

Residence by Investment: A viable tool for British Overseas Territories?

With much fanfare, earlier this year Anguilla introduced a *Residence by Investment* program to provide “an ‘elevated’ status to visitors who make significant financial investments into the island”. Is this a model for other British Overseas Territories to follow? What lessons can be learned from other jurisdictions with decades of experience with this economic development tool? Will the program be successful in meeting this BOT government’s goals? This article will examine all these issues from the viewpoint of someone who has operated in this area for almost three decades representing HNW individuals and their families...the target market of such programs.

First, it is worth understanding some history and law. In May 2002, the UK government passed the British Overseas Territories Act 2002 which changed the name of British “Dependent” Territories to British “Overseas” Territories. More significantly for those who possessed British Overseas Territory Citizenship (“BOTC”) up to that moment it made them full British citizens. Along with a second passport, British Citizenship gave the possessor full citizenship rights in the UK and EU wide mobility rights. In an instant BOTCs were able to not only live in their own specific British Overseas Territory, but also the UK and all the countries of the EU.

It is worth remembering that the UK government, then lead by Prime Minister Tony Blair, didn’t suddenly decide to benevolently bestow such privileges onto the citizens of BOTs. This privilege was granted in exchange for the legislatures of various BOTs which were also International Financial Centers, to adopt a new UK-set “Know Your Client” standard. Practically (or cynically), this *Quid Pro Quo* was negotiated five years after the UK had returned HK, its largest BOT, to the Chinese government.

With the value of a BOTC greatly enhanced, a few long term BOT residents started to explore the possibility of becoming BOTCs. The laws around this area were not well known and were confused by local laws relating to “Belonger” status. Belongers (eg: Bermudians, Caymanians, etc.) are granted that status under local laws. Depending on the BOT, Belonger Status may give the holder some additional privileges such as voting or holding political office in that specific jurisdiction, but not in other BOTs or the UK. Further complicating the situation was the fact that Belongers are also issued “travel documents”. Prior to 9-11 these documents were often confused by both the holder and foreign border officials with the passport issued by the UK government.

The laws relating to naturalization in a given BOT were also not well known prior to 2002 as few long-term residents ever pursued it. This was a practical outcome since BOTC citizenship would only give the possessor the right of abode in that territory...a right they already had as permanent residents. Also suppressing naturalization applications was a latent hostility from some of the local population to a group they thought of as “expats” who they felt should not be allowed to hold political office or even vote.

In mid 2002 I advised a long-term client, who had been a BOT resident for over a decade, of his ability to acquire BOTC and ultimately British citizenship. For the reason noted in the previous paragraph, his local advisors questioned my advice. So we turned to the leading barrister on British Nationality law who confirmed that only the British Nationality Act (and not local law) was applicable to the entire naturalization process. Furthermore, this power could be

exercised by either the local UK representative (I.e. Governor) or even by the Home Office, if the UK government thought appropriate. In short, the local laws, legislation or bureaucracy have no role to play in a naturalization application. The expert barrister did note that unlike the BOTCs who acquired that status prior to 2002, naturalized BOTCs who also wanted British citizenship needed to actually apply for this status AND had to meet the UK “good character” requirement.

While having no say in the naturalization process, local legislatures did have exclusive jurisdiction in granting an interested naturalization candidate a required essential prerequisite - namely residence and in particular residence “without time restriction”. To be successful a naturalization candidate needed to have legally lived in the BOT for five years, with at least one of the past five years “without time restriction” (i.e. permanent residence).

Since winning this 2002 precedent setting case, I have successfully applied for and secured BOTC and UK citizenships for a number of individuals from five different BOTs. In most cases the biggest hurdle was overcoming challenges by local authorities arguing that the status that the individual had under local immigration laws was “without time restriction”. This antagonistic attitude towards “expats” eventually eased up in several BOTs when politicians and the local voting public realized that those interested in this path did not have political power or even voting rights as a driving motivation. Once fear of a political takeover was dispelled, then some governments began to think of applicants’ interest not as a threat but as a potential economic tool.

For the past three decades I have met with various governments to discuss how they might make their *Residence by Investment* or *Citizenship by Investment* programs more effective and attractive to my HNW clients....their target market. It is worth noting that my approach is fundamentally different from the many “*Citizenship/Residence by Investment*” consulting firms who work in this area. My position is that I do not “sell” or “market” a particular program on behalf of a given independent country or BOT. In short, I do not act on behalf of the country. I avoid an inherent conflict by always acting solely on behalf of a client, by examining all options and guiding them to the one(s) that best meet their family goals.

