

CAYMAN ISLANDS



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**A BILL FOR A LAW TO REPEAL AND REPLACE THE NATIONAL  
PENSIONS LAW (2010 REVISION); TO MAKE FURTHER PROVISION  
FOR THE REGULATION OF PENSIONS IN THE CAYMAN ISLANDS;  
AND TO PROVIDE FOR INCIDENTAL AND CONNECTED PURPOSES**



**THE NATIONAL PENSIONS BILL, 2012**

**MEMORANDUM OF OBJECTS AND REASONS**

This Bill seeks to make further provision for the regulation of pensions in the Cayman Islands.

Part 1 of the Bill contains clauses 1 to 7 which are preliminary provisions.

Clause 1 provides the short title and commencement.

Clause 2 provides the definitions for terms used in the legislation including words such as “normal age of pension entitlement”, “normal entitlement date” and “person capable of retiring in the Islands”.

Clause 3 provides for the application of the legislation to pension plans maintained for the benefit of employees in the Islands.

Clause 4 makes provision for an employer to notify the Department in writing immediately on establishing or closing a business.

Clause 5 makes it mandatory for an employer to provide a standard pension plan or an international pension plan or to make a contribution to a standard pension plan or an international for every person employed by the employer in the Islands subject to the exceptions listed in clause 33(2).

Clause 6 clarifies that the legislation is not to be construed to prevent the registration of any pension plan that provides pension benefits and ancillary benefits that are more advantageous than those specified in the legislation.

Clause 7 provides for the determination of fitness and propriety of a person.

Part 2 of the Bill contains clauses 8 to 29 and provides for the licensing and administration of pension plans.

Clause 8 makes it mandatory that a pension plan has a trustee.

Clause 9 provides for the eligibility of a person to be appointed as a trustee of a pension plan.

Clause 10 makes it mandatory that a pension plan appoint an administrator. Clause 10 also prohibits a person from the administering a pension plan, holding himself out to be an administrator or soliciting business as an administrator unless

the person holds a valid pension plan administrator licence issued by the Authority.

Clause 11 provides for a licence to authorise the holder to carry on business as an administrator in respect of pension plans specified in the licence.

Clause 12 specifies the procedure required to make an application for a licence and the grant of a licence. Prohibitions on the grant, conditions and validity of the licence are also provided.

Clause 13 imposes restrictions on pension plan administration, opening of a subsidiary branch, agency or representative office, or change of name.

Clause 14 provides for the registration of a pension plan by the Authority.

Clause 15 provides for the contents of the document that constitutes a pension plan.

Clause 16 prohibits the registration of a pension plan where, apart from voluntary contributions, the pension plan does not provide for the accrual of pension benefits in a gradual and uniform manner or the formula for computation of the employer's contribution to the pension plan, or in the case of a defined benefit pension plan, the benefits provided under the pension plan are variable at the discretion of the employer. By virtue of clause 16(2), the Authority is only allowed to register a defined contribution pension plan if the formula governing allocation of contributions to a pension fund and the investment yield of such accumulated contributions among members of the defined pension plan is variable otherwise than at the discretion of a majority of the members of the defined pension plan.

Clause 17 provides for registration of an amendment to a pension plan. In the case of a standard pension plan or supplementary pension plan, approval in principle is required to be given by the Authority prior to an amendment being approved by the members and former members and registered by the Authority. In the case of an international pension plan, the trustee of the international pension plan is required to inform the Authority of the amendment and the Authority is required upon review of the amendment to inform the trustee of the issues which could negatively impact the pension plan's continued registration or compliance with the legislation. Clause 17 also provides for the Authority to issue a notice to the Department of any change in the details of registration of a

pension plan and for a pension plan that has been registered to be deemed to be amended so that it complies with the legislation and the Regulations.

Clause 18 provides for an amendment of a standard pension plan or supplementary pension plan to be void and of no effect where the amendment purports to reduce the amount, commuted value or actuarial present value of a pension benefit accrued under the pension plan with respect to employment before the commencement of the amendment, a pension or a deferred pension accrued under a pension plan, or an ancillary benefit for which a member or former member of the pension plan is eligible.

Clause 19 prohibits a person from contracting out of or waiving a requirement imposed on an employer or a trustee of a pension plan in favour of a member or former member or claimant and makes any such contracting out or waiver void and of no effect.

Clause 20 provides for the refusal of registration of a pension plan or an amendment to a pension plan that does not comply with the legislation and for the winding up of a pension plan where the Authority revokes the registration of a pension plan.

Clause 21 imposes a prohibition on administering a pension plan where registration is refused or revoked.

Clause 22 provides for the duties and functions of the trustee which include ensuring that the administration, custodianship and investment of a pension plan or pension fund are carried on by qualified and experienced persons.

Clause 23 provides for delegation of all or part of the trustee's functions relating to a standard pension plan or supplementary pension plan.

Clause 24 provides for the duties and responsibilities of the administrator which include ensuring segregation of assets and that the pension plan is administered in accordance with the legislation.

Clause 25 imposes an obligation on an administrator to have its accounts audited annually.

Clause 26 requires the auditor of an administrator to give information to the Authority including where the auditor obtains information or suspects that the administrator is unable or is likely to become unable to meet its obligations as they become due.

Clause 27 imposes an obligation on an employer to provide to the trustee of the pension plan of which his employees are members any information required by the trustee for the purpose of complying with the terms of the pension plan.

Clause 28 provides for proper books payroll accounts, books and records to be kept by an employer with respect to such sums of money paid to a pension plan on behalf of an employee.

Clause 29 provides for the establishment of an advisory committee by the members and former members of a pension plan, for example, to monitor the administration of a pension plan.

Part 3 of the Bill contains clauses 30 to 32 which make provision for disclosure of information relating to a pension plan.

Clause 30 makes provision for a trustee to provide to a person required to become a member of a pension plan an explanation of the applicable provisions of the pension plan, an explanation of the person's rights and any other information prescribed.

Clause 31 makes provision for the trustee to give a statement to each member of a standard pension plan quarterly or at shorter periods on a calendar year basis. In the case of a supplementary pension plan the trustee is required to give the statements annually. The statement shall contain the prescribed information, the member's expected pension benefits or the amount of money standing in the member's account, and the ancillary benefits for which the member is eligible.

Clause 32 provides for the inspection of documents in respect of a pension plan.

Part 4 of the Bill contains clause 33 which provides for eligibility for membership in a pension plan. By virtue of clause 33 and subject to specified exceptions, all employees between the ages of eighteen years and the normal age of pension entitlement are required to be members of a standard pension plan or international pension plan and every employer is required to provide a standard pension plan or international pension plan or to contribute to a standard pension plan or international pension plan for the benefit of his employees including the employer himself.

Part 5 of the Bill contains sections 34 to 37 which provide for entitlement and vesting.

Clause 34 provides for the normal entitlement date under a pension plan submitted for registration to be the date not later than three months after attaining the entitlement age on which a person becomes entitled under a registered pension plan to collect his pension benefits.

Clause 35 makes provision for a deferred pension for past services.

Clause 36 makes provision for a deferred pension for an active member of a pension plan.

Clause 37 provides for cessation of membership in a registered pension plan if no contributions are paid or are required to be paid to the pension fund by or on behalf of the member for twenty-four consecutive months in which case the member is designated as a former member and has the rights of a former member.

Part 6 of the Bill contains clauses 38 to 53 which provide for benefits under a pension plan.

Clause 38 provides for the minimum annual pension that a member of a defined benefit pension plan would be entitled to at his normal entitlement date which is equal to one and a half per cent of his pensionable earnings for each year of membership of that defined benefit pension plan, subject to a maximum of forty-two years' membership. Where a member elects to retire before the normal entitlement date, his annual pension is calculated in accordance with the Regulations.

Clause 39 provides for the value of a deferred pension.

Clause 40 specifies the ancillary benefits which may be provided by a pension plan which include disability benefits and death benefits.

Clause 41 provides for the option for an inactive member of a pension plan to elect to receive an early entitlement pension.

Clause 42 makes provision for the transfer of the deferred benefit under a pension plan to another pension plan or a prescribed entitlement savings arrangement or for purchase for the member of a life annuity that will not commence before the earliest date on which the member would have been entitled to receive payment of pension benefits under the pension plan. The member may also elect to remain in the current pension plan.

Clause 43 provides for the purchase of a pension or benefit from an approved provider by a trustee.

Clause 44 provides for joint and survivor pensions and clarifies how a former member's pension benefit is to be distributed on his death.

Clause 45 provides for the trustee to require all necessary relevant information before payment of a pension or benefit or payment of the commuted value of the pension or benefit and for the discharge of all liabilities upon making the payment.

Clause 46 provides for the surviving spouse of a former member of a pension plan who is receiving a pension to remain entitled to such pension notwithstanding the subsequent remarriage of such surviving spouse.

Clause 47 clarifies how the pension benefits of a member or former member of a pension plan who dies before the commencement of payment of a pension are to be distributed.

Clause 48 provides for the payment of greater benefits under a pension plan to a member whose life expectancy is likely to be reduced because of the mental or physical disability of that member.

Clause 49 provides for the payment of a lump sum as prescribed under the pension plan to a member or former member whose life expectancy is likely to be reduced to two years or less provided that when a member or former member has a spouse or dependent children, the payment is not to exceed fifty per cent of the commuted value.

Clause 50 permits a pension plan to provide for a lump sum payment to a former member of a portion of the commuted value of a benefit if the annual benefit payable at a normal entitlement date is less than the prescribed minimum pension.

Clause 51 provides for the payment of pension benefit to a spouse on the breakdown of marriage.

Clause 52 prohibits discrimination on the basis of sex of a member, former member or other beneficiary under a pension plan in determining the amount of contributions required to be made, benefits and eligibility for membership.

Clause 53 provides for pension benefits, pensions or deferred pensions to be adjusted in accordance with internationally accepted formulae respecting inflation increases.

Part 7 of the Bill contains clauses 54 to 60 which provide for contributions to pension plans.

Clause 54 prohibits a defined benefit pension plan from being registered unless it provides for funding sufficient to provide the benefits and rights under the pension plan.

Clause 55 makes provision for a member and his employer to contribute to the pension fund of a pension plan on behalf of that member from the mandatory date of that member's participation. Clause 55 also makes provision for a contribution date deadline, delinquent contributions, action by a trustee and the sharing of information regarding delinquent employers with other Government departments or agencies.

Clause 56 provides contribution rates for the employee and employers. An employee is not to be required, to contribute to a standard pension plan or international pension plan that is a defined contribution pension plan more than half the mandatory contribution rate of his earnings but may contribute less with his employer's permission subject to the year's maximum pensionable earnings. An employer is required to contribute such a percentage (being not less than half of the prescribed mandatory contribution rate) of the member's earnings that when added with the employee's contribution equals not less than the prescribed mandatory contribution rate subject to the year's maximum pensionable earnings. The mandatory contribution rate is not applicable to supplementary pension plans. Clause 56 also gives a member the discretion to make additional voluntary contributions prior to entitlement and gives a member the discretion to make designated voluntary contributions which may, subject to the Regulations, be withdrawn by the member for the purpose of health, education or housing.

