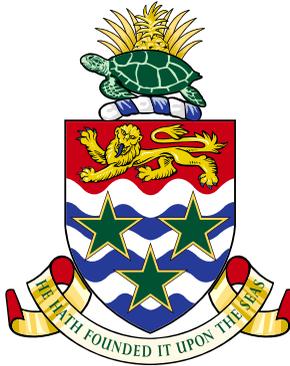


CAYMAN ISLANDS



PUBLIC SERVICE PENSIONS (AMENDMENT) BILL, 2019

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A BILL FOR A LAW TO AMEND THE PUBLIC SERVICE PENSIONS LAW (2017 REVISION) TO CHANGE THE MANNER OF CALCULATING PENSIONS; TO PROVIDE FOR A LONGER PERIOD FOR CASH-OUT PAYMENTS; TO SECURE ASSETS OF THE FUND BY ENABLING INVESTMENT DIVERSIFICATION; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS



Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the Public Service Pensions Law (2017 Revision) (“the principal Law”).

Clause 1 provides the short title of the legislation.

Clause 2 redefines certain terms in the principal Law such as, among other things, the terms “credited rate of return”, “designated beneficiary” and “former participant”; it renames a “participant” as a “plan member”; it inserts definitions of “Investment Committee” and “publicly traded company”; and it deletes the definition of the words “traded publicly”.

Clause 3 amends the principal law to provide that it be amended by deleting the word “participant” wherever it appears in the Law and substituting the words “plan member”.

Clause 4 amends section 5 of the principal Law to provide that the Public Service Pensions Board may act by committee or sub-committee or may delegate any of its powers to such committees, sub-committee or to any of their members.

Clause 5 amends section 6 of the principal Law to provide that the Board shall be responsible for the oversight and monitoring of the Administrator, the Investment Committee and any other committees or sub-committees appointed by the Board in accordance with section 5 of the principal Law; and when exercising its fiduciary responsibility the Board shall act in the best interests of the plan members and beneficiaries of the Fund.

Clause 6 amends section 16 of the principal Law in order to re-confirm that the Board will invest the Fund in accordance with recognised international practices. Among other provisions, the amendment to section 16(3) of the principal Law provides that the Board shall invest the Fund in such a manner to ensure that there is no undue risk of loss or impairment to the Fund, including by ensuring diversification of the investments of the Fund.

Clause 7 amends section 25 of the principal Law to deal with the circumstance where the Administrator may transfer or assign a pension.

Clause 8 amends section 26 of the principal Law to change the provisions relating to pay out of pensions to non-resident non-Caymanians who have left the Service and ceased to reside in the Islands.



Clause 9 amends section 35 of the principal Law to provide that a deferred vested plan member in the defined benefit part of the Plan whose services were terminated prior to retirement age but is unable to work due to permanent disability certified by the Chief Medical Officer is eligible to retire on those grounds.

Clause 10 inserts an exception to vesting in section 40 of the principal Law with the words “, except that where the pension or a part of the pension is transferred or assigned under section 25(1)(a)(i) the accrued benefit shall not vest.”.

Clause 11 amends section 52 of the principal Law to provide that a deferred vested plan member in the defined contribution part of the Plan whose services were terminated prior to retirement age but is unable to work due to permanent disability as certified by the Chief Medical Officer is eligible to retire on those grounds.

Clause 12 inserts an exception to vesting in section 56 of the principal Law with the words “, except that where the pension or a part of the pension is transferred or assigned under section 25(1)(a)(i) the accrued benefit shall not vest.”.

Clause 13 repeals and replaces Schedule 1 of the principal Law which deals with the constitution and procedure of the Board and the powers of the Managing Director. It is proposed that the responsibilities of the Board be focused on strategy and ensuring accountability of Executive Management. It is also proposed that the Managing Director would be focused on the execution of the adopted strategy including plan design and structure, delegating to Plan fiduciaries and the Plan actuary, and oversight and monitoring the administration of the Plan, amongst other operational responsibilities.

Clause 14 repeals and replaces Schedule 2 of the principal Law to further secure the assets of the Fund by enabling wider investment diversification through best practice portfolio management and, pursuant to the advice of investment professionals, to meet required benefit payments to plan members and the expenses of the Plan.

Clause 15 provides a savings provision.



