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RE: A new category of Permanent Residency - Protection of Caymanians and security of tenure for Expatriates

I refer to recent utterances and discussion in the local media (print and electronic) during the past year or two, on the need to urgently dig ourselves out of the morass of “paralysis by analysis” in our Immigration/Border Control policies and practices and in particular the Permanent Residency (“PR”) situation. The current prevailing situation is not in the interest of Caymanians or Expatriates, or employees, or employers, or future generations. Most people who follow local current affairs will recall that there has been a chronic delay in the processing of PR Applications by the Caymanian Status & Permanent Residency Board (“Board”), going on now for at least four (4) years; with great frustration levels spilling over to stakeholders. Recently there has also been a call for a rationalization of the PR as well as the “Roll-Over Policy”, in an effort to stimulate the economy and allow the Financial Services Industry to remain very competitive with counterpart jurisdictions (onshore or offshore). I am concerned that the continued delay in the consideration of the long-pending PR Applications by the Board could result in the Applicants becoming aggrieved parties, and they may win a legal challenge brought on the basis of their Human Rights, as a result of these chronic delays. Such a challenge, if successful, could truly throw the “flood gates” wide open again.

So what is the reason for the reluctance in moving on with the long-pending PR Applications and clearing the backlog? Is it a case of lack of resources, an unreasonable burden on volunteer Board members, or is it due to a fear of Caymanians losing control of their Islands if a majority of the PR Applications are approved on their merit? As a keen advocate and commentator on Human Capital and immigration control for the past two decades, I believe that the majority of PR applicants do not want to take control of Cayman, do not want to vote, do not want to own a business outright, and many do not intend (or can afford) to retire in the Cayman Islands. I believe that most simply want some form of “security of tenure”, and at the moment the only avenue to that is the progressive path to Caymanian Status, with the precursor being Permanent Residency.

In this “Community Voice” Opinion/Commentary, I wish to outline a new framework for the Term Limit and Roll-over policy regime which I think will be equitable to Caymanians and non-Caymanians, and which may also encourage economic growth and build investor confidence. My proposal is for a new system of Permanent Residence, particularly a new ***Permanent Residency (Restricted)*** category, while also building upon and fine-tuning the existing provisions of the Immigration Law & Regulations, and effectively rationalizing the “Caymanian Status” eligibility (for only a specific category of people).

I will admit that the following ideas of a new category of Permanent Residency is not exclusively mine, as although I publicly wrote about this 10 years ago it has also been generally discussed in some quarters for at least 15 years. The concept may however now enjoy more “traction”, due to the mid-stream impact of the rollover policy, the significant backlog in the PR Applications, and by extension the implications of this lethargic situation on the economic resilience of these Islands.

Please allow me to develop my thoughts on this suggestion, in the following paragraphs.

BACKGROUND

Vision 2008 (the 10-year National Strategic Plan which was launched in 1998), provides in Strategy 16 (pages 111 to 116), the over-arching objective of **“establishing a comprehensive immigration policy, which protects Caymanians and gives security to long-term residents”**. I have been a strong advocate for some form of “rollover policy” for at least 2 decades, and from the early 1980’s when I was overseas at university I even wrote letters to the newspaper back home advocating such a policy – in the interest of providing a career path for qualified and able Caymanians, while at the same time ensuring a Caymanian population advantage in the interest of future generations. Sadly such a policy only came formally into effect on 1st January 2004, against the back-drop of potentially different motives and with a somewhat rushed legislative package and timeline.

