



Leveling the Playing Field and giving Credit where Credit is Due

Proposed Immigration Accreditation System
Financial Services Sector

Nick Joseph, Partner - Appleby

A Brave
New World;

Join us on
the journey



History and Background



- Growing concerns of abuses of work permit system
- Widespread failure by employers to fulfill statutory requirements

History and Background con't...



Perceived abuses are wide ranging and include those relating to:

- Regulation 9 (duty to inform immigration of cessation of employment by work permit holder)
- Section 51 (failure to seek consent to promote or re-designate)
- Regulation 11 (exemption for work permits – is EVERYONE “coming for meeting?”)
- Work Permit Job Descriptions (are your labourers, masons and secretaries paralegals?)
- Preferences in employment (was the Caymanian applicant really not worthy of an interview?)

History and Background con't...



- Misleading advertising (is fluency in Japanese necessary?)
- Pensions (approximately 600 businesses are not compliant)
- Health Insurance (50 complaints are made each month against non-compliant employers)
- Labour (do you pay overtime/sick leave/vacation?)
- Licensing (are you allowed to do what you do? / are the shareholders also the owners?)

History and Background con't...

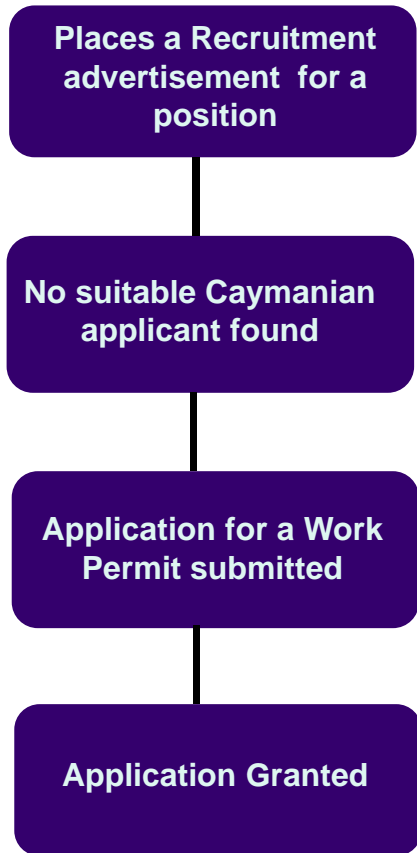


- Perception that compliance with the rules rendered some businesses non-competitive when compared to their non-compliant counterparts

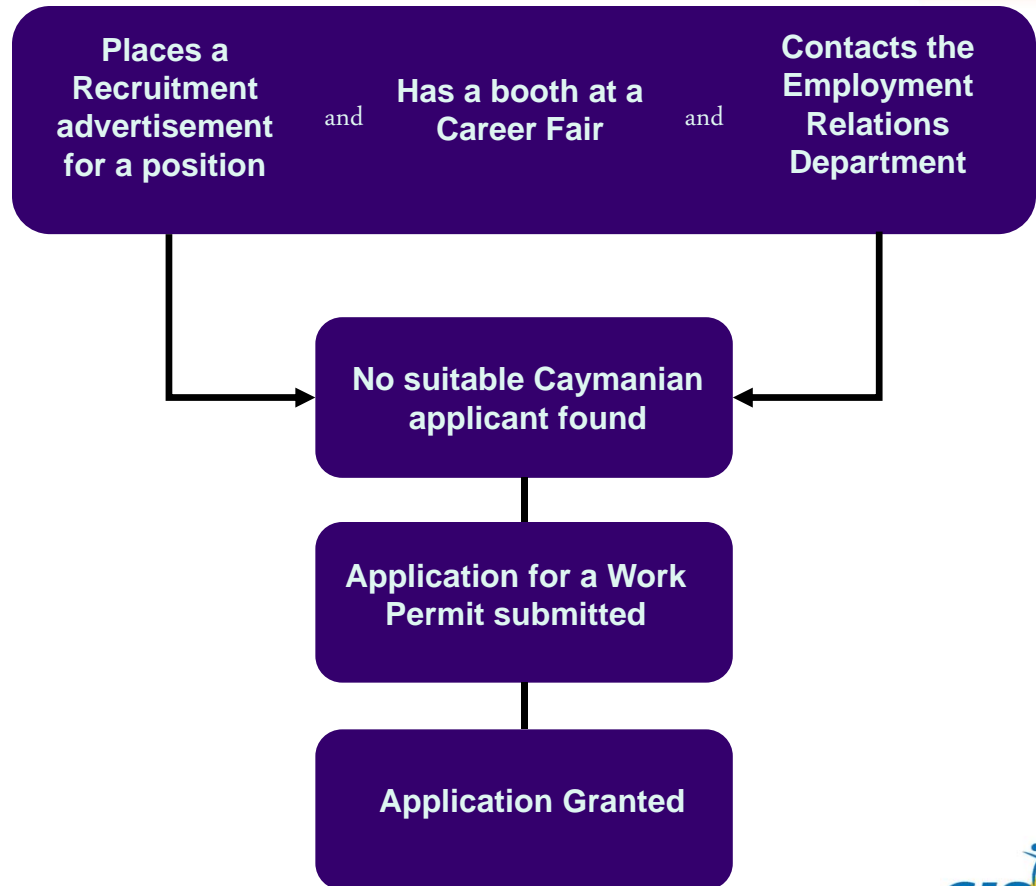
Positive Behaviour by Employers Not Being Rewarded



