

Hon. Mr Christopher Saunders MP  
Honourable Deputy Premier and  
Minister for Finance & Economic Development and  
Minister of Border Control & Labour  
Government Administration Building  
133 Elgin Ave, George Town  
Grand Cayman, Cayman Islands

By: Email & Hand  
1 March 2022

Dear Hon. Deputy Premier,

Business Staffing Plan Board

Thank you for the opportunity to meet and discuss some of the challenges the Business Staffing Plan Board (the "BSPB") has experienced since its composition on 1 October 2022.

As promised, below I have expanded upon these challenges in the hopes that it will assist in our combined efforts, not only to increase efficiency in the process but also to strike the right balance.

Backlog

The BSPB acknowledges there are numerous applications that remain unprocessed for several months. This issue of the backlog is not one that is novel and has been plagued by what appears to be, historical legacy issues. At the core of this issue is the frequent submission of incomplete applications, the consequence of which is self-evident.

Two additional facts in recent years have seemed to further exacerbate this issue. First, the global pandemic which, by its nature undermined the efficiency of the process. Second, the 2021 elections which brought about a change in the government naturally caused further disruption, as would be expected in any scenario where an administration is replaced after two consecutive terms in office. Indeed, this factor has compounded the delays.

Despite these challenges, the BSPB has already dedicated two business days each week to give due weight and attention to each application received. An average of some 50-75 agenda items are settled per meeting, which nearly doubles the pace of the previous Board that processed some 75 agenda items per meeting once weekly.

At twice per week, members have devoted approximately 40% of their professional commitments solely to meet the objectives of the BSPB. This is not an insignificant commitment, and their efforts are indeed worthy of acknowledgment. Recently, the BSPB has confirmed that arrangements have been made to meet three days weekly.

It is disheartening that certain prominent members of the private sector have seen the need to launch public criticisms and personal attacks on the integrity of the BSPB and its members, and more broadly the WORC administration. This behaviour does little to inspire confidence in the process and reflects poorly on the overall business climate of the Cayman Islands locally and abroad.



The BSPB remains open to conducive and constructive participation from both the private sector and the public sector. It considers itself as a partner in the shared objective to achieve a superior business community globally, whilst balancing the needs of commerce and the duty to recruit, train and develop qualified Caymanians and holders of a Residency and Employment Rights Certificate ("RERC"). We are all better served with solutions rather than condemnation.

### Quasi-Judicial

The legislative framework of the BSPB renders it a quasi-judicial board. Quite dissimilar to a WORC administrator, the BSPB by its composition is not administrative in nature. It is obliged to give adequate reasons for its decisions, which are subject to appeal to the Immigration Appeal Tribunal and ultimately by judicial review to the Grand Court.

It is for this precise reason why each application should be given the detailed consideration it deserves particularly where it relates to the interest of Caymanians and holders of RERC, as noted in section 58(4) of the Immigration Transition Act (2021 Revision) (the "ACT").

The ACT explicitly reserves employment opportunities for Caymanians and holders of RERC where such persons are duly qualified and readily available. This process must be exhausted, whereby Caymanians and holders of RERC are to be given priority, in that exact sequence, before an application for a work permit is successful.

The BSPB is conscious of this invariable and compulsory legislative requirement, which continues to guide its steps in each decision made. Equally, the need for a business to adequately staff itself, where the requisite resources are not available in the Cayman Islands, is abundantly clear to the BSPB and remains a key factor in the decision-making process. The BSPB is very much alive to the need for a balance to be struck.

### Abuse

The BSPB has noted what it perceives as a clear abuse of the process by some applicants that, for whatever reason, appear more determined to either recruit from abroad or retain their incumbent work permit holder at the expense of the Caymanian and holder of a RERC counterpart. The BSPB has witnessed the clearest evidence of this and sought to change the misguided perception that a work permit is a right rather than a privilege.