Clause 57 provides for money received from an employee by an employer under an arrangement that the employer will pay the money into a pension fund as the employee's contribution under the pension plan to be deemed to be held by the employer in trust for the employee until the employer pays the money into the pension fund.

Clause 58 makes an employer liable to pay interest to a pension fund, from the contribution date deadline up to the date of actual payment to the fund, on all money that is due to be paid by him to that pension fund at eighteen per cent per annum calculated and compounded on a monthly basis, in addition to any other fees, fines and penalties. Clause 58 also provides for the amount of any delinquent contribution to be collected and paid to be inclusive of the accrued interest.

Clause 59 makes provision for a trustee to have a prescribed level of capital.

Clause 60 imposes an obligation on every person engaged in selecting an investment to be made with the assets of a pension fund to ensure that the investment is selected in accordance with the criteria set out in the legislation.

Part 8 of the Bill contains clauses 61 to 68 which provide for withdrawal of pension funds by non-current homeowners.

Clause 61 contains definitions for the purposes of Part 8.

Clause 62 provides for the withdrawal of pension funds from a standard pension plan or supplementary pension plan in an amount not exceeding thirty-five thousand dollars by a person who is a Caymanian and does not currently own a dwelling unit as a deposit to purchase an existing dwelling unit, construct a new dwelling unit or purchase residential land.

Clause 63 provides for the withdrawal of pension funds from a standard pension plan or supplementary pension plan in an amount not exceeding thirty-five thousand dollars by a person who is a Caymanian as an amount to pay off an existing mortgage on a dwelling unit in the Islands.

Clauses 62 and 63 both impose a duty on a trustee, within forty-five days of the application being submitted, to issue the deposit or amount if satisfied that the applicant is entitled to withdraw the deposit or amount applied for or if not satisfied, to refuse the application and to give reasons for the refusal to the applicant. The clauses also provide for payment back to the pension plan where, before attaining the normal age of pension entitlement, the person sells the dwelling unit or residential land acquired.

Clause 64 makes provision for additional contributions to be made by a person who makes a withdrawal from his account in a standard pension plan or supplementary pension plan.

Clause 65 prohibits a person from withdrawing more than thirty-five thousand dollars in aggregate from his accounts in more than one standard pension plan or supplementary pension plan.

Clause 66 provides for a restriction to be entered by the Registrar of Lands with respect to a dwelling unit or residential land that is the subject of a withdrawal.

Clause 67 provides for the removal of a restriction.

Clause 68 provides a defence to a prosecution where a person took all reasonable steps to comply with the relevant provision of the legislation.

Part 9 of the Bill contains clauses 69 to 73 which provide for locking in.

Clause 69 restricts the entitlement of a member or a former member to a refund from a pension fund of contribution made in respect of employment in the Islands or investment earnings on such contributions or otherwise to receive a payment or transfer from a pension plan. Persons capable of retiring in the Islands are excluded from the provisions of the clause and an election to receive payment of a lump sum may only be made where a member's employment is terminated, that member ceases to reside in the Island and no contributions have been made to a pension plan by or on behalf of the member for a period of two years or more.

Clause 70 clarifies that a pension plan may provide for shorter qualification periods for entitlement to a deferred pension other than those set out in clause 35 or 36 in respect of employees who are transferring benefits to another approved pension plan.

Clause 71 clarifies that any transaction is void if it purports to convey, assign, charge, anticipate or give as security a right to receive money that is or may become payable under a pension plan or assets being transferred from a pension fund. This does not apply with respect to a transfer required by a court order relating to the transfer of assets on a divorce, legal separation or decree of nullity.

Clause 72 provides for money payable under a pension plan, transferred from a prescribed fund for purchase of a life annuity or payable from a prescribed entitlement savings arrangement or life annuity to be exempt from execution, seizure or attachment or any other process that is taken by a creditor. However, subject to clause 51, this does not apply to prevent execution, seizure or attachment in satisfaction of a court order made upon a divorce or separation for maintenance or other payments respecting divorce or separation.

Clause 73 provides for the commutation or surrender of a pension plan.

Part 10 of the Bill contains clauses 74 to 83 which provide for the termination and winding up of pension plans.

Clause 74 provides for the procedure for winding up of pension plans in whole or in part.

Clause 75 makes provision for the Authority to require the termination and winding up of a pension plan in whole or in part in cases such as cessation or suspension of employees' contributions to the pension fund, failure by the employer to make contributions to the pension fund or where, in the case of a multi-employer pension plan, there is a significant reduction of the number of members.

Clause 76 imposes a duty on a trustee of a pension plan that is to be wound up in whole or in part to file a winding up report and a requirement for approval by the Authority of the winding up report. Clause 76 also imposes a duty on the Authority to notify the Department of the winding up of a pension plan and the effective date of winding up.

Clause 77 makes provision for the Authority to appoint a trustee to carry on the winding up of a standard pension plan or a supplementary pension plan in a timely manner. The reasonable costs of the Authority or trustee may be paid out of the pension fund.

Clause 78 provides for the trustee to give notice of entitlement to each person entitled to a benefit or refund on the winding up of a pension plan.

Clause 79 provides the determination of the amounts of pension benefits and any other rights, benefits and entitlements on the winding up of a pension plan in whole or in part.

Clause 80 makes provision for the accrual of pensions during the period of notice of termination of a pension plan.

Clause 81 provides for the employer or each participating employer of a pension plan that is terminated to pay into the pension fund an amount equal to the total of all payments that are due or that have accrued and that have not been paid into the pension fund.

Clause 82 provides for the pension fund of a pension plan that is wound up to continue to be subject to the legislation and the Regulations until all the assets of the pension fund have been disbursed.

Clause 83 provides for the surrender of a licence by an administrator.

Part 11 of the Bill contains clause 84 which prohibits the payment of surplus under a defined benefit pension plan to any employer and requires that such

surplus be used solely for the benefit of members, former members and claimants of a pension plan. However, on the winding up of a defined benefit plan where a surplus exists after the payment of all obligations of the pension plan, this prohibition does not apply to the extent of the amount of that surplus.

Part 12 of the Bill contains clauses 85 and 86 which provide for sales and transfers of pension plans and new pension plans.

Clause 85 provides for the continuation of benefits under a successor employer.

Clause 86 makes provision for the transfer of assets and liabilities, and the carrying forward of benefits and rights of members, under a pension plan where a pension plan is established or utilised by an employer to be a successor to an existing pension plan.

Part 13 of the Bill contains clauses 87 to 91 which provide for the powers and duties of the Authority.

Clause 87 provides for the duties of the Authority to include the examination and the making of determinations with respect to applications for licences.

Clause 88 provides for the Authority to give directions to an administrator or trustee to cease or refrain from taking any action in respect of a pension plan or a pension fund where the pension plan or pension fund is not being administered in accordance with the legislation or the pension plan or where the pension plan does not comply with the legislation or the trustee or administrator of the pension plan is contravening a requirement of the legislation.

Clause 89 provides for the powers of the Authority which include the power to require a trustee or administrator to take steps to rectify matters where, for example, the Authority is of the opinion that a trustee or administrator is or appears unlikely to be able to meet its obligations as they fall due.

Clause 90 provides for the Authority to order an administrator, to take actions to correct a report in respect of a pension plan, where the assumptions or methods used by the administrator in the preparation of the report are inappropriate for a pension plan, the assumptions or the methods used in the preparation of the report do not accord with accepted actuarial principles approved by the Authority or the report does not meet the requirements of the legislation, the Regulations or the pension plan.

Clause 91 provides for the issuance of orders by the Grand Court for the preservation of assets, books and papers of the administrator.

Part 14 of the Bill contains clauses 92 to 112 which provide for miscellaneous matters.

Clause 92 imposes a duty on the Department to conduct surveys and research programmes and compile statistical information related to pensions and pension plans. The Department is empowered to request a trustee, an employer, an administrator or a member of a pension plan to provide information necessary to compile the statistical information, and makes it an offence for a trustee, an employer, an administrator or a member not to comply with such a request.

Clause 93 gives the Authority the discretion to require a trustee, an administrator or any other person to supply information or appear before the Authority with the information required and makes it an offence for a person to whom a request is made to fail to comply with the request.

Clause 94 gives the Department the discretion to require an employer or any other person to supply information or appear before the Department with the information required and makes it an offence for a person to whom a request is made to fail to comply with the request.

Clause 95 gives the Authority the discretion to require a trustee to secure an appraisal of any or all of the assets of the pension fund by one or more independent valuers, or the Authority may obtain the appraisal at the expense of the trustee.

Clause 96 protects the Authority or Department, or an officer or employee of the Authority or Department against liability in damages for anything done or omitted in the discharge or the purported discharge of their respective functions, responsibilities, powers and duties under the legislation unless it is shown that the act or omission was in bad faith.

Clause 97 provides for the extension of certain time limits by the Authority or the Department.

Clause 98 provides for entry and access to business premises and for examination, investigations or inquiries by the Authority, Department and authorized officers.

Clause 99 makes it an offence for a person to hinder or obstruct any person lawfully carrying out a duty and for a person to provide false or misleading information in connection with any information the person is required to provide.

Clause 100 provides for a Justice of the Peace to grant an inspection order if satisfied on evidence upon oath or affirmation by the Authority, the Department or an authorized officer.

Clause 101 provides for the Department to make an order where an employer is contravening a requirement of the legislation or the Regulations. The order may be filed in the Grand Court and upon such filing is enforceable as an order of that court.

Clause 102 contains a general offence provision. The clause entitles the court to order payment to a pension fund in addition to imposing any fine, where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an approved provider. A limit of seven years is introduced for summary proceedings under the legislation.

Clause 103 provides for fixed penalty offences so that the offences listed in Schedule 2 are designated as ticketable offences for which proceedings may be commenced by ticket issued by the Department. The clause also provides for the amount of a fixed penalty to be specified in Schedule 2 and for a person to have the option of admitting liability for the offence by pleading guilty and paying the amount of the fixed penalty to the general revenue of the Islands or to request a trial. Where a payment is not made or a trial is not requested, the court date for trial shall be the date specified on the ticket which shall be no less than twenty-eight days after the date the ticket was served. A person convicted of a ticketable offence in a trial requested or as a result of a failure to exercise the options is liable to a fine greater than the fixed penalty for that offence but not exceeding the maximum fine provided for that offence under the relevant provision of the legislation.

Clause 104 provides for the liability of directors or other officers where a body corporate commits an offence under the legislation.

Clause 105 provides that, in addition to any other remedy and to any penalty imposed by law, a contravention of the legislation or an order or approval may be restrained by action at the instance of the Authority, the Department or the administrator of the pension plan affected by the contravention.

Clause 106 provides the procedure for service of notices orders or other documents.

Clause 107 requires a trustee or administrator of a pension plan who is required to take action under the legislation to take the action within the prescribed period of time.

Clause 108 provides for an appeal to lie to the Grand Court against any decision of the Authority or the Department and for an appeal not to operate as a stay of any decision appealed against. The Rules Committee of the Grand Court has the discretion to make Rules of procedure governing the conduct of appeals.