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PUBLIC SERVICE PENSIONS (AMENDMENT) BILL, 2019

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A BILL FOR A LAW TO AMEND THE PUBLIC SERVICE PENSIONS LAW (2017 REVISION) TO CHANGE THE MANNER OF CALCULATING PENSIONS; TO PROVIDE FOR A LONGER PERIOD FOR CASH-OUT PAYMENTS; TO SECURE ASSETS OF THE FUND BY ENABLING INVESTMENT DIVERSIFICATION; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the Public Service Pensions (Amendment) Law, 2019.

Amendment of section 3 of the Public Service Pensions Law (2017 Revision)-definitions

2. The *Public Service Pensions Law (2017 Revision)*, in this Law referred to as “the principal Law”, is amended in section 3 —
 - (a) by deleting the definition of “credited rate of return” and substituting the following definition —

“**credited rate of return**” means —

 - (a) the rate of investment return to be credited to accounts on an account adjustment date, as determined by the Administrator



on 13th April, 1999, and at the end of each calendar year up to such date as the Cabinet may for this purpose in writing appoint and —

- (i) where on or after 14th April, 1999 an account adjustment date is the last day of a calendar year the credited rate of return shall be the average rate of investment return on Fund investments for that calendar year and the two immediately preceding calendar years; and
 - (ii) where an account adjustment date does not fall on the last day of a calendar year, the credited rate of return shall be the credited rate of return that was applied on the previous account adjustment date prorated for the period of the year up to such account adjustment date;
- (b) with respect to plan member’s contributions made to the Fund under the prior law credited to a plan member’s contribution account on the 14th April, 1999 under section 30(2), the average rate of investment return on Fund investments for the period commencing on the date the Fund was established under the prior law and ending on the 13th April, 1999, as determined by the Administrator; and
- (c) the rate of investment return to be credited to accounts on account adjustment date, as determined by the Administrator with effect from the first calendar quarter following the 31st day of December, 2018 and at the end of each calendar quarter —
- (i) where on or after the 31st day of December, 2018 an account adjustment date is the last day of the calendar quarter, the credited rate of return shall be the average for the twelve months immediately preceding that calendar quarter; and
 - (ii) where an account adjustment date does not fall on the last day of a calendar quarter, the credited rate of return shall be the credited rate of return that was applied on the previous account adjustment date prorated for the period of the calendar quarter up to such account adjustment date;”;
- (b) by deleting the definition of “designated beneficiary” and substituting the following definition —
- “ **“designated beneficiary”** means a person designated by the Plan member under section 19 to receive benefits under section 43, 60, 62, 63 or 65 or any other benefits not specified for payment to a



- plan member's spouse or children or an entity in the event of the plan member's death;";
- (c) by inserting in the appropriate alphabetical order the following definition —
- “ **“director”** means a member of the Board;”;
- (d) by deleting the definition of “former participant” and substituting the following definition —
- “ **“former plan member”** means a plan member who terminated employment and remains in the Service or who ceased to accrue benefits prior to being qualified for retirement under the Plan;”;
- (e) by inserting in the appropriate alphabetical order the following definition —
- “ **“Investment Committee”** means the Committee established by the Board pursuant to section 5(2C) and specified in Schedule 1;”;
- (f) in the definition of “member” by inserting after the word “Board” the words “or a committee or sub-committee of the Board”;
- (g) by deleting the definition of “participant”;
- (h) by inserting in the appropriate alphabetical order the following definition —
- “ **“plan member”** means an employee in Service, an employee on an approved leave of absence or an employee who has retired or resigned from Service on pensionable terms;”;
- (i) by inserting in the appropriate alphabetical order the following definition —
- “ **“publicly traded company”** means a company whose stock is traded on —
- (a) a stock exchange in the Islands; or
- (b) any other exchange recognized by internationally recognized credit rating agencies on which securities are traded, if the prices at which the securities have been traded on such market are regularly published in a newspaper or business or financial publication of general or regular paid circulation;” and
- (j) by repealing the definition of “traded publicly”.

Amendment of the principal Law-deletion of the word “participant” and substitution

- 3.** The principal Law is amended by deleting the word “participant” wherever it appears in the Law and substituting the words “plan member”.

Amendment of section 5- Public Service Pensions Board

4. The principal Law is amended in section 5 as follows —
- (a) by inserting after subsection (2) the following subsection —
 - “(2A) The Board may —
 - (a) act by committee or sub-committee; and
 - (b) delegate by instrument in writing any of its powers and duties to a committee or sub-committee and to any of their members.”; and
 - (b) in subsection (3) —
 - (i) by inserting after the word “Board” the words “or of any committee appointed by the Board”; and
 - (ii) by deleting the words “Public Service Pensions”.

