

CAYMAN ISLANDS



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A BILL FOR A LAW TO AMEND THE IMMIGRATION LAW (2011 REVISION) TO ALTER THE COMPOSITION OF THE IMMIGRATION APPEALS TRIBUNAL; TO VARY THE ELIGIBILITY REQUIREMENTS FOR A CERTIFICATE OF DIRECT INVESTMENT; TO CORRECT ISSUES RELATING TO SPECIALIST CAREGIVERS AND BUSINESS VISITORS; TO CREATE A NEW CATEGORY OF PERMANENT RESIDENCE FOR PERSONS OF INDEPENDENT MEANS AND A NEW RESIDENCE CATEGORY FOR PERSONS WHO ESTABLISH A SUBSTANTIAL BUSINESS PRESENCE IN AN APPROVED CATEGORY OF BUSINESS IN THE ISLANDS; TO CREATE NEW PROCEDURES FOR OBTAINING IMMIGRATION CLEARANCE OF RECREATIONAL SPORTS FISHERMEN; AND FOR INCIDENTAL AND CONNECTED PURPOSES

THE IMMIGRATION (AMENDMENT) (NO. 5) BILL, 2011

MEMORANDUM OF OBJECTS AND REASONS

The main objects of the Bill are to amend the Immigration Law (2011 Revision) to promote inward investment by offering long term residency opportunities to persons of high net worth; to enhance the ability of the Immigration Appeals Tribunal to hear a greater number of appeals and thereby reduce the backlog of outstanding appeals; to assist local businesses by introducing streamlined entry procedures for business visitors; and to resolve anomalies in relation to the Certificate for Specialist Caregivers.

Clause 1 recites the short title.

Clause 2 amends section 2 by defining certain expressions for the purposes of the principal Law.

Clause 3 amends section 11 to increase the composition of the Immigration Appeals Tribunal and the number of divisions in which the members may sit.

Clause 4 reduces the size of the quorum.

Clause 5 removes the requirement for legal and ordinary residence in the Islands to be established by the child or grandchild of a Caymanian born in the Islands, when applying for the right to be Caymanian.

Clause 6 inserts into the Law a new section 34A to empower the Chief Immigration Officer to grant to investors who satisfy the prescribed criteria a Certificate of Permanent Residence for Persons of Independent Means, subject to a quota.

Clause 7 makes provision for the spouse and dependants of the holder of a Certificate of Permanent Residence for Persons of Independent Means.

Clause 8 makes further provision for the juvenile dependants of the holder of a Certificate of Permanent Residence for Persons of Independent Means.

Clause 9 outlines the circumstances which may trigger the revocation of the right to reside in the Islands of the holder of a Certificate of Permanent Residence for Persons of Independent Means and the dependants of such persons.

Clause 10 makes an amendment to section 37A in relation to the Certificate of Direct Investment.

Clause 11 provides for the expansion of the principal Law relating to Specialist Caregivers to make possible the continuity of the care of the sick, elderly or handicapped person in the event of the demise or other incapacity of the holder of the Certificate for Specialist Caregivers.

Clause 12 introduces a new Residency Certificate to be available to investors who have established a substantial business presence in the Islands.

Clause 13 authorises the holder of a visitor's work visa to carry on gainful occupation in the Islands.

Clause 14 prohibits the grant or renewal of to work permit to the holder of a visitor's work visa.

Clause 15 provides that a business visitor's permit may not be granted to a person who is ineligible to be granted a work permit by virtue of section 52(1).

Clause 16 introduces the visitor's work visa and sets out the conditions under which it may be granted.

Clause 17 provides for the maintenance by the Chief Immigration Officer of a register of all fines and levies imposed administratively.

Clause 18 makes provision to simplify the immigration and customs clearance procedures for recreational sports fishermen going on long-range fishing expeditions to distant fishing grounds.

Clause 19 provides new procedures for recreational sports fishermen to obtain immigration clearance when going on fishing expeditions to distant fishing grounds.

Clause 20 provides for two new categories of person who are authorised to engage in gainful occupation in the Islands consequent upon the amendment to section 54 and the insertion of section 54A.

