend the deportation of a person convicted of a criminal offence, detain him in such place and for such period, not exceeding seven days as he may direct, save that a person to whom the Board has granted permanent residence shall not, while he continues to enjoy the benefit of the grant, be subject to a deportation order.

(5) Where a person who claims to have an interest in a vehicle or vessel applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the vehicle or vessel unless the person has been given an opportunity to show cause why the order should not be made.”.

33. The principal Law is amended in section 78 by repealing subsection (1) and substituting the following:

Amendment of section
78 - student visas

“(1) Subject to section 65(1A), no student may attend an educational institution in the Islands unless he is a student to whom a student visa has been issued.”.

34. The principal Law is amended in section 79 by repealing subsections (6) and (7) and substituting the following:

Amendment of section
79 - application for
asylum

“(6) Notwithstanding section 14, a person whose application for asylum has been refused may appeal to the Immigration Appeals Tribunal, within fourteen days of his being notified of the decision, against the refusal on the grounds that requiring him to leave the Islands would be contrary to the Refugee Convention.”.

Insertion of section 80A
- helping asylum-seeker
to enter the Islands

35. The principal Law is amended by inserting after section 80 the following:

“Helping
asylum-
seeker to
enter the
Islands

80A. (1) A person who -

- (a) knowingly and for gain facilitates the arrival in the Islands of an individual; and
- (b) knows or has reasonable cause to believe that the individual intends to apply for asylum under section 79(1),

is guilty of an offence.

(2) Subsection (1) does not apply to anything done by a person acting on behalf of an organisation which -

- (a) aims to assist individuals seeking asylum pursuant to the Refugee Convention; and
- (b) does not charge for its services.”.

Insertion of sections
98A to 98G-
miscellaneous offences

36. The principal Law is amended by inserting after section 98 the following:

“Possession
of
immigration
stamp

98A. A person who without reasonable excuse has in his possession an immigration stamp or a replica immigration stamp is guilty of an offence.

Assisting
entry in
breach of
deportation,
exclusion or
removal
order

98B. (1) A person who -

- (a) does an act which facilitates a breach of a deportation order, exclusion order or removal order in force against an individual; and
- (b) knows or has reasonable cause for believing that the act facilitates a breach of the deportation, exclusion or removal order,

is guilty of an offence.

(2) Subsection (1) applies to anything done-

- (a) in the Islands; or
- (b) outside the Islands by a body incorporated

under the law of the Islands.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for seven years, and the court before which the person is convicted may order the forfeiture of a vehicle or vessel used or intended to be used in connection with the offence if the convicted person -

- (a) owned the vehicle or vessel at the time the offence was committed;
- (b) was at that time a director, secretary, manager or other responsible officer of a company which owned the vehicle or vessel;
- (c) was at that time in possession of the vehicle or vessel under a hire-purchase agreement;
- (d) was at that time a director, secretary, manager or other responsible officer of a company which was in possession of the vehicle or vessel under a hire-purchase agreement;
- (e) was at that time a charterer of the vessel; or
- (f) committed the offence while acting as master of a vessel.

(4) Where a person who claims to have an interest in a vehicle or vessel applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the vehicle or vessel unless the person has been given an opportunity to show cause why the order should not be made.

(5) Where proceedings are instituted against a person for an offence under this section and either-

- (a) the proceedings do not result in his conviction; or
- (b) where he is convicted of the offence-
 - (i) the conviction concerned is quashed without a conviction for any other offence under this Law being substituted; or
 - (ii) Her Majesty has granted pardon in respect of the conviction,

the Grand Court may, on an application by a person who held property which was realisable property, order compensation to be paid by the Government to the applicant.

(6) The Grand Court shall not order compensation to be paid in any case unless the Court is satisfied-

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned and that, but for that default, the proceedings would not have been instituted or continued; and
- (b) that the applicant has suffered substantial loss in consequence of anything done in relation to the property by or in pursuance of an order of the Grand Court.