The BSPB has continually witnessed eligible Caymanians and holders of RECR deliberately shut out from the recruitment process only to pave the way for a work permit application. This practice now appears to be systemic with some applicants that have operated in the Cayman Islands for several decades and demonstrated no desire to employ Caymanians and holder of a RERC. Once again, this is not a novel encounter and to suggest otherwise can only be regarded as an act of wilful blindness.



## Sectors

It is apparent and must be accepted that Caymanians and holders of a RERC have demonstrated a lesser interest in some sectors, for various reasons. The BSPB would recommend closer examination of the each sector, and in particular the hospitality industry. The stated desire to remobilize this industry amidst the global pandemic is well known to the BSPB.

It is perhaps time for there to be closer examination of this sector and to consider a specific joint partnership with the key stakeholders, to address these immediate concerns. The increased demand and urgent need to expand the hospitality industry labour force, unless interim legislative reform is considered, will continue to outpace the resources of the BSPB in the short to medium term.

As it relates to other sectors, such as the financial services industry, the reverse is also true. It is fairly established that Caymanians and holders of a RERC have expressed consistent interests in this sector in addition to others such as the retail, real estate, and construction industries. Though the BSPB is not aware of any precise statistical data in this regard, this is a consistent observation throughout the course of various meetings over the past several months.

The BSPB would invite WORC to engage in pointed dialogue with the Cayman Islands Chamber of Commerce (the "Chamber of Commerce") in conjunction with the Department of Commerce and Investment (the "DCI") and other related entities to balance the needs of employers and seemingly eligible Caymanians and holders of a RERC that do not appear to be routinely absorbed by these sectors.

## Recommendations

Successive administrations have agreed upon a common desire to enhance the BSPB regime and to ensure its legislative objectives are met as it relates to the employment of Caymanians and holders of a RERC. This would be a welcome approach and the BSPB is readily available to further develop the issues noted above. An initial step in the process is the urgent need for legislative reform to increase efficiency and repair the unfortunate and unfair perception of the BSPB and WORC.

The current online portal on which job advertisements are published is in desperate need of revision. Once again, the BSPB would encourage joint consultation between the Chamber of Commerce and WORC to address this mutual challenge. Though not required by law, it is good always practice to advertise in the local newspapers and the BSPB fails to see why this is not the natural default position to be assumed by businesses genuinely in need of qualified applicants.

Periodically complaints are received from aggrieved Caymanians and holders of a RERC in relation to the behaviour and practices of various applicants and work permit holders. It is often the case that the author of such complaints is fearful that they will be alienated and ostracised by the applicant or a particular industry.

The BSPB would suggest that efforts are made to actively train and utilize the resources of the compliance division of WORC to examine the veracity of such complaints. This is a very serious concern and places the BSPB in a difficult situation, given the obligation to refuse applications that are deemed contrary to the local interest of Caymanians and holders of a RERC as stated in section 58(4) of the ACT.

As previously stated, the BSPB stands prepared to lend whatever resource that may be necessary to work in unison to meet the challenges noted above and those that lie ahead. There are many sectors that are mature enough, well established and suitably equipped to recruit, train, and develop Caymanians from within.

There must be a universal desire by all named agencies and, the public and private sector to honour the well-established legislative mandate to make Caymanians and holders of a RERC a priority. After all, this is not a distant concept and has always been the law. The BSPB is not prepared to countenance any request for work permits in circumstances where there are Caymanians and holders of a RERC duly equipped and available to fill the relevant positions.

Yours sincerely,



Richard Barton  
Chairman  
Business Staffing Plan Board

Cc: Hon. Premier, Mr Wayne Panton, JP, MP  
Cc: Hon. Andre M Ebanks, MP, Minister of Financial Services & Commerce  
and Minister for Investment, Innovation & Social Development  
Cc: Mr Wesley Howell, Chief Officer of Border Control and Labour,  
Cc: Ms Laura Walter, Acting Interim Director of WORC,  
Cc: Mr Jeremy Scott, Deputy Director of Compliance,  
Cc: Ms Dawn McLean-Brady, Deputy Chair of Business Staffing Plan Board