Clause 21 authorises the Chief Immigration Officer to delegate to an immigration officer of the rank of Assistant Chief Immigration Officer or above, responsibility for the determination of student visa applications.

Clause 22 repeals the Immigration (Amendment) Law, 2010.

THE IMMIGRATION (AMENDMENT) (NO. 5) BILL, 2011

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 of the Immigration Law (2011 Revision) – definitions
3. Amendment of section 11 – Immigration Appeals Tribunal
4. Amendment of section 12 - Meetings of Immigration Appeals Tribunal
5. Amendment of section 22 – acquisition of right to be Caymanian by grant of the Board
6. Insertion of section 34A – Certificate of Permanent Residence for Persons of Independent Means
7. Amendment of section 35 – spouse and dependants of the holder of a Residency Certificate for Persons of Independent Means
8. Amendment of section 36 – dependants of the holder of a Residency certificate for Persons of Independent Means
9. Insertion of section 36A – revocation of Certificate of Permanent Residence for Persons of Independent Means or Certificate of Permanent Residence for Dependants of Persons of Independent Means
10. Amendment of section 37A – Certificate of Direct Investment
11. Amendment of section 37C – Certificate for Specialist Caregivers
12. Insertion of section 37D – Residency Certificate (Substantial Business Presence)
13. Amendment of section 41 – who may be gainfully occupied
14. Amendment of section 48 – grant or refusal of work permit
15. Amendment of section 54 – business visitors’ permit
16. Insertion of section 54A – visitor’s work visa
17. Insertion of section 56A – administrative fines and levies
18. Amendment of section 59 – inward passenger and crew manifests
19. Amendment of section 61 – outward passenger and crew manifests
20. Amendment of section 66 – general prohibition from landing in the Islands without specific permission of immigration officer
21. Amendment of section 83 – student visas
22. Repeal of Law 12 of 2010 - repeal

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE IMMIGRATION LAW (2011 REVISION) TO ALTER THE COMPOSITION OF THE IMMIGRATION APPEALS TRIBUNAL; TO VARY THE ELIGIBILITY REQUIREMENTS FOR A CERTIFICATE OF DIRECT INVESTMENT; TO CORRECT ISSUES RELATING TO SPECIALIST CAREGIVERS AND BUSINESS VISITORS; TO CREATE A NEW CATEGORY OF PERMANENT RESIDENCE FOR PERSONS OF INDEPENDENT MEANS AND A NEW RESIDENCE CATEGORY FOR PERSONS WHO ESTABLISH A SUBSTANTIAL BUSINESS PRESENCE IN AN APPROVED CATEGORY OF BUSINESS IN THE ISLANDS; TO CREATE NEW PROCEDURES FOR OBTAINING IMMIGRATION CLEARANCE OF RECREATIONAL SPORTS FISHERMEN; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Immigration (Amendment) (No. 5) Law, 2011.

Short title

2. The Immigration Law (2011 Revision), in this Law referred to as the “principal Law”, is amended in section 2 as follows-

Amendment of section 2 of the Immigration Law (2011 Revision) - definitions

- (a) in the definition of “employment generating business” by deleting the word “fifty” and substituting the word “thirty”; and

- (b) by inserting after the definition of “prohibited immigrant” the following definition-
“recreational sports fishing vessel” means a sports fishing boat based in the Cayman Islands and registered in accordance with prescribed procedure;”.

Amendment of section 11 – Immigration Appeals Tribunal

- 3. The principal Law is amended in section 11 as follows-
 - (a) in subsection (1)(b) by deleting the word “two” and substituting the words “up to five”;
 - (b) in subsection (1)(c) by deleting the words “twelve other members” and substituting the words “a panel of persons”; and
 - (c) in subsection (3) by deleting the word “two” and substituting the words “up to six”.

Amendment of section 12 – meetings of Immigration Appeals Tribunal

- 4. The principal Law is amended in section 12(4)(c) by deleting the word “five” and substituting the word “three”.

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

- 5. The principal Law is amended in section 22(2) as follows-
 - (a) by inserting at the end of paragraph (b) the word “and”; and
 - (b) by deleting paragraph (c).