Good Employer



Excellent Employer





Excellent employers started to ask:

Why do I bother?

Against this Background



- Task force was created
- Widespread public consultation took place
- Significant support was indicated for an objective (points based) system, which also rewarded compliance and punished non-compliance

Result – Immigration Accreditation System



- Bi-partisan support
- Detail undergoing final review by IRT Subcommittee on Accreditation
- Determination made to introduce the system first to the Financial Services Sector

Legislative Framework



The Immigration (Financial Services Sector) Directions 2010 require the IRT to work with the Financial Services Subcommittee to establish a list of accredited employers based on seven criteria:

- Maintenance of a high standard of business ethics
- Talent development programmes
- Employment practices
- Community programmes
- Participation in developing business in a particular industry or field that is currently underdeveloped, the development of which is desirable
- Evidence of Caymanian ownership or participation
- Evidence of business expansion in the Cayman Islands

Committees Involved



IRT Subcommittee on Accreditation:

- Phil Jackson (Associate Director, Human Resources; UBS)
- Karie Bergstrom (Director, Consulting Services & Human Resources; Deloitte)
- Sherryl Miller (Director of Boards and Work Permits; Immigration)
- Bruce Smith (Deputy Chief Immigration Officer, Immigration)

Reporting to Sherri Ann Bodden-Cowan as Head of IRT

Financial Services Sector Subcommittee:

- Winston Connolly
- Christopher Saunders
- Tammy Seymour
- David Gordon

Reporting to Danny Scott as Head of the Business Staffing Planning Board

Four different points criteria are proposed:



- Maintaining a High Standard of Business Ethics
- Talent Development Programmes
- Employment Practices
- Community Programmes

Bonus Points are proposed to be available in respect of:

- Business Sector
- Business Ownership

Maintaining a High Standard of Business Ethics



This is expected to require:

- Proof of Trade & Business license or other relevant license
- Certificate of Good Standing from Registrar of Companies
- Proof of compliance with the National Pensions Law
- Proof of compliance with the Health Insurance Law
- Compliance with the Immigration Law
- Compliance with the Labour Law
- Evidence of bona fide business operations
- Evidence of Employment Contracts and/or statements of working conditions

Talent Development Programmes



Points are expected to be awarded for numerous factors under this head, including with respect to:

- In-house Training/Apprenticeship/Secondment programmes for Caymanians
- Employee and external scholarships for Caymanians
- Promotions of Caymanians in the last 12 months
- Participation in local educational and developmental programmes
- Cultural awareness training for all employees

In the latest iteration it appears that the emphasis of the system will be on talent development, with more points available under this head than any other single factor.

Employment Practices



Points under this sector are likely to be awarded with regard to:

- % Caymanians as employees
- % Caymanians in Management
- Business Continuity/Disaster Preparedness programmes
- Demographics
- No. of Caymanians succeeding work permit holders under Regulation 6
- Job vacancies advertised internally

Community Programmes



Points will be available for a variety of activities, including:

- Sponsorship of non-profit organisation programmes
- Participation in any of the following:
 - School literacy programmes
 - Disability assistance programmes
 - Youth sports programmes
 - Elderly assistance programmes
 - Counseling programmes
 - Rehabilitation of offenders programmes
 - Arts programmes
 - Cultural Preservation programmes
 - Environmental Preservation programmes
- External scholarship programmes for Caymanians in unrelated field
- Service on government boards

Bonus Points



Business Sector:

- Participation in developing business in a particular industry or field that is currently under-developed and desirable
(To be designated by Cabinet with potentially significant points available)