(7) The amount of compensation to be paid under this section shall be such as the Grand Court thinks just in all the circumstances of the case.

(8) For the purposes of this section “realisable property” means any property held by-

- (a) a person against whom proceedings have been instituted for an offence under this section; and
- (b) another person to whom that person has directly or indirectly made a gift caught by this section,

save that such property is not realisable property if a forfeiture order made by the Court in respect of that property is in force.

(9) A gift is caught by this section if-

- (a) it was made by a person against whom proceedings have been instituted under this section at anytime since the beginning of the period of six years ending when the proceedings were instituted; or
- (b) it was made by him at anytime and was a gift of property-
 - (i) received by him in connection with illegal activity carried on by him or

- another; or
- (ii) which in whole or in part directly or indirectly represented in his hands property received by him in that connection.

(10) For the purposes of subsection (9), the circumstances in which a person against whom proceedings have been instituted for the offence is to be treated as making a gift include where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by him.

Provision of
immigration
services

98C. (1) No person may provide or purport to provide immigration advice or immigration services for any fee, gain or reward unless he is a qualified person.

(2) A person is a qualified person if -

- (a) he is registered with the Chief Immigration Officer or is employed by, or works under the supervision of, such a person;
- (b) he is a member or employee of a body which is licensed, or exempted by the Trade and Business Licensing Law (2003 Revision), or works under the supervision of such a member or employee; or
- (c) he is a person admitted to practise as an attorney-at-law under the Legal Practitioners Law (2003 Revision).

(3) Subsection (1) does not apply to a person who -

- (a) is certified by the Chief Immigration Officer as exempt (in this section referred to as "an exempt person");
- (b) is employed by an exempt person;
- (c) works under the supervision of an exempt person or an employee of an exempt person; or
- (d) falls within a category of person specified in an order made by the Governor for the

purposes of this subsection.

(4) A certificate under subsection (3)(a) may relate only to a specified description of immigration advice or immigration services.

(5) Subsection (1) does not apply to a person -

- (a) holding an office under the Crown, when acting in that capacity;
- (b) employed by, or for the purposes of, a Government department, when acting in that capacity;
- (c) acting under the control of a Government department; or
- (d) otherwise exercising functions on behalf of the Crown.

(6) An exemption given under subsection (3)(a) may be withdrawn by the Chief Immigration Officer.

(7) A person who acts in contravention of subsection (1) is guilty of an offence.

Registration
and
exemption
by the Chief
Immigration
Officer

98D. (1) The Chief Immigration Officer shall prepare and maintain a register for the purposes of section 98C(2)(a) and (b).

(2) The Chief Immigration Officer shall keep a record of the persons to whom he has issued a certificate of exemption under section 98C(3)(a).

Human
smuggling

98E. (1) A person who, in contravention of this Law and whether for financial or material benefit or not, assists or facilitates the transportation, harbouring or movement into or out of the Islands, of an individual is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for seven years.

(2) Subsection (1) applies to anything done-

- (a) in the Islands; or
- (b) outside the Islands by a body incorporated under the law of the Islands.”.

37. Section 100 of the principal Law is amended by re-numbering the section as subsection (1) of section 100 and inserting the following subsections after subsection (1) as re-numbered:

Amendment of section
100 – offence to enter
marriage of convenience

“(2) If a marriage officer has reasonable grounds for suspecting that a marriage will be a marriage of convenience, and fails to report his suspicion to the Chief Immigration Officer without delay and in such form and manner as may be prescribed, he is guilty of an offence.

(3) Subsection (2) also applies where a marriage is solemnised in the presence of a marriage officer who, before, during or immediately after solemnisation of the marriage, has reasonable grounds for suspecting that the marriage will be, or is, a marriage of convenience.”.

Passed by the Legislative Assembly the day of 2006.

Speaker.

Clerk of the Legislative Assembly.