On the subject of security of tenure for long-term residents, there has been resistance in embracing the changes brought about by the ‘rollover policy’, because of the delays in implementing the policy and the then robust economic climate (in Cayman and elsewhere) – which made recruiting a challenge in some areas. To further aggravate the prevailing feeble Change Management efforts leading up to the passage and enactment of the Law, the introduction of this new policy framework (enshrined in the Immigration Law 2004) was further compromised by the impact of hurricane Ivan in September 2004, as this made it even more difficult to implement both the Immigration and the Human Capital Development objectives of the Law. After the completion of the General Elections in May 2005 (delayed from November 2004 as a result of Ivan), the new Government decided to continue the implementation of the Immigration Law 2004 and its Term Limit provision, rather than to delay, amend, or repeal such Clause(s). Respective Immigration Boards, including the Business Staffing Plan Board (of which I was Deputy Chairman from August 2005 to June 2009) undertook valiant efforts to accommodate the Law and to serve its various constituents, albeit under difficult conditions.

However, in view of the fact that the Immigration statistics still seem to indicate that the average length of stay of expatriate workers is 4 to 5 years, and the often stated claim by many expatriates that they do not necessarily want Caymanian status or citizenship, but only some security of working tenure, we may therefore have a perfect recipe for a solution. If the foregoing assumptions are indeed correct, where some expatriates (whom their employers may have difficulty replacing in the short term) only desire to become “Key” is to enable them to qualify to apply for Permanent Residence in order to have

some security of employment tenure, then another option for them may be more suitable. This new option would achieve their and their employers' objectives, while keeping them under Immigration control and monitoring their training of Caymanians, conduct etc., but preventing them from ever achieving Caymanian Status.

INTRODUCTION OF PERMANENT RESIDENCY (RESTRICTED) CATEGORY

In substitution of the current system of a 9-year Term Limit or "Roll-over" for everyone, except those who have been designated as "Key Employees", I suggest that certain categories of specified non-Caymanian workers could begin the application for a new Permanent Residency (Restricted) category after they have been legally and ordinarily resident in these Islands for a at least three (3) years. In order to create equity and to avoid abuse, obviously the Immigration Law and Regulations would have to stipulate the category or job level of eligible Employees, specific expectations and rules for the Employee to fulfill, and similarly for the Employer (perhaps following a similar standard as was proposed 3 to 4 years ago known as the "Immigration Accreditation System"). Those employees who choose not to pursue this new option of Permanent Residency (Restricted), would continue to be subjected to the 9-year "Roll-over".

The "mechanics" of my proposal for a new option of Permanent Residency (Restricted) category is therefore outlined in a 7-point plan, as follows:

- 1) Establish a new category of Permanent Residency(PR), with Restrictions in regard to the type of work/industry the holder can be engaged, and also preventing them from ownership in certain categories of businesses as well as from voting in General Elections;
- 2) Carry out an exhaustive analysis of this proposal, particularly with regard to any Human Rights objections or hurdles, and obtain opinions from relevant international legal luminaries, including Queen Counsels, and internationally recognized human rights scholars;
- 3) If the two foregoing points are confirmed, then amend the Immigration Law and Regulations accordingly;
- 4) Those individuals who meet the criteria of being critical to their employers, but who do not wish to obtain the existing Permanent Residency, (and thereafter Status), can apply for this new category of Permanent Residency (Restricted). Other employees would be able to continue to seek and apply for the traditional/existing Permanent Residency, however they would continue to run the risk of being unsuccessful in gaining Permanent Residency, i.e. they would then be "rolled over" after 9 years on the Island;
- 5) Those employees who exercise the option of this new (Restricted) category of Permanent Residence, would do so voluntarily and would also voluntarily waive their right (by a certified and Notarized legal instrument) to apply for Permanent Residency or Status in the future;
- 6) This new Permanent Residency (Restricted) would be awarded for 3 to 5 years each time, with annual reports (Police Clearance, Caymanian training or availability etc., marital status, dependents etc.) being required each year with the payment of the fee;
- 7) At a confirmation every 2 years, the employee would have to Renew their waiver to apply for the other Permanent Residency or Caymanian Status, i.e. they would remain on the Restricted "license" with no claim to PR or Caymanian Status.