Business Ownership:

- Evidence of Caymanian ownership
 - Evidence of profit sharing in accordance with shareholding

Deductible Points



Factors potentially warranting deductions (even post-accreditation) include:

- Employment violations
 - Licensing violations
 - Immigration violations
 - Pension violations
 - Health insurance violations
 - Customs violations
 - Criminal convictions
 - Workplace violations (government regulated workplace safety and health legislation)
 - Providing false or misleading information to Immigration department
 - Failing to live up to obligations at current tier
- *Minimum points may be deducted if violations are considered less serious and do not evidence a pattern of misconduct.*
- *Maximum points may be deducted if the company has serious violations in any of the above areas*

Scoring



Depending on total points businesses will be slotted into one of five potential categories:

- Probationary Accreditation
- Tier One Accreditation
- Tier Two Accreditation
- Tier Three Accreditation
- Tier Four Accreditation

Tier System – Financial Services Sector



Probationary Accreditation

Details

Business must meet all Legal requirements including:

- National Pensions Law
- Health Insurance Law
- Labour Law
- Immigration Law

Must provide proof of:

- a current business license
- evidence of a bona fide Business operation
- employment contracts in the Cayman Islands

One or more of the above may not be fully compliant at application date.

Benefits

Consideration for work permit renewals only. Probationary period of maximum of 6 months

N.B. no work permit grants and no Key Employee grants

Tier One - Accreditation



Details

Business must meet all Legal requirements including:

- National Pensions Law
- Health Insurance Law
- Labour Law
- Immigration Law

Must provide proof of:

- a current business license
- evidence of a bona fide Business operation
- employment contracts in the Cayman Islands

Benefits

Consideration for work permit grants and renewals

N.B. no Key Employee grants available

Tier Two - Accreditation



Details

Business must meet all Legal requirements including:

- National Pensions Law
- Health Insurance Law
- Labour Law
- Immigration Law

Must provide proof of:

- a current business license
- evidence of a bona fide Business operation
- employment contracts in the Cayman Islands

Talent Development Programmes

Employment Practices

Community Programmes

Benefits

Consideration for work permit grants and renewals

Eligible for application for Key Employee grants

Tier Three - Accreditation



Details

Business must meet all Legal requirements including:

- National Pensions Law
- Health Insurance Law
- Labour Law
- Immigration Law

Must provide proof of:

- a current business license
- evidence of a bona fide Business operation
- employment contracts in the Cayman Islands

Talent Development Programmes

Employment Practices

Community Programmes

Benefits

Consideration for work permit grants and renewals

Eligible for application for Key Employee grants

Other benefits to be determined

Tier Four - Accreditation



Details

Business must meet all Legal requirements including:

- National Pensions Law
- Health Insurance Law
- Labour Law
- Immigration Law

Must provide proof of:

- a current business license
- evidence of a bona fide Business operation
- employment contracts in the Cayman Islands

Talent Development Programmes

Employment Practices

Community Programmes

Benefits

Consideration for work permit grants and renewals

Eligible for application for Key Employee grants

Other benefits to be determined

And more...

Administrative & Application Process



Initial Application Process:

- Administrative process – not to be dealt with by a board
- Straight forward application process with clear guidance
- Computerised tool to score applicants (and permit self assessment)
- No appeals process
- Employer can re-submit an application for reconsideration
- Nominal Application fees
- Accreditation renewal at appropriate intervals

So why bother?



Direction 5 of The Immigration (Financial Services Sector) Directions 2010 provide that an accredited employer in the Financial Services Industry enjoys presumption of Key Employee (provided application is made) in respect of a long list of positions:

So why bother?



- Managing Director, Chief Executive Officer or General Manager
- Partner, Principal or President
- Senior Vice President
- Senior Account Executive
- Senior Account Manager
- Senior Fund Administration Manager
- Broker dealer
- Investment Banker
- Investment Manager
- Trader
- Insurance/reinsurance Manager
- Country Manager
- Senior in House Counsel
- Chief Technology Officer/IT Director
- Chief Operating Officer
- Directors/Associate Director
- Reinsurance Underwriter
- Actuary
- Insurance Claims Manager (captive industry – offshore only – not local/domestic)

The Future



If the system works effectively and efficiently, it is likely that separate tailor-made versions will be developed for small businesses and other industries not benefiting from the pilot programme.

Ultimately, accreditation may provide an efficient, more workable and more effective alternative to Business Staffing Plans.