Amendment of section 6- powers and duties of the Board

5. The principal Law is amended in section 6 as follows —
- (a) by inserting after subsection (1A) the following subsection —
 - “(1B) The Board shall be responsible for the oversight and monitoring of the Administrator, the Investment Committee and any other committees or sub-committees appointed by the Board in accordance with section 5; and when exercising its fiduciary responsibility the Board shall act in the best interests of the plan members and beneficiaries of the Fund.”; and
 - (b) in subsection (3), by deleting the words “No member or employee of the Board” and substituting the words “No director, member of a committee or sub-committee of the Board or employee of the Board”.

Amendment of section 16- fund investments

6. The principal Law is amended in section 16 as follows —
- (a) by repealing subsection (1) and substituting the following subsection —
 - “(1) The Fund shall be invested by the Board in a manner consistent with —
 - (a) best-practice portfolio management;
 - (b) the Board’s duty to avoid undue risk of loss or impairment pursuant to subsection (3);
 - (c) the Board’s duties of care, diligence and skill pursuant to subsection (4); and
 - (d) the investment policies and procedures formulated in accordance with subsection (5).”;



- (b) by repealing subsection (3) and substituting the following subsection —
- “(3) The Board shall invest the Fund in such a manner to ensure that there is no undue risk of loss or impairment to the Fund, including by ensuring diversification of the investments of the Fund, and pursuant to the advice of the Investment Committee and any investment managers appointed by the Board under subsection (2).”; and
- (c) by inserting after subsection (4) the following subsection —
- “(5) The Board shall establish, maintain and adhere to investment policies and procedures that are consistent with its duties under subsections (1), (3) and (4) and that covers, among any other relevant issues —
- (a) the classes of investments in which the Fund is to be invested and the selection criteria for investments within those classes;
 - (b) the determination of benchmarks or standards against which the performance of the Fund as a whole, classes of investments and individual investments will be assessed;
 - (c) standards for reporting the investment performance of the Fund;
 - (d) the balance between risk and return in the overall Fund portfolio;
 - (e) the fund management structure;
 - (f) the use of options, futures and other derivative financial instruments;
 - (g) the investment in private equity funds, hedge funds and funds that invest in infrastructure;
 - (h) the management of credit, liquidity, operational, currency, market and other financial risks;
 - (i) the retention, exercise or delegation of voting rights acquired through investments;
 - (j) the method of, and basis for, valuation of investments that are not regularly traded at a public exchange; and
 - (k) the prohibition, restriction, constraint or limit on any investment.”.

Amendment of section 25- pensions not to be assignable

7. The principal Law is amended in section 25 —

- (a) by renumbering the existing section as section 25(1); and

- (b) by inserting after subsection (1) as renumbered the following subsections —
- “(2) A pension provided under this Law shall not be transferable or assignable by the Administrator, except for the purpose of satisfying —
- (a) a debt due to the Government, a statutory authority or a Government company, where there is no dispute as to the debt or the amount of any deduction from a pension to satisfy that debt; or
 - (b) an order of a court for the payment of periodical sums of money towards the maintenance of the spouse, former spouse or minor child of the Plan member to whom the pension has been granted.”; and
- (3) Where there is a dispute, a party to the dispute may submit the dispute to binding arbitration under the *Arbitration Law 2012*.”.

Amendment of section 26- non-resident non-Caymanians

8. The principal Law is amended by repealing section 26(1) and substituting the following subsections —

- “(1) Notwithstanding any provision to the contrary, a retired or deferred vested plan member who became a plan member before the date of the commencement of this amending Law, who —
- (a) is not the holder of Caymanian status as defined in section 26 of the *Immigration (Transition) Law, 2018*; and
 - (b) ceases to reside in the Islands,
- may, upon such cessation in residency, elect to receive the present value of the remainder of his accrued benefit (actuarially adjusted to take into account any benefits already paid to the plan member pursuant to any of the other forms of benefit available to the plan member or due to any prior distribution) in a single lump sum cash payment payable within one month after the plan member so ceases to be resident in the Islands.
- (1A) For the purposes of subsection (1)(b), a person shall be considered to have ceased to be resident in the Islands when that person no longer has a legal right to reside in the Islands and has been absent from the Islands for a period of not less than two months; and, in calculating a period of absence, no account shall be taken of a period of stay in the Islands, as a visitor or transit passenger, for a continuous period of three weeks or less.