Clause 109 entitles an employee in writing to make a disclosure of information to the Department or an authorized officer where the employee reasonably believes that an employer has failed to comply with the legislation and prohibits an employer from subjecting or threatening to subject an employee to any victimization on account of a disclosure.. An employee who reasonably believes that he has been victimized as a result of his disclosure is entitled to make a complaint to a Labour Tribunal.

Clause 110 provides for the legislation to prevail against any other Law in cases of inconsistency except the Confidential Relationships (Preservation) Law (2009 Revision) which is to prevail over the legislation.

Clause 111 empowers the Governor in Cabinet to make Regulations.

Clause 112 repeals the National Pensions Law (2010 Revision).

Part 15 of the Bill contains clauses 113 to 121 which provide for savings and transitional matters.

**NATIONAL PENSIONS BILL, 2012**

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CAYMAN ISLANDS

**A BILL FOR A LAW TO REPEAL AND REPLACE THE NATIONAL PENSIONS LAW (2010 REVISION); TO MAKE FURTHER PROVISION FOR THE REGULATION OF PENSIONS IN THE CAYMAN ISLANDS; AND TO PROVIDE FOR INCIDENTAL AND CONNECTED PURPOSES**

Enacted by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY PROVISIONS

1. (1) This Law may be cited as the National Pensions Law, 2012.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Governor in Cabinet.

2. In this Law -

Interpretation

“active member”, in relation to a pension plan, means a member of the pension plan who -

- (a) has not terminated his employment under the pension plan;
- (b) has not exercised his entitlement under section 36; and
- (c) has not been deemed under section 79(1) to have terminated his employment under the pension plan;

“actuarial present value”, in relation to a pension or benefit, means the value of the pension or benefit calculated in the prescribed manner and as of a fixed date;

“actuary” means a person who has qualified as an actuary by examination of the Institute of Actuaries in England or the Faculty of Actuaries in Scotland or the

Society of Actuaries in the United States of America or Canada, and who is a current member in good standing of one of the professional associations referred to or a person in good standing with some other actuarial qualification who is recognised by the Authority as such for the purpose of this Law;

“additional voluntary contribution” means a contribution to a pension fund by a member in excess of the amount the member is required by a pension plan or this Law to contribute;

“administer” in relation to a pension plan, means to supervise the function of or otherwise manage a pension plan and includes advertising, promoting, soliciting funds or membership in relation to a plan or accepting membership or contributions on behalf of a pension plan;

“administrator” means a person who holds a licence to administer a pension plan granted under section 12;

“ancillary benefit” means any of the benefits described in section 40;

“approved provider” means an insurance company or other company licensed by the Authority to provide in the Islands individual entitlement accounts, entitlement savings arrangements, annuities or similar pension products as approved by the Authority;

“assets”, in relation to an employer, means assets that in the ordinary course of business would be entered in the employer’s books of accounts;

“auditor” means a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants in England and Wales, Ireland or Scotland, or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants, and who is a current member in good standing of one of the institutes referred to or a person in good standing with some other accountancy qualification who is recognised by the Authority as such for the purpose of this Law;

(2011 Revision)

“Authority” means the Cayman Islands Monetary Authority established under section 5 of the Monetary Authority Law (2011 Revision) and includes any employee of the Authority acting under the Authority’s authorization;

“authorized officer” means a person authorized in writing by the Authority or the Department;

“benefit” means a pension benefit or an ancillary benefit;

“Caymanian” has the meaning assigned to that expression under the Immigration Law (2011 Revision);

(2011 Revision)

“certified copy” means a copy certified by a notary public or justice of the peace to be a true copy;

“cessation”, in relation to contributions, means the discontinuation of contributions to a particular pension plan;

“claimant”, in relation to a pension plan, means a person other than a member or former member who, as a result of another person’s membership at any time in a pension plan, is or may be entitled to a right or benefit under such pension plan;

“commuted value”, for the purpose of determining the lump sum amount that is equivalent to a pension or benefit, means the value of the pension or benefit calculated in the prescribed manner and as of a fixed date;

“conjugal period” means a period beginning with the marriage of a man and a woman and ending on either the death of one of them or on the date set out in -

- (a) a decree of dissolution of the marriage;
- (b) a decree of nullity of the marriage;
- (c) a decree of presumption of death of one of them; or
- (d) a decree of judicial separation;

“continuous”, in relation to employment, membership or service, means continuous without regard to periods of temporary suspension of employment, membership or service of less than six months, and notwithstanding periods of lay-off from employment;

“contribution date deadline” means the day specified in section 55(2) for remittance to employees’ pension plans;

“contributory benefit” means a pension benefit or part of a pension benefit in respect of which a member is required to make contributions under the terms of the pension plan;

“deferred benefit”, in relation to a member of a pension plan, means a benefit other than an immediate benefit;

“deferred pension” means a deferred benefit that is not in payment;

“defined benefit” means a benefit determined in advance with reference to various factors including level of earnings and length of employment;

“defined benefit pension plan” means a pension plan providing a defined benefit;

“defined contribution benefit” means a benefit that is determined solely with reference to and is provided by, contributions made by or for the credit of a member together with the investment yield of such accumulated contributions and that is determined on an individual account basis;

“defined contribution pension plan” means a pension plan providing a defined contribution benefit;

“delinquent contribution” means any contribution due to be paid into a pension plan which has not been received into the pension plan by the contribution date deadline;

“Department” means the Department of Government responsible for national pensions;

“dependent child” means a child who has not yet reached his 18<sup>th</sup> birthday, or, if in full time education, his 23<sup>rd</sup> birthday;

“disability”, in relation to a member, means unable because of a physical or mental condition to perform most or all of the tasks related to that member’s employment;

“dissolution of marriage”, means the end of the conjugal period other than by death or presumption of death;

“document” includes any record held, kept or stored electronically;

“early entitlement” has the meaning set out in section 41;

“earnings” means -

- (a) in the case of an employee, any wages, salary, leave pay, fee, commission, bonus or gratuity, or other payment or allowance, or the market value of any other benefit, paid, payable or provided by an employer, directly or indirectly, to that employee, in consideration of employment, but does not include the

- employer's portion of any other payments or compensation required by law, to be paid on behalf of the employee; or
- (b) in the case of a self-employed person, any wages, salary, leave pay, fee, commission, bonus or gratuity, or other payment or allowance, or the market value of any other benefit, paid, payable or provided, directly or indirectly, to that self-employed person, in consideration of employment;

“employee” has the meaning assigned to that expression under section 2 of the Labour Law (2011 Revision);

(2011 Revision)

“employer” has the meaning assigned to that expression under section 2 of the Labour Law (2011 Revision);

“entitlement” means in relation to employment, when an employee is entitled to be paid his pension benefits, whether through early entitlement, entitlement at the normal age of pension entitlement, or at a later entitlement age;

“former member” means a person who was a member of a pension plan and who has terminated employment or membership in a pension plan, and is -

- (a) entitled to a deferred benefit payable from the pension fund;
- (b) in receipt of a pension payable from the pension fund;
- (c) entitled to commence receiving payment of a pension benefit from the pension fund after termination of employment or membership; or
- (d) entitled to receive any other payment from the pension fund;

“fully funded”, in relation to a pension plan, means to have at a given time, sufficient assets in a pension plan to provide for all pensions and other benefits as they become payable;

“immediate benefit” means a benefit under the pension plan where payment of the pension in respect of the benefit is to commence not later than the first day of the month following the termination of the employment or membership of the member;

“inactive member”, in relation to a pension plan, means a member of the pension plan other than an active member;

“international pension plan” means a pension plan that is established and regulated outside of the Islands which is provided to an employee in the Islands by an employer in the Islands that has employees in two or more countries; ;

“joint and survivor pension” means a pension payable during the joint lives of the person entitled to the pension and his spouse and thereafter during the life of the survivor of them;

(2011 Revision) “key employee” has the meaning assigned to that expression under section 2 of the Immigration Law (2011 Revision);

(2011 Revision) “Labour Tribunal” means a Labour Tribunal established pursuant to section 74 of the Labour Law (2011 Revision);

“licence” means a pension plan administrator licence required under section 10 and granted under section 12;

“mandatory contribution rate” means the percentage of a member’s earnings prescribed under this Law from time to time, currently being ten per cent;

“member”, in relation to a pension plan, means a person who is or may be entitled to a benefit or refund of the contributions to the person’s pension account under the pension plan;

“multi-employer pension plan” means a pension plan established and maintained for self-employed persons or employees of two or more employers who contribute or on whose behalf contributions are made to a pension fund, but does not include a pension plan where all the employers are affiliated;

“normal age of pension entitlement” means sixty-five years of age except that a person who attains sixty years of age within three years of the date of commencement of this Law may opt for a normal age of pension entitlement of sixty years of age;

“normal entitlement date” means the normal entitlement date referred to in section 34;

“order” means an order in writing;

“partial winding up” means the termination of part of a pension plan and the distribution of the assets of the pension fund related to that part of that pension plan;

“pension” means a benefit which is being paid at regular intervals;

“pension benefit”, in relation to -

- (a) a member of a pension plan, means the entitlement of the member or of another person upon the death of the member to the periodic amounts provided under the pension plan for the lifetime of the member; or
- (b) a former member of a pension plan, means the entitlement of the former member or of another person upon the death of the former member to the periodic amounts provided under the pension plan for the lifetime of the former member,

but does not include an ancillary benefit;

“pension fund” means a fund maintained to provide benefits payable under a pension plan;

“pension plan” includes a defined benefit pension plan or a defined contribution pension plan constituted and administered to provide pension benefits for employees but does not include -

- (a) an employee’s profit sharing plan or a deferred profit sharing plan;
- (b) subject to Part 8, a plan to provide cash withdrawals from the fund or lump sum payments such as a superannuation scheme or college education savings scheme;
- (c) a plan under which all pension benefits are provided by contributions made by members who are not self-employed; or
- (d) any other prescribed type of plan;

“pensionable earnings” means the average annual rate of earnings received by a member in that consecutive sixty month period during which his earnings were the highest, or if membership is less than sixty months, the average annual rate of earnings over the period of his membership subject, in either case, to a prescribed maximum;

“permanent resident” has the meaning assigned to that expression under section 2 of the Immigration Law (2011 Revision); (2011 Revision)

“person capable of retiring in the Islands” means -

- (a) a Caymanian;
- (b) a key employee;
- (c) a permanent resident; or
- (d) the spouses of the persons referred to in paragraphs (a), (b) and (c).

(2006 Revision)

“personal representative” has the meaning assigned to that expression under section 2 of the Succession Law (2006 Revision);

“prescribed” means prescribed in the Regulations;

“reciprocal transfer agreement” means an agreement respecting two or more pension plans that provides for the transfer of money, credits for employment or other matters in respect of individual members who are transferring to and from registered pension plans whether in or outside the Islands;

(2004 Revision)

“Registrar of Lands” means the person appointed as such pursuant to section 5 of the Registered Land Law (2004 Revision).