Insertion of section 34A – Certificate of Permanent Residence for Persons of Independent Means

- 6. The principal Law is amended by inserting after section 34 the following section-

“Certificate of Permanent Residence for Persons of Independent Means

34A.(1) A person of independent means who satisfies the requirements of this section may apply in the prescribed manner to the Chief Immigration Officer for the grant of the right to reside permanently in the Islands.

(2) Subject to subsection (4) an applicant under this section shall be granted a Certificate of Permanent Residence for Persons of Independent Means, without the right to work, if he satisfies the Chief Immigration Officer that-

- (a) he has invested the prescribed sum in developed real estate in the Islands;
- (b) he and his spouse (where applicable) have a clean criminal record;
- (c) he, his spouse and dependent children (where applicable) are in good health and possess adequate health insurance coverage; and
- (d) his financial resources are sufficient to adequately maintain himself and his dependents.

(3) Notwithstanding subsection (2) and section 35(1) the holder of a Certificate of Permanent Residence for Persons of Independent Means or his spouse, if he holds a Certificate of Permanent Residence for Persons of Independent Means issued under section 34, may apply to the Caymanian Status and Permanent Residency Board for a variation of his Certificate to allow the right to work for any employer but only in a particular occupation or occupations specified by the Board.

(4) The Governor shall establish a quota that would restrict the number of Certificates granted under this section and such quota shall be gazetted.

7. The principal Law is amended in section 35 as follows-

(a) by deleting the marginal note and substituting the following-

“Spouse and dependants of the holder of a Residency Certificate for Persons of Independent Means or a Certificate of Permanent Residence for Persons of Independent Means”;

(b) in subsection (1)-

(i) by inserting after the words “Independent Means” the words “or a Certificate of Permanent Residence for Persons of Independent Means”; and

(ii) by inserting after the words “(Dependant’s) Certificate” the words “or a Certificate of Permanent Residence for Dependants of Persons of Independent Means, respectively,”;

(c) in subsection (2) by inserting after the words “Independent Means” wherever they appear the words “or a Certificate of Permanent Residence for Persons of Independent Means”; and

(d) in subsection (3) by inserting after the words “Independent Means” the words “or a Certificate of Permanent Residence for Persons of Independent Means”.

Amendment of section 35 – spouse and dependants of the holder of a Residency Certificate for Persons of Independent Means

8. The principal Law is amended in section 36 as follows-

(a) by deleting the marginal note and substituting the following-

“Dependants of the holder of a Residency Certificate for Persons of Independent Means or a Certificate of Permanent Residence for Persons of Independent Means”;

Amendment of section 36 – dependants of the holder of a Residency Certificate for Persons of Independent Means

- (b) in subsection (1) by adding after the words “whichever happens earlier” the words “, unless the Chief Immigration Officer is satisfied that there are special circumstances”; and
- (c) in subsection (3) by inserting after the words “Independent Means” the words “or a Certificate of Permanent Residence for Persons of Independent Means”.

Insertion of section 36A – revocation of Certificate of Permanent Residence for Persons of Independent Means or Certificate of Permanent Residence for Dependants of Persons of Independent Means

9 The principal Law is amended by inserting after section 36 the following section-

“Revocation of Certificate of Permanent Residence for Persons of Independent Means or Certificate of Permanent Residence for Dependants of Independent Means

36A. The holder of a Certificate of Permanent Residence for Persons of Independent Means or a Certificate of Permanent Residence for Dependants of 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 the required prescribed level of investment in developed real estate in the Islands; or
- (b) in the opinion of the Chief Immigration Officer, any of the matters referred to in section 38(1)(a) to (j) applies to the holder or his dependants.”.

Amendment of section 37A – Certificate of Direct Investment

10. The principal Law is amended in section 37A(1)-

- (a) by deleting the words “has a personal net worth in the prescribed amount and”;
- (b) by adding at the end of paragraph (b) the word “and”; and
- (c) by deleting paragraph (c).