In practice, as it is in my client’s interest I advise governments on the needs and concerns of my clients. In that way governments can shape their programs to better meet those needs in a competitive environment. Those jurisdictions which offer a program that meets my clients’ needs (while also meeting the needs of the local population) in a financially competitive way tend to be successful. Those jurisdictions which ignore their market competitors or design unnecessarily cumbersome or overpriced programs tend not to be successful.

With this history and overview of the changes in the law in mind, let me lay out the various factors which I believe a BOT – or indeed any jurisdiction - should consider when designing and operating a program:

- 1) **Investment criteria should be straightforward whether in real estate, existing or new local businesses or local public projects such as hospitals etc.:** It is worth pointing out that determining which type of investment is most important to a given jurisdiction is properly the role of local politicians and voters;
- 2) **Pricing of the required investment must take into account alternatives available to the target market:** In the area of BOT *Residence by Investment* programs, the obvious

comparison is the programs operated by other BOTs. However, the investment levels must also take into account other citizenship by investment programs such as those of EU countries;

- 3) **Recognition that some of the target market are purchasing only for residence status while others also eventually want to secure BOTC and UK citizenship:** Residence status may be sought for a variety of reasons including 1. securing access to a local residence or business and/or 2. enforcing a tax position that the individual is no longer resident or domiciled in their home jurisdiction for tax purposes. Also, some individuals recognize that their lifestyle and travel mean that they may never meet the naturalization requirements set under the British Nationality Act;
- 4) **Clear transparent, consistent and timely processing:** Along with having straightforward investment criteria, the entire application process should be logical and efficient. Many applicants are acquiring this status as part of a very detailed tax plan revolving around a specific liquidity event in their lives. Therefore, knowing that a jurisdiction consistently processes applications in a specific time period may be THE deciding factor on which program to select. In short, if a client needs to be tax resident outside of their home country by year end, they do not want to hear that the key politician or bureaucrat is “off island” for the entire month of December;
- 5) **High level security and background checks on all applicants:** Contrary to popular belief, criminal and terrorist types are not generally attracted to *Residence* or *Citizenship by Investment* programs. This is due to the simple fact that they can easily purchase authentic citizenship-originating documents such as birth certificates in any major country for a fraction of price of even the least expensive of these programs. These documents immediately give them access to a first rate passport WITHOUT any accompanying background check or processing delay.

This reality does not mean that BOTs should not have very strict external and internal background checks done on each applicant. Background checks not only screen out bad apples, they also give assurance to clean applicants that the status they are spending money on is not the favourite of drug lords and international terrorists.

Note: Several times I have suggested that in furtherance of timely processing the outside due diligence agency should accept the original application package. Along with doing a detailed background check they can also easily ensure the application is completed properly and has all the required accompanying documentation. Any shortcomings can be rectified quickly and efficiently. Then the local government can have the background review double-checked by local law enforcement officials and a completed application presented to the local committee for acceptance or denial; and

- 6) **Transparent reporting to the local population of statistics on the program including investment:** Privacy for individual applicants is a critical factor. Unfortunately, too often local politicians and bureaucrats either do not gather or publish general statistics on the number of applications accepted or rejected; or the actual economic benefits resulting from their program. Not surprisingly, lack of transparent reporting presents an opportunity for the opposition or those elements of the voting public who are philosophically opposed to such programs to “fill in the blanks” with negative information. Long-term public support gained through transparency and demonstrated public benefit means that a program will maintain public support over the long period required to reap the maximum economic benefit.

In conclusion, a well-conceived and executed *Residence by Investment* program could be an excellent economic development tool for any British Overseas Territory. If improperly designed or operated, such a program will not fulfill its true potential and will waste local support in the process. As with many things in life, the difference between success and failure is in the planning and execution.

ⁱ [http://www.gov.ai/documents/finance/Anguilla%20Residency%20by%20Investment%20\(ARBI\)%20Presentation-%20General%20Public.pdf](http://www.gov.ai/documents/finance/Anguilla%20Residency%20by%20Investment%20(ARBI)%20Presentation-%20General%20Public.pdf)