- (1B) Notwithstanding any provision to the contrary, a retired or deferred vested plan member who became a plan member after the date of the commencement of this amending Law, who —
- (a) is not the holder of Caymanian status as defined in section 26 of the *Immigration (Transition) Law, 2018*; and
 - (b) ceases to reside in the Islands,
- may, upon such cessation in residency, elect to receive the present value of the remainder of his accrued benefit (actuarially adjusted to take into account any benefits already paid to the plan member pursuant to any of the other forms of benefit available to the plan member or due to any prior distribution) in a single lump sum cash payment payable within one month after the plan member so ceases to be resident in the Islands.
- (1C) For the purposes of subsection (1B)(b), a person shall be considered to have ceased to be resident in the Islands when the person no longer has a legal right to reside in the Islands and has been absent from the Islands for a period of two years or more; and, in calculating a period of absence, no account shall be taken of a period of stay in the Islands, as a visitor or transit passenger, for a continuous period of three weeks or less.
- (1D) The provisions of subsections (1) to (1C) shall not apply until 1st January 2020 and the provisions of the principal Law which are in force immediately prior to the date of the commencement of this amending Law shall continue in force until such commencement.”.

Amendment of section 35- disability retirement

9. The principal Law is amended in section 35(1) by inserting after the word “active” the words “or a deferred vested”.

Amendment of section 40- vesting

10. The principal Law is amended in section 40 by deleting the full stop and substituting the words “, except that where the pension or a part of the pension is transferred or assigned under section 25(1)(a)(i) the accrued benefit shall not vest.”.

Amendment of section 52- disability retirement

11. The principal Law is amended in section 52(1) by inserting after the word “active” the words “or a deferred vested”.

Amendment of section 56- vesting

12. The principal Law is amended in section 56 by deleting the full stop and substituting the words “, except that where the pension or a part of the pension is transferred or assigned under section 25(1)(a)(i) the accrued benefit shall not vest.”.

Repeal of Schedule 1 and substitution- constitution and procedure of the Board; duties of the Managing Director

13. The principal Law is amended by repealing Schedule 1 and substituting the following Schedule —

“Schedule 1**(Section 5)****Part 1 - Constitution and procedure of the Board and of any committee appointed by the Board**

1. (1) Subject to sub-paragraph (2), the Board shall consist of the following directors —
 - (a) the Financial Secretary (*ex officio*);
 - (b) the Chief Officer, Portfolio of the Civil Service (*ex officio*);
 - (c) the President of the Cayman Islands Civil Service Association (CICSA) (*ex officio*) or his nominee;
 - (d) subject to paragraph 2, five directors appointed by the Governor who are neither employees in the Public Service nor Other Public Service; and
 - (e) the Managing Director (*ex officio* and non-voting).
- (2) The Board, after being constituted under sub-paragraph (1) may appoint as a member of the Board an active defined contribution plan member under the Plan who has been nominated by active members.
2. In appointing the directors under paragraph 1(1)(d) the Governor shall ensure that —
 - (a) one of the directors has substantial professional investment experience;
 - (b) one of the directors is an attorney-at-law with substantial fiduciary expertise; and
 - (c) one of the directors is a retired plan member under the Plan.
3. The chairman shall be appointed by the Governor from among the five directors appointed by the Governor and, in the absence of the chairman, a temporary chairman may be approved by the directors in attendance.



4. The Managing Director may designate an officer of the staff or other staff of another entity to act as secretary to the Board, the Investment Committee and any other committees or sub-committees established under this Law.
5. A director who is appointed by the Governor or by the Board shall hold office at the Governor's or the Board's pleasure respectively, for a four year term but, at the discretion of the Governor or the Board as the case maybe, may be appointed for two additional consecutive terms of two years.
6. A director who is appointed by the Governor or by the Board may resign his office at any time in writing addressed to the Governor or the Board and shall cease to be a director from the date of the receipt of such resignation by the Governor or by the Board.
7. Where a director resigns under paragraph 6 the Governor shall appoint or the Board select a new director for the remaining term of the former director.
8. The Board shall meet at least once in every three calendar months.
9. A director shall be deemed to be present at a meeting of the Board, the Investment Committee or of any other committee or sub-committee of the Board if the member physically attends or participates in the meeting by conference telephone or by some other conference facility.
10. The Board's proceedings shall be governed by standing orders prepared by the Board and such standing orders shall be kept under review, and may be amended, by the Board.
11. There is established a committee to be known as the Investment Committee to whom the Board may delegate its authority with respect to the investment of Fund assets.
12. (1) The Investment Committee shall be comprised of the following members —
 - (a) the Managing Director;
 - (b) a plan member representative who is a director;
 - (c) the member with substantial professional investment experience from the Board appointed under paragraph 1(d); and
 - (d) not more than two other individuals with substantial professional investment experience, who may be a current director of the Board (excluding the Chairman).
- (2) In addition to delegating any of its powers set out in the Law with respect to the investment of the Fund, the Board may delegate to the

Investment Committee the authority to set asset allocation ranges, evaluate and monitor investment performance and make recommendations to the Board in respect of all other areas related to the Fund's investment strategy and programme.