“Regulations” means regulations made under this Law;

“self-employed person” means a person over school leaving age whose earnings (otherwise than in the capacity of an employee) derive from his production (in all or part) of goods or services in the Islands, or his trade in goods or services in or from the Islands;

(2011 Revision)

“specialist caregiver” has the meaning assigned to that expression under section 2 of the Immigration Law (2011 Revision);

“spouse” means a man or a woman who -

- (a) in the case of a man, is married to the woman; or
- (b) in the case of a woman, is married to the man;

“standard pension plan” means a pension plan that is not a supplementary pension plan or an international pension plan;

“supplementary pension plan” means a pension plan which is supplemental in nature because it is a pension plan in excess and apart from an employee’s pension plan provided by his employer as required by this Law, such plans being over and above the minimum standards required by this Law and funded by work performed in the Islands;

“surplus” means the excess of the value of the assets of a pension fund related to a defined benefit pension plan over the value of the liabilities under the pension fund, both calculated in the prescribed manner;

“surviving spouse”, in relation a member of a pension plan who has died, means the person who was the spouse of that member on the date of the member’s death;

“termination”, in relation to a pension plan, means the winding up of a pension plan, or the closure of a pension plan under any other means allowed by this Law;

“trustee” means a person appointed as a trustee pursuant to section 8;

“winding up”, in relation to a pension plan, means the discontinuation of the accrual of benefits under a plan and distribution of the assets of the pension plan after the pension plan is terminated; and

“year’s maximum pensionable earnings” means earnings totalling in any year sixty thousand dollars per employment or such other amount as may be prescribed.

3. This Law applies to pension plans maintained for the benefit of employees in the Islands. Application of Law to certain pension plans

4. (1) A person shall notify the Department in writing immediately upon establishing a business, indicating whether the person will be only self-employed or will hire employees. Notification of Department

(2) An employer or a self-employed person having an established business prior to the commencement of this Law shall within twelve months of this Law coming into effect, notify the Department in writing of his existence.

(3) An employer or a self-employed person, upon closing a business for any reason, shall immediately notify the Department in writing of the closing of the business.

(4) An employer or a self-employed person who fails without reasonable cause to notify the Department pursuant to subsection (1), (2) or (3), within the time limit specified, commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars.

5. (1) Subject to section 33(2), an employer in the Islands shall provide a standard pension plan or international pension plan or make contributions to a standard pension plan or an international pension plan for every employee employed by the employer in the Islands which shall, at the employer’s discretion, be either a defined benefit pension plan or a defined contribution pension plan. Establishment of pension plans

(2) Subject to section 33, an employer who fails without reasonable cause to comply with the requirements of subsection (1) commits an offence and is liable -

- (a) in the case of a first offence, on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both;
- (b) in the case of a second offence, on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of three years, or to both; or
- (c) in the case of a third or subsequent offence, on conviction on indictment to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both,

in addition to any other fees, fines, penalties or interest due under this Law in respect of any contribution not made within the time specified in this Law.

(3) An employer shall maintain a written notification, acknowledged by the employee in writing, of the pension plan referred to in subsection (1).

(4) An employer who fails without reasonable cause to comply with subsection (3) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(5) For each employee, except an employee for whom an employer is not required to provide a pension plan or to contribute to a pension plan under section 33(2), an employer shall keep and maintain records showing -

- (a) the name of the employee;
- (b) the date the employment commenced and the duration;
- (c) whether the employment is part time or full time;
- (d) the rate of pay and salaried arrangements;
- (e) gross and net amounts of pay;
- (f) bonuses;
- (g) resignations and terminations relating to the employee;
- (h) the name of the pension plan;
- (i) all deductions from earnings of the employee for pension contributions;
- (j) all contributions made by the employer and employee and evidence of such payment to the pension plan;
- (k) the period over which such contributions were made;
- (l) the dates on which the contributions were made; and
- (m) any interest payments made in the name of the pension plan.

(6) The contributions shall be stated clearly and there shall be no comingling; that is, contributions shall be differentiated from other payments that employers are required to pay, such as health insurance.

(7) An employer shall retain books and records required to be kept under subsections (3) and (5) for a minimum period of seven years from the date on which they are prepared.

(8) An employer who fails without reasonable cause to comply with subsection (5), (6) or (7) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(9) An employee shall be deemed to be employed in the Islands -

- (a) if he is normally resident in the Islands;
- (b) where the office of his employer to which he is required to report to work is situated in the Islands; or
- (c) where the office from which the person's salary, wage or other remuneration is paid is situated in the Islands.

6. Nothing in this Law shall be construed to prevent the registration under this Law of any pension plan that provides pension benefits and ancillary benefits which are more advantageous to its members than those specified under this Law. Greater pension benefits

7. In determining for the purpose of this Law whether a person is a fit and proper person, regard shall be had to all circumstances, including that person's - Determination of fitness and propriety

- (a) honesty, integrity and reputation;
- (b) competence and capability; and
- (c) financial soundness.

## PART 2 - LICENSING AND ADMINISTRATION

8. A pension plan shall appoint a trustee in accordance with section 9. Pension plan shall have trustee

9. (1) For the purposes of this Law, only the following persons may be appointed as a trustee for the purposes of section 8 - Eligibility to act as trustee of a pension plan

- (a) individuals appointed to a board of trustees pursuant to the pension plan and approved by the Authority as fit and proper;
- (b) a trust company licensed in accordance with the Banks and Trust Companies Law (2009 Revision) and approved by the Authority to act as trustee, provided that, in respect of the provisions of this Law, the directors of the trust company shall have the same fiduciary duty and obligations as the trustees of a trust; or (2009 Revision)

(c) in the case of an international pension plan, a trustee approved by the Authority.

(2) At least fifty per cent of the members of the board of trustees referred to in subsection (1)(a) shall be members of the pension plan except that -

- (a) if at least fifty per cent of the members of the pension plan are Caymanian, Caymanian representation on the board shall be at least fifty per cent;
- (b) if between twenty-five per cent and fifty per cent of the members of the pension plan are Caymanian, Caymanian representation on the board shall be at least twenty-five per cent;
- (c) if between five per cent and twenty-five per cent of the members of the pension plan are Caymanian, at least one Caymanian representative shall be a member of the board; and
- (d) if less than five per cent of the members of the pension plan are Caymanian, no Caymanian representation is required on the board.

(3) For the purposes of subsection (2) Caymanians or permanent residents are eligible to serve on the board of trustees as Caymanian representatives.

(4) A person who acts as a trustee in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.

Prohibition on  
administration of  
pension plan

10. (1) A pension plan shall appoint an administrator.

(2) Subject to subsection (3), and sections 11, 12 and 13, a person shall not administer a pension plan or hold himself out to be an administrator or solicit business as an administrator unless the person holds a pension plan administrator licence issued by the Authority.

(3) A person who is a receiver or trustee in bankruptcy of an administrator of the pension plan shall not in or from within the Islands administer a pension plan except for the purpose of transferring -

- (a) within six months of his appointment, the net assets into another registered pension plan; or
- (b) within thirty days of his appointment, the administration of the pension plan to another administrator;

and in the event that the said transfer does not take place within the time specified in paragraph (a) or (b), as the case may be, the Authority shall act as administrator, or appoint an administrator, of the pension plan.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.

11. (1) A licence authorises the holder of such licence to act or carry on business as an administrator in respect of the pension plans specified in the licence. Licence

(2) Nothing in this section prevents a trustee that is a trust company from administering a pension plan provided it is licensed as an administrator in accordance with section 12.

(3) Subject to subsection (2), where the trustee administers the pension plan, any reference in this Law to an administrator of a pension plan shall be construed as a reference to the trustee acting as administrator.

12. (1) An application for a licence shall be made to the Authority in the prescribed form provided or approved for the purpose by the Authority and accompanied by such information as determined by the Authority together with the prescribed application fee. Application for, and grant and validity of, licence

(2) Where an application is made pursuant to subsection (1), the Authority, if satisfied pursuant to subsection (3), may, after consultation with the Department, grant a licence, subject to such conditions as determined by the Authority for the proper operation and supervision of the licensee.

(3) The Authority shall not grant a licence under this section unless it is satisfied that -

- (a) the applicant has sufficient expertise to administer pension plans;
- (b) the business as a pension plan administrator will be carried on by persons who are fit and proper persons to be directors, managers or officers of the administrator in their respective positions;
- (c) the applicant will be able to comply with the requirements of this Law and the Regulations and with the Money Laundering Regulations (2010 Revision);
- (d) the grant of the licence will not be against the public interest;
- (e) the applicant has personnel with the necessary skills, knowledge and experience and has such facilities and such books and

(2010 Revision)

records as the Authority considers appropriate, having regard to the nature and scale of the business;

- (f) the structure of the applicant's group, if any, will not hinder effective supervision;
- (g) the applicant's capital complies with the prescribed level pursuant to section 59; and
- (h) the applicant has a place of business in the Islands.

(4) The Authority shall cause notice of each licence granted under this section to be published in the Gazette and via any other media as the Authority determines.

(5) A person shall not, in connection with an application for a licence, supply to the Authority information he knows or should reasonably know to be false or misleading.

(6) A person who contravenes subsection (5) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.

(7) A licence shall be valid for a period of one year.

Restriction on pension plan administration, opening subsidiary, etc., and change of name

13. An administrator -

- (a) shall administer a pension plan only in accordance with the information given in its approved licence application and business plan and shall seek the prior written approval of the Authority for any change to the approved business plan or the information supplied in the application; and
- (b) shall not, without the prior written approval of the Authority, open outside the Islands a subsidiary branch, agency or representative office or change its name.

Registration of pension plan

14. (1) All pension plans shall be registered by the Authority.

(2) An application for registration of a standard pension plan shall be made by the trustee to the Authority in the prescribed form and accompanied by -

- (a) the prescribed fee;
- (b) two certified copies of the document constituting the standard pension plan and the relevant pension fund;
- (c) a certified copy of any reciprocal transfer agreement related to the pension plan;

- (d) a statement of investment policy including the standard pension plan's initial benchmark;
- (e) evidence of the method utilised to address on-going trustee training, where there is a board of trustees;
- (f) a certified copy of the explanation and any other information required under section 30(1);
- (g) details of the person that has accepted the appointment as auditor of the standard pension plan;
- (h) details of any persons who will carry on the functions of administrator, investment manager, investment adviser or custodian of the standard pension plan;
- (i) details of all the individuals to be appointed to the board of trustees or the trust company acting as trustee pursuant to sections 8 and 9;
- (j) in the case of a defined benefit pension plan, an original or certified copy of an actuarial report;
- (k) any other prescribed information respecting the standard pension plan and pension fund; and
- (l) such other information and particulars including copies of any actuarial report or advice given to the administrator or employer in connection with the establishment of the standard pension plan as the Authority considers relevant.

(3) An application for the registration of a supplementary pension plan shall be made to the Authority by the trustee in the prescribed form and accompanied by the following information, and such other information as prescribed -

- (a) the prescribed fee;
- (b) the name of the pension plan;
- (c) the names of the members of the board of trustees, if any;
- (d) the name, telephone number and address of the administrator;
- (e) the number of persons capable of retiring in the Islands who participate, and are expected to participate within the next year, in the pension plan;
- (f) the number of persons registered in the pension plan;
- (g) details of the person that has accepted the appointment as auditor of the pension plan;
- (h) two certified copies of the document constituting the supplementary pension plan and the relevant pension fund; and
- (i) confirmation, and if so required by the Authority, evidence of compliance with the conditions specified in subsection (4).