SUMMARY OF NEW IMMIGRATION OPTIONS:

As I see it, if the following option becomes a reality, the Immigration “landscape” would be materially but not adversely altered, and would include following options:

Category	General characteristics
Residency & Employment Rights Certificate	Reserved for persons who are married to Caymanians, or those with Caymanian connections due to descent etc
Permanent Residency with Right to Work	For people who may be successful in obtaining PR after they have become a Key Employee and are successful with the PR exam etc (if they choose to go that route)
Permanent Residency (Restricted) NEW	As outlined above
Permanent Residency without the Right to Work	Reserved for Wealthy Retires, Investors, or other eligible long-term residents of property/home owners, whose resources are sufficient to take care of them without their need to work.
Caymanian Status	This would normally be for a Grant due to birth, marriage to a Caymanian, or on the basis of Residency under the existing Immigration Law.

OBJECTIONS TO, OR DANGERS WITH, THE NEW CATEGORY?

There may be some who may argue that this new system may give some expatriates access to more power quicker than they can now achieve it. However, this is not necessarily the case if we examine the current economic situation and the other proposals and sentiments which are circulating. Additionally, if the proper monitoring and enforcement is done, preferably by a new Authority, then the damage to Caymanians can be effectively mitigated, and the prospects for Caymanians’ upward career mobility will be enhanced. Others may say that there is a risk that children born to families who possess this new Permanent Residency (Restricted) category may themselves have a Right to Caymanian Status. Again, this is a matter for the legal luminaries to examine, as suggested in #2 of the 7-point plan above. Third, some may say that this establishes a risky precedent. Well, that objection is also not without its weakness, because several years ago the Legislative Assembly amended the Immigration Law and thereby exempted certain categories of Caregivers (of the Elderly, Physically handicapped/afflicted etc), from the provisions of the Term Limit. I am not sure what protective and control mechanisms are in place to prevent abuse of this new exemption for Caregivers; however, with the Permanent Residency (Restricted) category which I am proposing there would be proper rules and monitoring. Finally, some may suggest that those people who agree to the Waiver and sign a “renewal” every 2 years may (say after 10-15 years) eventually renege on their commitment and then try to claim their Right to Caymanian Status. However, this would be subject to a Court Order, as the Government would defend its position and Appeal any unfavourable outcome, with the assistance of a credible Queen’s Counsel.

BENEFITS OF THE NEW CATEGORY, AND CONCLUSION:

The foregoing appears, in my mind, to be a fair compromise, which upholds the spirit of Strategy 16 of Vision 2008. However, for this to be truly effective, it ought to be done under the aegis of a long-range Development Plan (a renewed Vision?), as well as having a National Training Initiative imbedded in that bulwark. As I have also said repeatedly in the past, Action Plan 7 of Strategy 16 (to establish a Human Resources Authority) is a critical link in the chain of hope, in the new frontier of tranquility and prosperity for Caymanians, long-term residents, and our economy. In due course I will address this matter, as I have always maintained that the best home for the effective implementation of Labour & Human Capital policies is not with the Immigration Department or the various Work Permit Boards.

I commend the foregoing ideas, once again, for discussion and analysis on the Agenda at the highest levels in the private sector and the political directorate. I stand ready to assist with, and engage in, a genuine discussion on a comprehensive and equitable solution in relation to the protection and development of Caymanian human capital as well as the equitable integration of non-Caymanian talent, as a recipe for sustainable development of our beloved Cayman Islands.

It is my considered opinion that the adoption of this policy, in a sincere and holistic fashion, will preserve the core of Caymanians values and aspirations, while at the same time rewarding and embracing needed and compatible non-Caymanian human capital. In my opinion, this new economic environment will result in a paradigm shift which will stimulate progress, promote workplace tranquility and productivity, and encourage investor confidence and sustainable development. In a service economy, where labour is a key input, such a combination would be the catalyst for dynamic economic recovery and propel the Cayman Islands from “Good to Great”.

I remain,

Yours Faithfully,

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