13. The Governor or the Board, respectively shall terminate the appointment of any director so appointed by the Governor or the Board who, —
 - (a) resigns his office;
 - (b) becomes of unsound mind or incapable of carrying out his duties;
 - (c) becomes bankrupt, suspends payment to or compounds with his creditors;
 - (d) is convicted in the Islands or any other jurisdiction of an offence involving dishonesty, fraud or any indictable offence;
 - (e) commits serious misconduct in relation to his duties; or
 - (f) is absent without leave for three or more consecutive meetings.

Part 2 - Duties of the Managing Director

The Managing Director is entrusted with the day to day operations of the Plan and any other plan administered by the Board and has the following duties —

- (a) providing instructions to any investment managers appointed by the Board under section 16(2);
- (b) managing the cash flow of the Fund;
- (c) delegating tasks relating to the overall management of the Fund to selected employees and or selected agents retained by the Board, including the actuaries, investment advisor and other fiduciaries of the Plan;
- (d) assisting auditors;
- (e) developing funding policies;
- (f) interpreting the Plan or any other Plan administered by the Board;
- (g) execution of adopted strategies including plan design and structure;
- (h) ensuring an education programme is in place for the Board its committees and sub-committees;
- (i) the preparation of reports of the Board required under this Law;



- (j) hiring staff and providing oversight and monitoring of the administration of the Plan among other operational responsibilities; and
- (k) reporting to the Board on activities, at least annually, and performing such other duties as the Board, in its discretion, may assign.”.

Repeal of Schedule 2 and substitution- approved investments

14. The principal Law is amended by repealing Schedule 2 and substituting the following Schedule —

“Schedule 2

(Section 16)

Approved Investments

1. This Schedule of approved investments is intended to provide guidance to the Board with respect to Fund investments and is not intended to be restrictive to the specific asset classes and sub-classes designated below.
2. The Fund’s investment policy is designed to be a fully invested portfolio, reflecting the broad spectrum of long-term risks and opportunities in the global economy and financial markets (without taking undue risk of loss or impairment), taking into account the actuarial assumptions and funding requirements of the Plan and maintaining adequate liquidity to meet required benefit payments to plan members and expenses of the Plan.
3. Subject to paragraph 4, the list of approved investments in paragraph 5 may be held in segregated arrangements or through holding units in an open-end or closed-end mutual, collective or pooled fund, a private equity fund, a hedge fund, or a fund that invests in infrastructure.
4. Funds specified under paragraph 3 must be listed on a recognized international stock exchange, other than private equity funds, hedge funds or funds that invest in infrastructure.
5. The approved investments, by asset class, are as follows —
 - (a) Fixed Income Portfolio —
 - (i) treasury bills;
 - (ii) bonds and notes, including domestic and foreign government bonds, commercial paper and investment grade corporate bonds;

- (iii) cash and cash equivalents; and
- (iv) guaranteed insurance company contracts;
- (b) Equity Portfolio—
 - (i) large cap value and growth of stocks of publicly traded companies;
 - (ii) small and mid-cap stocks of publicly traded companies;
 - (iii) convertible securities of publicly traded companies;
 - (iv) emerging markets stocks; and
 - (v) private equity funds;
- (c) Alternative Investment Portfolio —
 - (i) real estate, including real estate investment trusts;
 - (ii) mortgages, asset-backed securities and bank loans;
 - (iii) energy and natural resources;
 - (iv) derivative investment contracts which provide for portfolio protection, such as currency hedging, warrants, options and future contracts;
 - (v) absolute return funds;
 - (vi) hedge funds which are pools of capital from accredited investors or institutions which invest in a variety of assets using risk management techniques; and
 - (vii) funds that invest in infrastructure.”.

Savings

- 15.** Where, prior to the date of the commencement of this amending Law, an application was made under the principal Law and the application has not been determined at the date of commencement of this amending Law that application shall be determined as if this amending Law had not come into force.

Passed by the Legislative Assembly the day of , 2019.

Speaker

Clerk of the Legislative Assembly