(4) The conditions referred to in subsection (3)(i) are that -

- (a) the employee's participation in the supplementary pension plan shall be voluntary;
- (b) the supplementary pension plan is offered in addition to a standard pension plan;
- (c) the plan provider shall ensure that -
  - (i) the name, telephone number and address of the administrator;
  - (ii) the latest audited financial statements;
  - (iii) the latest actuarial report;
  - (iv) the estimated value of the fund;
  - (v) the investment performance of the fund over the previous five year period or, if the supplementary pension plan has been in existence for less than five years, since inception;
  - (vi) the name of the trustee or members of the board of trustees;
  - (vii) the funding status of the pension plan;
  - (viii) information to comply with such other guidelines as the Authority may issue from time to time in respect of such a fund; and
  - (ix) any other information that is relevant to allow a potential member to make an informed decision about whether to enrol in the supplementary pension plan,

are provided to a potential member before enrolment in the supplementary pension plan.

(5) An application for the registration of an international pension plan shall be made to the Authority by the trustee in the prescribed form and accompanied by the following information, and such other information as prescribed -

- (a) the prescribed fee;
- (b) the name of the pension plan;
- (c) the names of the members of the board of trustees, if any, or the entity appointed as the trustee;
- (d) the name, telephone number and address of the administrator;
- (e) a copy of the approval of the home jurisdiction regulator and its agreement to notify the Authority of any prescribed information;
- (f) the number of persons capable of retiring in the Islands who participate, and are expected to participate within the next year, in the pension plan;
- (g) the number of persons registered in the pension plan;

- (h) confirmation, and, if so required by the Authority, evidence, that the condition specified in subsection (6) has been and is being complied with;
- (i) details of the firm which has accepted the appointment as auditor of the pension plan; and
- (j) details of delegation or outsourcing by the trustee.

(6) The condition referred to in subsection (5)(h) is that the plan provider shall ensure that -

- (a) the name, telephone number and address of the administrator;
- (b) the country in which the international pension plan is regulated;
- (c) the latest audited financial statements;
- (d) the latest actuarial report;
- (e) the estimated value of the fund;
- (f) the investment performance of the fund over the previous five year period or, if the international pension plan has been in existence for less than five years, since inception;
- (g) the name of the trustee or members of the board of trustees;
- (h) the contribution rate;
- (i) the funding status of the pension plan;
- (j) information to comply with such other guidelines as the Authority may issue from time to time; and
- (k) any other information that is relevant to allow a potential member to make an informed decision about whether to enrol in the international pension plan,

are provided to a potential member before enrolment in the international pension plan.

(7) The trustee shall furnish to the Authority clear details of any proposed changes to any of the information required under subsection (2) or (3) no later than thirty days before such change is due to take effect and the Authority shall cause the information to be updated on an annual basis in the register.

(8) The Authority shall give to the Department notice of each pension plan registered under this section together with other information relating to the registration including details of any persons who will carry on the functions of trustee, administrator, investment manager, investment adviser and custodian of the pension plan.

(9) The Authority shall cause to be published, in the Gazette and via any other media as the Authority determines, notice of each pension plan registered

under this section together with the details of any persons who will carry on the functions of trustee, administrator, investment manager, investment adviser, or custodian of the pension plan.

(10) In this section -

“custodian” means the person entrusted with the safekeeping of the pension fund;

“investment adviser” means a person who advises a person on securities if the advice is given to the person in his capacity as an investor or potential investor or in his capacity as agent for an investor or a potential investor; and advises on the merits of his buying, selling, subscribing for or underwriting a particular security or exercising any right conferred by a security to buy, sell, subscribe for or underwrite a security, whether as principal or agent; and

“investment manager” means a person acting on behalf of a pension plan who manages its investments in circumstances involving the use of discretion.

Contents of pension plan

15. (1) The document that constitutes a pension plan shall contain the following information -

- (a) the method of appointment and the details of the appointment of the administrator of the pension plan;
- (b) the conditions for membership of the pension plan;
- (c) the benefits and rights which will accrue upon -
  - (i) termination of employment;
  - (ii) cessation of membership;
  - (iii) entitlement; and
  - (iv) death;
- (d) the entitlement date under the pension plan;
- (e) the requirements for entitlement under the pension plan to any pension benefit;
- (f) the contributions or the method of calculating the contributions required by the pension plan;
- (g) the method of determining benefits payable under the pension plan;
- (h) the method of calculating investment earnings and interest to be credited to contributions under the pension plan;
- (i) the mechanism for payment of the cost of administration of the pension plan and pension fund together with a schedule of administration fees;

- (j) the mechanism for establishing and maintaining the pension fund;
- (k) in the case of a defined benefit pension plan, the method of dealing with surplus during the continuation and on the winding up of the pension plan;
- (l) the obligation of the trustee to provide members with information and documents required to be disclosed under this Law and the Regulations;
- (m) the method of allocation of the assets of the pension on the winding up of such pension plan; and
- (n) particulars of any previous pension plan under which members of the pension plan may be entitled to pension benefits.

(2) The documents constituting the trust agreement shall set out the powers and duties of the trustee, and the method of appointing and terminating the trustee.

16. (1) The Authority shall not register a pension plan where, apart from additional voluntary contributions -

Accrual of pension benefits

- (a) the pension plan does not provide for the accrual of pension benefits in a gradual and uniform manner; or
- (b) the formula for computation of the employer's contributions to the pension fund or, in the case of a defined benefit pension plan, the benefits provided under the pension plan, are variable at the discretion of the employer.

(2) The Authority shall register a defined contribution pension plan only if the formula governing allocation of contributions to a pension fund and the investment yield of such accumulated contributions among members of the defined pension plan is variable otherwise than at the discretion of a majority of the members of the defined pension plan.

17. (1) A trustee shall seek the Authority's approval in principle prior to making any amendment to a standard pension plan or a supplementary pension plan.

Registration of amendment

(2) Once the Authority's approval in principle under subsection (1) has been obtained but before the Authority registers the amendment to a standard pension plan or a supplementary pension plan pursuant to subsection (4), the trustee shall give notice in writing containing an explanation of the amendment to -

- (a) each member;
- (b) each former member; and

(c) any other person entitled to payment from the pension fund,  
and the proposed amendment shall be voted on and approved by the members and former members of the pension plan within three months after the date of the notice.

(3) Notwithstanding subsection (2), the trustee shall not be required to obtain the approval of the members of a standard pension plan or a supplementary pension plan for amendments which are statutorily required.

(4) An application for the registration of an approved amendment to a standard pension plan or a supplementary pension plan shall be submitted to the Authority within one month after the vote of the membership under subsection (2), and shall be made in the prescribed form and shall be accompanied by -

- (a) the prescribed fee;
- (b) a certified copy of the amendment;
- (c) a certified statement of notification to participants or members;  
and
- (d) any other prescribed information,

and the Authority shall register the amendment, and the trustee shall file a certified copy of the amended pension plan with the Authority forthwith.

(5) Where an application for registration of an approved amendment to a standard pension plan or a supplementary pension plan is not submitted to the Authority within the time period referred to in subsection (4), the approval in principle under subsection (1) shall expire.

(6) An amendment of a standard pension plan or a supplementary pension plan -

- (a) is not effective; and
- (b) shall not be administered or advertised in any way,

until it is registered by the Authority.

(7) The trustee shall notify each member of the date of registration of an amendment of a standard pension plan or a supplementary pension plan and provide an explanation of the amendment and the date of registration.

(8) The Authority may, upon the written application of a trustee, exempt that trustee from the requirements of subsection (7) where the trustee has been exempted from obtaining the approval of the members of a standard pension plan

or a supplementary pension plan under subsection (2) or where the Authority is of the opinion that the amendment -

- (a) is of a technical nature;
- (b) will not substantially affect the pension benefits, rights or obligations of a member or former member; or
- (c) will not adversely affect any person entitled to payments from the pension fund.

(9) Notwithstanding the provisions of this section, an employer shall not be compelled to comply with the amendment if the amendment exceeds the requirements of this Law.

(10) An amendment of a standard pension plan or a supplementary pension plan which purports to convert a defined benefit pension plan to a defined contribution pension plan, or vice versa, shall be void and of no effect unless made with the prior written consent of the employer.

(11) The employer shall give notice to all members and former members of the pension plan and any other participants in the pension plan of the proposed conversion under subsection (10) as soon as reasonably practicable, but in no event less than ninety days prior to the occurrence of the conversion.

(12) Where an international pension plan is amended, the trustee shall inform the Authority of the amendment and the Authority shall upon review of the amendment inform the trustee of any issues which could negatively impact the pension plan's continued registration or its compliance with this Law or the Regulations.

(13) The Authority shall issue a notice to the Department of any change in the details of registration of a pension plan.

(14) Notwithstanding any provision in a pension plan, a pension plan that has been registered shall be deemed to be amended so that it complies with this Law and the Regulations.

18. An amendment to a standard pension plan or supplementary pension plan made pursuant to section 17 is void where the amendment purports to reduce -

Reduction of benefits

- (a) the amount, the commuted value or the actuarial present value of a pension benefit accrued under the pension plan with respect to employment before the commencement of the amendment;
  - (b) the amount, the commuted value or the actuarial present value of a pension or a deferred pension accrued under the pension plan;
- or

- (c) the amount, the commuted value or the actuarial present value of an ancillary benefit for which a member or former member of the pension plan is eligible.

Prohibition on contracting out or waiving of requirement imposed on employer or trustee

19. A person shall not contract out, or waive a requirement imposed under this Law upon an employer or trustee of a pension plan in favour of a member, former member or claimant and any such contracting out or waiver is void.

Refusal or revocation of registration

20. (1) The Authority shall refuse to register a pension plan or an amendment to a pension plan which does not comply with this Law.

(2) An amendment to a pension plan terminates on the date the Authority revokes the registration of the amendment.

(3) Where the Authority revokes the registration of a plan, the trustee shall wind up the pension plan in accordance with this Law and the Regulations.

(4) In the case of international pension plans, the Authority may refuse to register an international pension plan if the plan provides lesser benefits than are required under this Law.

Prohibition where pension plan registration is refused or revoked

21. (1) A person shall not administer a pension plan if the registration of that plan has been refused or revoked by the Authority.

(2) Subsection (1) does not apply to prevent administration of a pension plan for the purposes of the winding up of that pension plan.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.

Duties and functions of trustee

22. (1) A trustee shall ensure that the administration, custodianship and investment of a pension plan or pension fund are undertaken by qualified and experienced persons.

(2) A trustee shall exercise the care, diligence and skill in the administration of a pension plan and in the management and investment of the pension fund that a trustee would exercise in dealing with the property of another.

(3) A trustee shall not knowingly permit his private interests to conflict with his duties and powers in respect of a pension plan or pension fund.

