MINISTRY OF
EDUCATION, EMPLOYMENT
& GENDER AFFAIRS
CAYMAN ISLANDS GOVERNMENT

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National Pensions (Amendment) Bill, 2016
Summary Notes
May 2016

The National Pensions (Amendment) Bill, 2015 ("the Bill") was released for public consultation and the public was invited to provide feedback on the Bill until September 30, 2015. The Bill sought to introduce key amendments to the National Pensions Law (2012 Revision) especially in priority areas for reform which will continue to build on our efforts to have a culture of compliance and which will be of benefit to both employees and employers. From the feedback received during the public consultation process and based on policy guidance of the Government during the discussion about the feedback received, the National Pensions (Amendment) Bill, 2016 ("the Amendment Law") was created. On 4 May, 2016 the Amendment Law was unanimously passed by all legislators who voted on the Bill.

Why was it necessary to amend the National Pensions Law (2012 Revision)?

The National Pensions Law ("NPL") was initially implemented in 1998 and in recent years, specifically, 2010 and 2011, there have been amendments to the NPL focused on specific areas. The current amendments being proposed to the NPL are the first substantive revisions to the National Pensions Law, which governs private sector pensions, since its introduction over 15 years ago. The proposed revisions strive to align the National Pensions Law with the re-organisation of Labour and Pensions Services in the Cayman Islands. Furthermore, the inclusion of other essential changes is envisioned to facilitate enhancements such as greater equity, improved compliance and better information resources to the benefit of employees and employers.

What were the key objectives of the National Pensions (Amendment) Bill, 2016?

- To remove the notion of a 'normal retirement age' and to increase the age at which persons become entitled to access their pension from 60 to 65, recognizing the longevity of people in today's society and, in many instances, their willingness and ability to work longer to contribute to their own independence;
- To introduce more requirements for pension plans to educate and inform members including the requirement for annual general meetings and an increase in the availability of pension statements as well as notification from the administrator if their employer becomes delinquent;
- To introduce new and enhanced mechanisms to improve compliance with the National Pensions Law, especially the strengthening and broadening of the

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Department of Labour & Pensions ("DLP") powers and the introduction of a administrative fine regime as well as a verification of compliance provision; and

- To align the National Pensions Law with the re-organisation of Labour and Pensions Services in the Cayman Islands, by including in legislation the establishment of the DLP.

What will be the major changes to the Law as a result of the National Pensions (Amendment) Bill, 2016?

A summary of the major changes is listed below. It should be noted that all fine amounts or imprisonment times listed below mean that the fine or length of time can be ***up to*** that amount.

- **Part I - Introductory:**
  - Amends the definition of "employee" and excludes Caymanians who are under the age of 23 years old and in full-time education meaning that these individuals will no longer be pensionable (i.e. no longer required to contribute to pensions) under the National Pensions Law;
  - Removes the position of "Superintendent" and establishes the position of "Director" (of the Department of Labour and Pensions);
  - Introduces the term "normal age of pension entitlement" which replaces the common terminology, "normal retirement age";
  - Increases the "normal age of pension entitlement" from 60 to 65;
  - Increases "year's maximum pensionable earnings" (this is the amount that employees and employers are required by law to pay pension contributions on) from CI$60,000 to CI$87,000;
  - Introduces requirements for the Director to publish notice of each pension plan registered along with key service providers;
  - Increases fines from $5,000 to $20,000 or imprisonment for a term of 2 years, or both for the first offense and introduces escalating fines for additional offenses to $100,000 or imprisonment for 5 years for a third or subsequent offence.

- **Part II – Registration and Administration:**
  - Increases the fine for administration of an unregistered pension plan from $5,000 plus further fine of five hundred dollars per day to $10,000 or imprisonment for 1 year or both;
  - Increases the fine for the administration of a pension plan whose registration has been refused or revoked from $5,000 plus further fine of five hundred dollars per day to $100,000 or imprisonment for 5 years or both;

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- Introduces a new fine for the administrator of $100,000 or imprisonment of 5 years or both;
- Expands the list of information that must accompany an application to register a pension plan to include evidence of ongoing administrator training as well as a statement of investment policy;
- Expands the duties of the administrator to include activities such as mandatory annual general meetings for members and faster filing of audited financial statements to the Director;
- Introduces the functions of the administrator to ensure that the administration, custodianship and investment of a pension plan or pension fund are carried out by persons qualified and experienced;
- Introduces obligations of the employer to "cause to be kept" proper books and records for at least 5 years in relation to the pensionable employees.