Amendment of section 37C – Certificate for Specialist Caregivers

11. The principal Law is amended in section 37C as follows-

- (a) by inserting after subsection (8) the following subsection-

“(8A) Where during the currency of a Certificate for Specialist Caregivers the holder of the Certificate dies or is no longer capable of holding the Certificate, the Certificate may be transferred at the discretion of the Work Permit Board to another competent holder provided that the employee will continue to care for the same sick, elderly or handicapped person named in the Certificate.”; and
- (b) in subsection (9) by inserting after paragraph (a) the following paragraph-

“(aa) the person named in the Certificate as being the employer dies or becomes in the opinion of the Work Permit Board no longer capable of holding the Certificate;”.

12. The principal Law is amended by inserting after section 37C the following section-

Insertion of section 37D
– Residency Certificate
(Substantial Business
Presence)

“Residency Certificate
(Substantial Business
Presence)

37D. (1) A person who is or proposes to be legally and ordinarily resident in the Islands for a minimum period of ninety days in each calendar year and who-

- (a) owns, or proposes to own, either directly or indirectly, a minimum of ten percent of the shares in an approved category of business in the Islands through which he has established, or will establish, a substantial business presence in the Islands; or
- (b) proves to the satisfaction of the Chief Immigration Officer that he is or will be employed in a senior management capacity of an approved category of business in the Islands,

may apply to the Chief Immigration Officer for a Residency Certificate (Substantial Business Presence) but such Certificate shall not confer any right to a licence under the Local Companies (Control) Law (2007 Revision) or the Trade and Business Licensing Law (2007 Revision).

(2) For the purposes of this section, the expressions “approved category of business”, “senior management capacity” and “substantial business presence” shall have the meanings ascribed to them in the Regulations.

(3) Where the Chief Immigration Officer is satisfied that-

- (a) the applicant and his spouse (where applicable) have a clean criminal record;
- (b) the applicant, his spouse and dependent children (where applicable) are in good health and possess adequate health insurance coverage; and
- (c) the applicant has provided satisfactory evidence with respect to subsection (1),

he may, taking into account the views of the Department of Commerce and Investment-

- (i) in the case of an applicant who proposes to become a shareholder in an approved category of business as referred to in subsection (1)(a) but does not meet the shareholding or substantial business presence requirements or has not yet obtained all required licences, issue an Approval-in-Principle Residency Certificate (Substantial Business Presence) valid for six months; or
- (ii) in the case of an applicant under subsection (1)(b), or an applicant under subsection (1)(a) who already meets the shareholding and substantial business presence requirements, or the holder of an unexpired Approval-in-Principle Residency Certificate (Substantial Business Presence) who now meets all shareholding and substantial business presence requirements and has obtained all required licences, issue a Residency Certificate (Substantial Business Presence) valid for twenty-five years.

(4) A Certificate issued under subsection (3)(ii) shall be renewable on application and at the discretion of the Chief Immigration Officer.

(5) A Certificate issued under subsection (3) shall entitle the holder-

- (a) to reside in the Cayman Islands; and
- (b) to work in the business in which he is an owner or is employed in a senior management capacity in an occupation approved by the Chief Immigration Officer.

(6) The spouse and dependent children (where applicable) of the holder of an Approval-in-Principle Residency Certificate (Substantial Business Presence) shall be granted a Substantial Business Presence (Dependant's) Certificate, the holder of which is permitted, subject to this section, to reside in the Islands.

(7) Upon the death of the holder of an Approval-in-Principle Residency Certificate (Substantial Business Presence) or a Residency Certificate (Substantial Business Presence) or upon the dissolution of his marriage, the right of the dependent spouse to reside in the Islands shall cease after a period of one year from the date of the death or the dissolution unless-

- (a) the spouse can demonstrate to the satisfaction of the Chief Immigration Officer that he can support himself and any dependent children without having to become gainfully occupied in the Islands; or
- (b) the holder is granted permission to remain under any other provision of this Law.

(8) The right of a dependent 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, unless the Chief Immigration Officer is satisfied that there are special circumstances.