- (4) A trustee is not entitled to any benefit from a pension plan other than -
  - (a) pension benefits, ancillary benefits or a refund of contributions under the pension plan to which the trustee is entitled as a member, former member or claimant under the pension plan; and
  - (b) such reasonable trustee fees and expenses as are provided by a pension plan.
- (5) Subsection (4) applies with necessary modifications to a member of a board of trustees that is the trustee of a pension plan.
- (6) A trustee shall -
  - (a) pay the prescribed fee within three months of the end of each financial year of a pension plan;
  - (b) file with the Authority each year during the continuation of a pension plan an annual information return relating to the pension plan in the prescribed form within three months of the end of a financial year of the pension plan or within such longer period as the Authority may approve;
  - (c) within three months of the end of a financial year of a pension plan or such longer period as the Authority may approve, file with the Authority audited financial statements of the pension plan prepared in accordance with internationally recognised accounting standards by an independent auditor approved by the Authority, together with a copy of any prescribed management letter issued by the auditor;
  - (d) every three years during the continuation of a defined benefit pension plan with the assistance of an actuary, review the financial operation of the pension plan and file with the Authority an actuarial report within six months of the completion of the review, or such longer period as the Authority may allow;
  - (e) provide performance figures for each pension plan, in the prescribed format, which shall be provided to the Authority within three months of the end of a financial year of the pension plan;
  - (f) provide evidence of on-going trustee training;
  - (g) file with the Authority and the Department a list of all active and inactive employers in the pension plan annually when filing the annual information return under paragraph (b) and also on a monthly basis, thereafter, file with the Department all employer movements in or out of the pension plan;
  - (h) hold annual general meetings dealing with prescribed information and provide a record thereof to the Authority within three months of such meeting;

- (i) file with the Authority such additional reports required under this Law or the Regulations; and
- (j) advertise a pension plan or details relating thereto in the prescribed manner.

(7) A trustee shall, in respect of each supplementary pension plan for which it acts as trustee -

- (a) pay the prescribed fee within three months of the end of the financial year of the supplementary pension plan;
- (b) file with the Authority each year during the continuation of a supplementary pension plan an annual information return relating to the supplementary pension plan in the prescribed form within three months of the end of the financial year of the supplementary pension plan;
- (c) file with the Authority audited financial statements of the supplementary pensions plan prepared in accordance with internationally recognised accounting standards by an independent auditor approved by the Authority, together with a copy of any prescribed management letter issued by the auditor; and
- (d) file with the Authority such additional reports as may be prescribed.

(8) Every international pension plan shall, on an annual basis within three months of the end of its financial year or such longer period as the Authority may approve -

- (a) pay the prescribed fee;
- (b) file with the Authority an annual information return relating to the international pension plan in the prescribed form;
- (c) file with the Authority audited financial statements of the international pension plan prepared in accordance with internationally recognised accounting standards;
- (d) file a list of all active and inactive employers in the pension plan;
- (e) provide performance figures for the pension plan to the Authority, in a format approved by the Authority, within three months of the end of a financial year of the pension plan; and
- (f) file with the Authority such additional reports as may be prescribed.

Delegation by trustee

23. (1) A trustee may delegate to a third party all or part of its functions relating to a pension plan or pension fund under this Law.

(2) If a trustee delegates or outsources any function to a third party relating to a pension plan or pension fund under this Law, the trustee retains full responsibility for ensuring that its legal, regulatory and contractual obligations relating to the outsourced functions are complied with in respect of the pension plan.

(3) Where a trustee outsources any function to a third party relating to a pension plan or pension fund under this Law, the following conditions shall be met -

- (a) there shall be a written contractual agreement between the trustee and third party setting out the outsourcing arrangement; and
- (b) the written contractual agreement shall inform the third party of the regulatory obligations pertaining to the outsourced function.

24. (1) An administrator shall -

- (a) administer the pension plan and pension fund in accordance with this Law and the Regulations; and
- (b) administer the pension plan and any amendment to the pension plan in accordance with the documents filed with the Authority upon registration of such plan or amendment.

Duties and responsibilities of administrator, including segregation of assets, etc.

(2) An administrator shall -

- (a) where more than one pension plan is administered by the administrator, segregate the assets, bank accounts and records of each pension plan from the other; and
- (b) segregate the assets, bank accounts and records of a pension plan from any other business in which the administrator may be engaged.

(3) An administrator shall use his best efforts in the administration of a pension fund using all relevant knowledge and skill that, by reason of the administrator's profession or business or calling, he ought to possess.

(4) In the administration of the pension plan and pension fund, the administrator shall exercise the degree of care and diligence that a prudent person would exercise in dealing with the property of another person.

(5) The Authority may publish prudent investment guidelines which shall set out the Authority's interpretation of the prudent person rule and an administrator shall select, report and monitor a portfolio of pension fund investments and any investment options in accordance with the prudent person rule.

Annual audit of  
administrator

25. (1) An administrator shall have its accounts audited annually by an auditor approved by the Authority.

(2) An administrator shall, in such manner as the Authority may from time to time direct, submit its audited accounts in respect of a financial year of the administrator to the Authority within three months of the end of that financial year or within such extension of that period as the Authority may allow.

(3) An administrator shall file with the Authority an annual return in the prescribed form within three months of the end of its financial year or within such period as the Authority may approve.

(4) An administrator who contravenes subsection (1), (2) or (3) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

Duties of auditor in  
respect of administrator

26. (1) If an auditor, in the course of carrying out an audit of the accounts of an administrator under this Law, obtains information or suspects that the administrator is -

- (a) unable or likely to become unable to meet its obligations as they fall due;
- (b) carrying on or attempting to carry on business or winding up its business voluntarily in a manner that is prejudicial to its participants, beneficiaries or creditors;
- (c) carrying on or attempting to carry on business without keeping any or sufficient accounting records to allow its accounts to be properly audited;
- (d) carrying on or attempting to carry on business in a fraudulent or criminal manner; or
- (e) carrying on or attempting to carry on business otherwise than in compliance with -
  - (i) this Law or the Regulations;
  - (ii) the Monetary Authority Law (2011 Revision);
  - (iii) the Money Laundering Regulations (2010 Revision); or
  - (iv) a condition of the licence,

(2011 Revision)  
(2010 Revision)

the auditor shall immediately give the Authority written notice of his information or suspicion and, in the case of suspicion, his reason for that suspicion.

(2) Without prejudice to subsection (8), if it appears to the Authority that an auditor has failed to comply with subsection (1), the Authority may disqualify

him from being an auditor of an administrator, but the Authority may remove any disqualification imposed under this subsection if satisfied that the person in question will comply with subsection (1).

(3) An administrator shall not appoint as an auditor a person who is disqualified under subsection (2).

(4) Where the Authority has granted approval of an auditor under this Law, the approval may be revoked by the Authority if the Authority is of the opinion that the auditor is not sufficiently competent to carry out an audit of the accounts of an administrator that, in all the circumstances, the auditor is incapable of carrying out the audit objectively.

(5) When an administrator changes its auditor, the Authority may require the former auditor to explain the reasons for the change.

(6) A person carrying out or charged with the carrying out of any function, responsibility, power or duty under this section shall not be liable in damages for anything done or omitted in the discharge or purported discharge of that function, responsibility, power or duty unless it is shown that the act or omission concerned was in bad faith.

(7) A reference in this section to an auditor carrying out an audit of the accounts of an administrator includes a reference to an auditor who was engaged to carry out such an audit or who was in the course of carrying out such an audit but resigned before carrying out or completing the audit or whose contract to carry out or complete the audit was otherwise terminated.

(8) Nothing in subsection (1) shall impose on an auditor carrying out an audit of the accounts of a administrator an obligation to do anything that the auditor would not otherwise be required to do in accordance with generally accepted auditing standards, other than the obligation to provide notice and reasons to the Authority.

(9) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years, or to both.

27. (1) An employer shall provide to the trustee of the pension plan of which his employees are members any information required by the trustee for the purpose of complying with the terms of the pension plan, this Law or the Regulations.

Information provided by  
employer

(2) In subsection (1) -

“employer” includes a predecessor of the employer.

Audits and accounts

28. (1) An employer shall cause to be kept proper payroll accounts, books and records with respect to all sums of money paid by the employer to a pension plan.

(2) For the purposes of subsection (1), proper payroll accounts, books and records shall not be deemed to be kept if there are not kept such payroll accounts, books and records as are necessary to give a true and fair view of the state of affairs of the employer with regards to a pension plan and to explain its transactions.

(3) An employer shall cause all books of account required to be kept under subsection (1) to be retained for a minimum period of seven years from the date on which they are prepared.

(4) An employer that knowingly and wilfully contravenes subsection (1) or (3) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

Advisory committee

29. (1) The members and former members of a standard pension plan or supplementary pension plan, by the decision of a majority of them participating in a vote, may establish an advisory committee.

(2) The advisory committee established under subsection (1) shall inform the Authority of its establishment and include terms of office, and terms of reference.

(3) The advisory committee established under subsection (1) shall inform members of its establishment, details of its membership and their communication details, terms of office and terms of reference.

(4) The inactive members of a standard pension plan or supplementary pension plan are entitled to appoint at least one representative to the advisory committee.

(5) An advisory committee may be established pursuant to subsection (1) to -

(a) monitor the administration of the standard pension plan or supplementary pension plan;

- (b) make recommendations to a trustee respecting the administration of, or other function in relation to the standard pension plan or supplementary pension plan; and
- (c) promote awareness and understanding of the standard pension plan or supplementary pension plan among members, former members and claimants of the standard pension plan or supplementary pension plan and other persons receiving benefits under the standard pension plan or supplementary pension plan.

(6) An advisory committee established under subsection (1) or a member of the advisory committee may examine the records of the administrator relating to the administration of the standard pension plan or supplementary pension plan and the pension fund at the office of the administrator, and may make copies of the records, but shall not, without the written consent of a member, examine information relating to any member's -

- (a) service;
- (b) salary;
- (c) pension benefits; or
- (d) other personal information.

(7) An administrator shall provide to an advisory committee established under subsection (1) or its representative such information as is under the control of the administrator and is required by the advisory committee or its representative for the purposes of the committee.

### PART 3 - DISCLOSURE OF INFORMATION

30. (1) A trustee shall provide, in writing, to each person who under this Law is required to become a member of a pension plan, immediately upon his application for membership in the pension plan -

Information from trustee

- (a) an explanation of the provisions of the pension plan that apply to the person;
- (b) an explanation of the person's rights and obligations under the pension plan;
- (c) details of the performance of the pension fund in the prescribed format; and
- (d) any other information prescribed.

(2) An employer shall, as soon as reasonably practicable, provide to a trustee the information required to enable the trustee to comply with this section.

31. (1) Subject to subsection (2), a trustee shall at the end of each quarter or at such shorter periods, on a calendar year basis, as may be specified in a standard pension plan, give to each member a written statement setting out -

Quarterly statement of pension benefits

- (a) the prescribed information in respect of the standard pension plan which shall cover the pension plan's operations since the last report or since registration in the first instance;
- (b) in the case of a standard pension plan that is a defined benefit pension plan, the member's expected pension benefits as at his normal entitlement date or, in the case of a standard pension plan that is a defined contribution pension plan, the amount of money standing in the member's account; and
- (c) any ancillary benefits for which the member is eligible.