- **Part III – Disclosure of Information:**
  - Introduces the requirement for pension plan administrators to provide members with details on the investment returns and expense ratios of their pension fund;
  - Increases the frequency of member statements from annually to semi-annually and allows statements to be issued electronically with a member's consent;
  - Increases the access to the administrator's records on the pension plan from once a year to every six months and establishes that the access is permitted to those persons stated in the NPL.

- **Part IV - Membership:**
  - Changes the timeframe for non-Caymanians to start paying pension contributions from the first nine months of employment on the Islands to the first six months. Caymanians and Permanent Residents remain pensionable immediately upon employment as is currently the case;
  - Introduces the definition of "household domestic"; this means that private residence employers who employ non-Caymanian and non-Permanent Resident maids or gardeners are not required to pay pensions on these employees.

- **Part VI – Benefits:**
  - Permits members to transfer their deferred benefit to a plan administered under the Public Service Pensions Law;
  - Changes the criteria to be met for members to transfer their pension benefit outside to the Islands to require: termination of employment (which was previously the only criteria), cessation of residence for two years and no contributions to a pension plan for two years.
  - Clarifies that the surviving spouse is equally entitled to an immediate benefit of the deceased's pension benefit the same as a listed beneficiary.

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- **Part VII - Contributions:**
  - Allows members to access their additional voluntary contributions prior to the normal age of pension entitlement, for the following four reasons: housing, medical, temporary unemployment and educational purposes;
  - Clarifies when a pension contribution is considered delinquent;
  - Introduces specific timeframes for delinquent contributions to be reported and for action to be taken by the Director;
  - Introduces the requirement for the pension plan administrator to notify the affected employees that their employer is delinquent in the payment of their pension contributions;
  - Expands the enforcement actions that the Director can utilise to deal with a delinquent employer including the ability to instruct an administrator to publish breaches including the employer's name, offence under the NPL and applicable penalty;
  - Increases the fine for failure to pay contributions into a pension plan by the time given by the Director to $20,000 or imprisonment for 2 years or both;
  - Permits the Director to share information with other Government departments and agencies on investigations into employers' contributions to pension plans.

- **Part VIII – Locking In:**
  - Allows for Cabinet to determine a date at which pension plan members will no longer be allowed to obtain a refund. Following that date (which is to be determined), refunds will only be available under two circumstances: at the administrators discretion for commuted values of less than CI$5,000 (as allowed for in section 42- cash out of small benefits); and where a member reaches age 65 and wants to but is unable to transfer their pension benefit to an approved pension plan, retirement savings account or similar arrangement, or a life annuity.

- **Part X1- Sales, Transfers and New Plans**
  - Introduces the ability to fine an administrator who is convicted of contravening section 69 (adoption of a new pension plan) a fine of $50,000 or 5% of the assets transferred, whichever is greater; and the fine shall be paid by the administrator and not be charged to the pension plan.

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- **Part XIV: National Pensions Board:**
  - Establishes the Department of Labour and Pensions and repeals the Office of the Superintendent of Pensions;
  - Removes the duty of the National Pensions Board to administer the Law and its regulations and highlights its duty to carry out its functions as an appellate body under Part XIII of the Law.
  - Increases the power of the Director, Deputy Director and designated person to have the same powers, privileges and immunities as conferred on a constable by the Police Law when performing their duties in relation to administering administrative penalties.
  - Increases the fine for not providing information to assist in compiling statistical data from $1,000 to $5,000; increases the fine for not providing information to ascertain compliance with the Law and regulations from $1,000 to $10,000 and 1 year imprisonment or both; and increases the fine for not providing a requested appraisal of assets in a pension fund by an independent valuer from $5,000 to $20,000 or 2 years imprisonment or both.

- **Part XV- General:**
  - Increases the fine for general offences from $5,000 to $10,000 or to imprisonment for 1 year or both;
  - Changes the way that the timeframe is calculated for the initiation of summary proceedings from when the matter occurred to when it was reported to the Director, although the statute of limitation to initiate summary proceedings remains at five years (now from the time when the DLP became aware of the alleged breach of the Law, and not from when the matter occurred);
  - Introduces liability for the Director or other officer where a body corporate commits an offence;
  - Introduces an administrative fine regime as another enforcement tool to deal with employer non-compliance;
  - Permits the Director to share information with Government Departments and statutory authorities on the compliance of pension plans and employers with the NPL but expressly prohibits the sharing of any personal information of any employee;
  - Introduces a victimisation protection clause for employees;
  - Establishes the ability of employers to apply for and obtain verification of their compliance with the NPL.