(9) Where there is a change in the number of children who are dependants of the holder of a Certificate issued under this section or where he marries or divorces subsequent to the issue of the

Certificate, or changes his occupation within the business, he shall so inform the Chief Immigration Officer of the fact and the Chief Immigration Officer may amend the Certificate accordingly and subject to such conditions as he may, in his absolute discretion, determine.

(10) When paying the prescribed annual fee the holder shall also submit a declaration signed by him confirming that-

- (a) his permission to operate or work in the business has not been lost as a result of the revocation or non-renewal of a required licence; and
- (b) he was physically resident in the Islands for a minimum of ninety days in aggregate in the preceding calendar year.

(11) The holder of a Certificate issued under this section may at the discretion of the Chief Immigration Officer have his right to reside in the Islands revoked if-

- (a) his ability to operate or work in the business to which the Certificate relates is lost as a result of the revocation or non-renewal of a required licence;
- (b) he was not physically resident in the Islands for a minimum of ninety days in aggregate in any calendar year;
- (c) the business in relation to which the certificate was granted no longer exists;
- (d) he ceases to comply with the provisions of subsection (1);
- (e) he fails to pay the prescribed fees in respect of himself or his dependants within thirty days of the due date; or
- (f) in the opinion of the Chief Immigration Officer, any of the matters referred to in section 38(1)(a) to (j) applies to the holder or his spouse.”.

13. The principal Law is amended in section 41 by inserting after paragraph (c) the following paragraph-

Amendment of section 41 – who may be gainfully occupied

“(ca) he is authorised to do so by a visitor’s work visa granted under this Law;”.

14. The principal Law is amended in section 48(10)(g) by adding after the word “visitor” the words “or as the holder of a visitor’s work visa”.

Amendment of section 48 – grant or refusal of work permit

15. The principal Law is amended in section 54(4) by adding after the word “visit” the words “or in respect of a person who is ineligible to be granted a work permit by virtue of section 52(1)”.

Amendment of section 54 – business visitors’ permit

16. The principal Law is amended by inserting after section 54 the following section-

Insertion of section 54A – Visitor’s Work Visa

“Visitor’s Work Visa 54A. (1) A person, other than a person who is eligible for the grant of a work permit by virtue of section 52(1), who-

- (a) is employed full time by a company, individual or institution outside the Islands;
- (b) is coming to the Islands for up to five calendar days for the purpose of engaging in commercial activity with one or more persons or entities licensed to trade in the Islands under the Trade and Business Licensing Law (2007 Revision) or any other law;
- (c) would otherwise require a work permit for the activity referred to in paragraph (b); and
- (d) is being sponsored in accordance with paragraph (b),

may apply to an immigration officer upon arrival at a port of entry for the grant of a visitor’s work visa.

(2) An immigration officer of the rank of Senior Immigration Officer or above, upon being satisfied that the applicant under subsection (1)-

- (a) is formally sponsored by one or more persons or entities licensed to trade in the Islands under the Trade and Business Licensing Law (2007

Revision) or any other law by virtue of a letter or letters (in the event that the applicant is conducting business with more than one local entity) of sponsorship in the prescribed form having been received by the Immigration Department prior to his arrival at the port of entry;

- (b) possesses a valid entry visa, if required;
- (c) is not a prohibited immigrant; and
- (d) has paid the prescribed non-refundable fee,

may approve the grant of a visitor's work visa valid for five calendar days.

(3) A person granted a visitor's work visa under this section shall be entitled to engage in commercial activity only with his sponsor or sponsors.

(4) An application under subsection (1) may be refused on the ground that-

- (a) the applicant is required to have and does not possess a valid entry visa;
- (b) no letter or letters of sponsorship in the required form have been received by the Immigration Department in respect of the applicant;
- (c) the applicant is a prohibited immigrant;
- (d) in the opinion of the immigration officer the sponsorship of the applicant is not genuine; or
- (e) in the opinion of the immigration officer the applicant's presence in the Islands is not conducive to the public good.

(5) A visitor's work visa issued under this section shall not be extended or renewed unless the Chief Immigration Officer is satisfied that there are exceptional circumstances and only then for a further five calendar days after which the holder shall leave the Islands unless authorised to remain under any other section of this Law.