(2) In the case of a supplementary pension plan, a trustee shall give the written statement referred to in subsection (1) to a member annually rather than quarterly.

(3) A trustee shall, where a member terminates employment with an employer or otherwise ceases to be a member of a standard pension plan or supplementary pension plan, give to that member or any other person who is, as a result, entitled to a benefit under the pension plan, a written statement setting out the prescribed information in respect of the benefits, rights and obligations of the member or the other person.

(4) Subsection (3) applies in respect of a standard pension plan or a supplementary pension plan that is a multi-employer pension plan where a member ceases to be a member but does not apply where a member terminates his employment with an employer but continues to be a member.

Inspection of documents

32. (1) On written request, a trustee shall, within two weeks of the request, make available the documents and information in respect of a pension plan and the pension fund listed in section 14 and such other documents and information as may be prescribed for inspection without charge to -

- (a) a member;
- (b) a former member;
- (c) a claimant;
- (d) any other person entitled to pension benefits under the pension plan;
- (e) an agent authorised in writing by a person mentioned in paragraph (a), (b), (c) or (d);
- (f) an employer who is or was required to make contributions to the pension plan;
- (g) a receiver or trustee in bankruptcy of an employer referred to in paragraph (f); and

(h) such other person as may be prescribed.

(2) The documents and information referred to in subsection (1) may be inspected at the premises of the employer of a member or former member or at such other location agreed upon by the trustee and the person making the request.

(3) A person inspecting the documents may copy the documents or purchase from the trustee, at a reasonable fee, copies of the documents.

(4) The trustee and the persons mentioned in subsection (1) may, in accordance with the Regulations, inspect at the offices of the Authority during normal business hours, the copies of the documents that constitute the pension plan and the pension fund and such other prescribed documents as are filed in respect of the pension plan and the pension fund and may obtain copies of the documents upon payment of the prescribed fee.

#### PART 4 - MEMBERSHIP

33. (1) Subject to subsection (2), all employees between the ages of eighteen years and the normal age of pension entitlement shall be members of a standard pension plan or an international pension plan.

Eligibility for membership

(2) An employer is not required to provide a pension plan, or to contribute to a pension plan, for the benefit of an employee who is not a person capable of retiring in the Cayman Islands and who -

- (a) is employed under a work permit for a term of less than one year and has been working in the Islands for a continuous period of less than one year; or
- (b) is employed as a domestic helper to do housework in a private residence, except a specialist caregiver.

(3) For the avoidance of doubt, where an employee is employed under a work permit of one year's duration or longer, the employee shall participate in a standard pension plan or international pension plan immediately upon employment.

(4) For the avoidance of doubt, an employer is required to provide a standard or international pension plan or to contribute to a standard or international pension plan for the benefit of an employee or a who is a person capable of retiring in the Islands, including a domestic helper who is a person capable of retiring in the Islands.

(5) Where an employee is employed by more than one employer, each employer shall be liable to pay contributions to a standard pension plan or an international pension plan in respect of such employee.

(6) With the approval of the Department, an employer may offer or establish a separate standard pension plan or international pension plan for employees employed in less than full-time continuous employment.

(7) The Department shall approve a separate standard pension plan or international pension referred to in subsection (6) if the Department considers that the separate pension plan provides benefits equivalent to those in the standard pension plan or international pension maintained by the employer for employees of the same class employed in full-time continuous employment.

#### PART 5 - ENTITLEMENT AND VESTING

Normal entitlement date

34. (1) The normal entitlement date under a pension plan submitted for registration under this Law shall be the date, not later than three months after attaining the normal age of pension entitlement, on which a person becomes entitled under a registered pension plan to collect his pension benefits.

(2) The first instalment of a member's pension shall be due not later than the first day of the month following the normal entitlement date, unless the member elects otherwise.

(3) An active member who continues employment and membership in a pension plan after the normal entitlement date may elect to continue accruing benefits under the pension plan up to the date of his entitlement and is subject to any terms of the pension plan -

- (a) limiting the number of years of employment or active membership that can be considered for the purpose of determining a member's pension benefit; or
- (b) fixing a maximum amount of a member's pension benefit.

(4) The first instalment of a pension of a member who makes the election described in subsection (3) shall be due not later than the earlier of -

- (a) the date of revocation of the election by the member; or
- (b) the first day of the month following the date of termination of employment of the member.

Deferred pension for past service

35. (1) An active member of a pension plan continued on or after 1<sup>st</sup> June, 1998 who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

(2) The qualifications are that, on the date the member terminates his employment -

- (a) the member shall have been employed by the employer or have been a member of the pension plan for a continuous period of at least ten years;
- (b) the member shall have reached the age of forty-five years; and
- (c) the member shall terminate his employment with the employer before the normal entitlement date under the pension plan.

(3) The benefit referred to in subsection (1) is a deferred pension provided under the pension plan as it existed on the day before 1<sup>st</sup> June, 1998 in respect of employment in the Islands before 1<sup>st</sup> June, 1998.

36. (1) An active member of a pension plan brought into existence on or after 1<sup>st</sup> June, 1998 who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3). Deferred pension

(2) The qualifications are that the member shall -

- (a) be a member of a pension plan on or after 1<sup>st</sup> June, 1998; and
- (b) have terminated membership of a pension plan before the normal entitlement date.

(3) The benefit is a deferred pension provided under the pension plan in respect of employment on or after 1<sup>st</sup> June, 1998.

37. (1) A person who is an active member of a registered pension plan may cease his active membership in the pension plan if no contributions are paid or required to be paid to the pension fund by or on behalf of the member for twenty-four consecutive months, in which case the member is to be designated a former member, having the rights and privileges of a former member. Cessation of membership

(2) For the purpose of determining benefits under this Law, a person mentioned in subsection (1) who ceases his membership in a pension plan shall be deemed to have terminated his employment relating to that pension plan.

(3) For the avoidance of doubt, although a member may cease his active membership in a plan as provided by subsection (1), if the member who terminated his employment is a person capable of retiring in the Islands, he may

not withdraw from the fund any assets attributable to him unless he meets the criteria of normal or early entitlement.

(4) Notwithstanding the provisions of subsection (3), the member who has terminated his employment, regardless of his immigration status in the Islands, may transfer those assets pursuant to section 42.

(5) Subsections (1) and (2) shall not apply if contributions are not paid or are not required to be paid because the person has become a member of another pension plan and there is a reciprocal transfer agreement between the two pension plans.

#### PART 6 - BENEFITS

Minimum benefit

38. (1) A member of a defined benefit pension plan that is continued or established on or after 1<sup>st</sup> June, 1998 shall be entitled at his normal entitlement date to a minimum annual pension equivalent to one and a half per cent of his pensionable earnings for each year that he shall have been in membership of that defined benefit pension plan subject to a maximum of forty-two years' membership.

(2) Where a member elects to retire before the normal entitlement date, his annual pension shall be calculated in accordance with the Regulations.

(3) In calculating years of membership each completed month shall count as one-twelfth of a year.

Value of deferred pension

39. (1) If the commuted value of the contributory benefit that accrued under a defined benefit pension plan before 1<sup>st</sup> June, 1998, and to which a member is entitled on the date of termination of employment is less, on the date of termination, than the sum of the member's contributions made under the pension plan before 1<sup>st</sup> June, 1998 to the date of his termination, the benefit shall be increased on the date of his termination so that the commuted value of the benefit is at least equal to the sum of the member's contributions and the interest thereon.

(2) Subsection (1) does not apply in respect of a pension plan that contains the provision described in subsection (4).

(3) Under a pension plan an increase in the commuted value of a contributory benefit under a pension plan in respect of employment before 1<sup>st</sup> June, 1998 -

- (a) that results from an amendment to the pension plan made on or after that date; and
- (b) to which the member is entitled on the date of termination of employment,

may be included in calculating the commuted value of the benefit for the purposes of subsection (1).

(4) A pension plan may provide, in respect of each member of the pension plan that -

- (a) the sum of the member's contributions under the pension plan made before 1<sup>st</sup> June, 1998 and the interest thereon to the date of termination of employment of the member shall not be used to provide more than fifty per cent of the commuted value on the date of cessation of the contributory benefit under the pension plan to which the member is entitled on the date of his termination; and
- (b) if the member is entitled to a contributory benefit under the pension plan on termination of employment, the member is entitled to payment on termination of a lump sum equal to the amount by which the sum of the member's contributions made before 1<sup>st</sup> June, 1998 and interest thereon to the date of termination exceeds fifty per cent of the commuted value accrued before 1<sup>st</sup> June, 1998.

(5) The sum of the contributions under a pension plan made by a member of the pension plan on or after 1<sup>st</sup> June, 1998 and the interest thereon to the date of termination of employment shall not be used to provide more than fifty per cent of the commuted value of the contributory benefit under the pension plan that has accrued on or after 1<sup>st</sup> June, 1998 and to which the member is entitled on the date of termination.

(6) A member is entitled to payment on termination of membership to a lump sum equal to the amount by which the sum of the member's contributions made on or after 1<sup>st</sup> June, 1998 and interest thereon to the date of cessation exceeds fifty per cent of the commuted value of the contributory benefit that accrued on or after 1<sup>st</sup> June, 1998 and to which the member is entitled on the date of cessation, provided that the member is not a person capable of retiring in the Islands.

(7) Notwithstanding subsection (6), any member who has terminated his employment may transfer the assets of the pension plan attributable to him to another registered pension plan pursuant to section 42.

(8) Under a pension plan the following may be excluded in determining that part of the commuted value of a pension or the actuarial present value of a benefit to which subsections (5) and (6) apply -

- (a) defined contribution benefits;
- (b) benefits that result from additional voluntary contributions; and
- (c) any other benefits prescribed for the purposes of this subsection.

(9) Under a pension plan the following may be included in calculating a member's contributory benefit for the purposes of this section -

- (a) ancillary benefits related to employment on or after 1<sup>st</sup> June, 1998;
- (b) any increase in pension benefits and ancillary benefits related to employment before the date of the amendment to a pension plan resulting from an amendment to such pension plan made on or after 1<sup>st</sup> June, 1998 but that is not included in calculating commuted value under subsection (3); and
- (c) pension benefits and ancillary benefits related to employment before the date of the establishment of the pension plan, in the case of a pension plan established on or after 1<sup>st</sup> June, 1998.

(10) Where a defined benefit accrued by a member of a pension plan is, at any time, converted in whole or in part into a defined contribution benefit, the value of the defined benefits that are converted shall be the actuarial present value of those benefits at the time of conversion, and subsections (5) and (6) shall apply as if the member had terminated his employment at the time of conversion, and as if the term "actuarial present value" were substituted for the term "commuted value" in those subsections.

Ancillary benefits

40. (1) A standard pension plan or supplementary pension plan may only provide the following ancillary benefits -

- (a) disability benefits;
- (b) death benefits in excess of those referred to in section 44;
- (c) benefits arising from additional voluntary contributions which have provided an entitlement fund in excess of the minimum as prescribed;
- (d) early entitlement options and benefits in excess of those provided for in section 36; and
- (e) any other prescribed ancillary benefit.