(6) A person may not hold more than one visitor's work visa for the same sponsor or sponsors in the same calendar month.”.

17. The principal Law is amended by inserting after section 56 the following section-

Insertion of section 56A
– administrative fines
and levies

“Administrative fines
and levies

56A. (1) The Chief Immigration Officer shall keep and maintain a register of all administrative fines and levies imposed under this Law in consequence of the breach of any of its provisions.

(2) The register shall contain particulars of-

- (a) the name and address of the person in breach;
- (b) the nature, location and date of the breach;
- (c) any measures taken by the Chief Immigration Officer in consequence of the breach; and
- (d) the amount of the fine or levy imposed and the date on which it was paid.

(3) The Chief Immigration Officer shall, within fourteen days of the end of each quarter, provide the Governor and the Director of Public Prosecutions with the information contained in the register in relation to that quarter.”.

18. The principal Law is amended in section 59 as follows-

Amendment of section
59 – inward passenger
and crew manifests

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

“(1) It is the duty of the master, the local agent or the captain of every vessel arriving in the Islands, other than a recreational sport fishing vessel returning from a sports fishing expedition that took place beyond the Islands’ territorial waters, prior to the arrival of such vessel or as soon as practicable thereafter, to deliver to an immigration officer lists showing separately the names and particulars of-

- (a) the passengers on board the vessel;

- (b) the passengers whose intention it is to disembark at the Islands;
 - (c) the crew of the vessel; and
 - (d) any other person on board the vessel.”.
- (b) by inserting after subsection (1) the following subsection-
- “(1A) A recreational sports fishing vessel arriving in the Islands shall comply with the prescribed arrival procedures.”.
- (c) in subsection (2)-
- (i) by inserting after the word “master” the words “or captain of the vessel”; and
 - (ii) in paragraph (b) by deleting the words “subsection (1)” and substituting the words “subsections (1) and (1A)”.

Amendment of section
61 – outward passenger
and crew manifests

19. The principal Law is amended in section 61 as follows-

- (a) by repealing subsection (1) and substituting the following subsection-
- “(1) It is the duty of the master, the local agent or the captain of every vessel leaving the Islands, other than a recreational sport fishing vessel departing the Islands on a fishing expedition beyond the Islands’ territorial waters, unless excused from doing so by the Chief Immigration Officer, to deliver to an immigration officer, prior to departure of such vessel, lists showing separately the names and particulars of-
- (a) the passengers on board the vessel;
 - (b) the crew on board the vessel; and
 - (c) any other person on board the vessel.”;
- (b) by inserting after subsection (1) the following subsection-
- “(1A) A recreational sport fishing vessel shall, prior to departure on a fishing expedition beyond the Islands’ territorial waters, comply with the prescribed departure procedures.”; and
- (c) in subsection (2) by deleting the words “subsection (1)” and substituting the words “subsections (1) and (A)”.

Amendment of section
66 – general prohibition
from landing in the
Islands without specific
permission of
immigration officer

20. The principal Law is amended in section 66(b)(i) by deleting the words “section 48 or 53” and substituting the words “section 48, 53, 54 or 54A”

21. The principal Law is amended in section 83 as follows-

Amendment of section
83 – student visas

(a) by inserting after subsection (2) the following subsection-

“(2A) Unless the context otherwise requires, a reference to the Chief Immigration Officer in relation to the granting, extending, varying or revoking of a student visa shall be construed as including a reference to anyone specifically designated by him to perform those duties.”;

(b) by inserting after subsection (3) the following subsection-

“(3A) Any of the powers conferred upon the Chief Immigration Officer under subsections (5) and (6) may be delegated by him to an immigration officer of the rank of Assistant Chief Immigration Officer or above.”;

(c) in subsection (4) by inserting after the word “Officer” where it appears for the first time the words “or his designate”; and

(d) in subsections (5), (7) and (8)(a) by inserting after the word “Officer” the words “or his designate”.

22. The Immigration (Amendment) Law, 2010 is repealed.

Repeal of Law 12 of
2010

Passed by the Legislative Assembly the day of , 20 .

Speaker.

Clerk of the Legislative Assembly.