(2) The pension benefit to which a member is entitled on the date of termination of employment of the member shall include an ancillary benefit for

which the member has met, by that date, all eligibility requirements under the pension plan.

(3) For the purposes of subsection (2), where, under a pension plan, the consent of an employer is an eligibility requirement for entitlement to receive an ancillary benefit and a member or a former member has met all other eligibility requirements, the employer's consent shall be deemed to have been given.

41. (1) An inactive member of a pension plan is entitled to elect to receive an early entitlement pension which shall be one-half the amount per distribution period payable at normal age of pension entitlement, provided that the member has contributed to pension plans and, if the member -

- (a) terminates employment on or after 1<sup>st</sup> June, 1998;
- (b) is entitled, at the time of election, to a deferred benefit under the pension plans; and
- (c) is at the time of election, within -
  - (i) five years of the normal entitlement date if the normal age of pension entitlement is sixty; or
  - (ii) ten years if the normal age of pension entitlement is sixty-five.

(2) Notwithstanding subsection (1), when a retiree reaches normal age of pension entitlement, he shall be entitled to receive his full pension per distribution period.

(3) An active member who is within five years of the normal entitlement date and who would be entitled to a deferred benefit on termination of employment is entitled upon termination of employment or on the winding up of the pension plan in whole or in part to elect to receive an early entitlement pension.

(4) The actuarial present value of an inactive member's early entitlement pension under subsection (1) shall not be less than the actuarial present value of the inactive member's deferred benefit under the pension plan.

(5) The actuarial present value of an active member's early entitlement pension shall not be less than the actuarial present value of the deferred benefit under the pension plan to which the member would be entitled on termination of employment.

(6) An inactive or active member may require the commencement of the payment of the early entitlement pension at any time after making the election and within the five year period mentioned in subsections (1) and (3).

(7) An election under subsection (1) or (3) shall be made in writing, signed by the member and delivered to the trustee of the pension plan.

Transfer

42. (1) A member of a pension plan who, on or after 1<sup>st</sup> June, 1998, terminates employment with a specific employer and who is entitled to a deferred benefit -

- (a) may require the trustee to pay an amount equal to the commuted value of the deferred benefit or the balance in the member's defined contribution account -
  - (i) to another registered pension plan, if the trustee of the other pension plan agrees to accept the payment;
  - (ii) into a prescribed entitlement savings arrangement; or
  - (iii) for the purchase for the member of a life annuity that will not commence before the earliest date on which the member would have been entitled to receive payment of pension benefits under the pension plan; or
- (b) may elect to remain in the pension plan.

(2) The entitlement under subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds and no transfer may be made to an overseas pension plan or other recipient where the member is a person capable of retiring in the Islands.

(3) A former member may exercise his entitlement under subsection (1) by delivering to the trustee within the prescribed period of time a direction in a form supplied by the Authority.

(4) Subject to the compliance with the requirements of this section and the Regulations, the trustee shall comply with the direction referred to in subsection (3) not later than forty-five days after the date of delivery of the direction.

(5) A trustee who contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both; and if the offence is a continuing one to a fine of one thousand dollars for every day or part of a day during which the offence has continued.

(6) The trustee shall not make a payment under -

- (a) subsection (1)(b), unless the entitlement savings arrangement is in accordance with the prescribed requirements; and
- (b) subsection (1)(c), unless the contract to purchase the deferred life annuity is in accordance with the prescribed requirements.

(7) Where a payment does not meet the limitations prescribed in relation to the transfer of funds from pension funds, the administrator shall not make the payment without the approval of the Authority.

(8) The Authority may approve a payment under subsection (7) subject to such terms and conditions as the Authority thinks fit in the circumstances.

(9) Where -

- (a) a payment that does not meet the limitations prescribed in relation to the transfer of the funds from pension funds is made without the approval of the Authority; or
- (b) there is a failure to comply with a term or condition of the approval given under subsection (8),

the Authority may, by order, require any person to whom payment has been made to repay an amount equal to the amount paid together with interest on the amount.

(10) This section does not apply in respect of benefits under a pension plan accrued on or before a prescribed date where such benefits are guaranteed by an approved provider and the guarantee was given by the approved provider on or before that date.

(11) Subject to section 90, an order for payment under subsection (8) may be enforced in the same manner as a judgment of the Grand Court for the payment of money.

(12) A trustee is discharged from all responsibilities and liabilities in respect of a payment made in good faith under this section and in compliance with this Law and the Regulations.

43. (1) Subject to section 42 and any other limitations on transfer of funds from pension plans, a trustee who is required by a pension plan to provide a pension or benefit, may purchase the pension or benefit from an approved provider.

Purchase of pension or benefit.

(2) Where a purchase under subsection (1) does not comply with limitations prescribed in respect of transfer of funds from pension funds, the trustee may not complete the purchase without the prior approval of the Authority.

(3) The Authority may approve a purchase under this section subject to such terms and conditions as the Authority considers fit in the circumstances.

- (4) Where -
- (a) a purchase that does not comply with limitations prescribed in relation to transfer of funds from pension funds is made without the approval of the Authority; or
  - (b) there is a failure to comply with a term or condition attached to the Authority's approval under subsection (3),

the Authority may, by order, require any person, to whom payment under this section has been made, to repay an amount not greater than the amount of the payment together with interest thereon at the rate to be prescribed.

(5) An order for payment under subsection (4) may be enforced in the same manner as a judgment of the Grand Court for the payment of money.

Joint and survivor  
pension benefits

44. (1) Subject to subsections (2) and (3), every pension paid under a pension plan to a former member who has a spouse on the date that the payment of the first instalment of the pension benefit is due shall be a joint and survivor pension and the pension payable to the spouse on the death of the member shall be of an amount equivalent to one hundred per cent of the pension benefit paid to the member.

(2) Where a former member dies leaving a surviving spouse and dependent children, fifty per cent of the pension shall be immediately paid to, and held by, the legal guardian of the dependent children, to be used as needed (both as to the principal and the investment return thereon) for their maintenance, benefit and education and for the avoidance of doubt, whenever a child ceases to be a dependent child, the pension benefit shall accrue for the benefit of the remaining dependent children or dependent child and when there are no more dependent children, the benefit remaining, if any, reverts to the surviving spouse.

(3) Subject to subsection (4), a member or former member may designate a special beneficiary specifically to receive any balance remaining in his pension account after the death of his surviving spouse, provided there are then no dependent children.

(4) For the avoidance of doubt, where no special beneficiary has been designated for this purpose, then subsections (1) and (2) shall apply without any reference to subsection (3).

(5) Where a former member dies leaving dependent children but no surviving spouse, then one hundred per cent of the former member's pension

shall be paid to and held by the legal guardian of the dependent children, to be used for their maintenance, benefit and education; and for the avoidance of doubt, whenever a child ceases to be a dependent child, the pension benefit shall accrue for the benefit of the remaining dependent children or dependent child and when there are no more dependent children, the balance in the pension account, if any, shall be paid to the former member's designated beneficiary or beneficiaries.

(6) The personal representative of the estate of a former member may receive payment of the commuted value of a pension under this section as the property of the former member if the former member -

- (a) has not designated a special beneficiary in accordance with subsection (3); and
- (b) does not have a spouse or dependent child on the date of the former member's death.

(7) In a case where there is need, in the interests of the dependent children, the Department responsible for children and family services shall have power to apply to the Grand Court for an order appointing a trustee to receive and to apply the pension benefit for the benefit of the dependent children in accordance with subsections (2) and (5), in place of the legal guardian specified in those subsections.

(8) The actuarial present value of a joint and survivor pension under subsection (1) shall not be less than the actuarial present value of the pension that would be payable under the pension plan to the former member but for subsection (1). the Authority or Department, or an officer or employee of the Authority or Department against liability in damages for anything done or omitted in the discharge or the purported discharge of their respective functions, responsibilities, powers and duties under the legislation unless it is shown that the act or omission was in bad faith.

(9) Subsections (1) and (6) do not apply -

- (a) in respect of a pension benefit if payment of the pension commenced before 1<sup>st</sup> June, 1998; or
- (b) in respect of the portion of a pension that relates to a prescribed ancillary benefit unless the ancillary benefit is unused.

(10) Where -

- (a) prior to 1<sup>st</sup> June, 1998 a deferred life annuity has been purchased from an approved provider for a person entitled to a deferred pension under this Law;
- (b) payments have not commenced under the annuity on 1<sup>st</sup> June, 1998; and

- (c) the recipient of the payments has a spouse on the date payments commence,

the annuity shall be paid as a joint and survivor pension in accordance with the requirements of this section, and the approved provider shall make payments accordingly.

Information for payment of pension

45. (1) A trustee shall, before paying a pension or benefit, or paying the commuted value of the pension or benefit, require the person entitled to such pension, benefit or commuted value, to provide him with any necessary relevant information respecting the calculation of the amount of the pension or benefit.

- (2) A trustee is discharged from all liabilities upon making the payment -
  - (a) in accordance with information provided by the person entitled under subsection (1); or
  - (b) where the person entitled fails to provide information in accordance with subsection (1), in accordance with such information respecting that person's pension or benefit as is contained in the records of the trustee.

Remarriage of spouse

46. (1) The surviving spouse of a former member of a pension plan who is receiving a pension under such pension plan remains entitled to such pension notwithstanding the subsequent remarriage of such surviving spouse.

(2) Subsection (1) applies in respect of pensions which are first paid on or after 1<sup>st</sup> June, 1998.

Pre-entitlement death benefit

47. (1) If a member or former member of a pension plan dies before the commencement of payment of a pension, leaving a surviving spouse but no dependent children, that surviving spouse is entitled, subject to subsection (5), to an immediate or deferred pension the commuted value of which is at least equal to the commuted value of the deferred pension of the member or former member.

(2) If a member continues in employment after the normal entitlement date under the pension plan and dies before the commencement date of the payment of benefits, leaving a surviving spouse but no dependent children, that surviving spouse is entitled, subject to subsection (5), to an immediate or deferred pension the commuted value of which is at least equal to the commuted value of the pension benefit of the member at the date of death.

- (3) The surviving spouse may elect that -

- (a) the pension in respect of the deferred benefit described in subsection (1) and (2) shall be paid to the spouse -
  - (i) no earlier than five years before the spouse attains normal age of pension entitlement; or
  - (ii) no later than the spouse's normal age of pension entitlement under the pension plan; or
- (b) the commuted value of the defined benefit shall be paid by the trustee in accordance with the requirements of the member under section 42(1).

(4) Where a former member dies leaving a surviving spouse and dependent children, fifty per cent of the commuted value of the former member's pension shall be immediately paid to, and held by, the legal guardians of the dependent children to be used for their maintenance, benefit, and education; and for the avoidance of doubt, whenever a child ceases to be a dependent child, the pension benefit shall accrue for the remaining dependent children or dependent child and when there are no more dependent children, any remaining benefit reverts to the surviving spouse, subject to subsection (3).

(5) A member or former member may designate a special beneficiary specifically to receive any balance remaining in his pension account after the death of his surviving spouse, provided there are then no dependent children; and for the avoidance of doubt, where no special beneficiary has been designated for this purpose, then subsections (1) and (2) shall apply without any reference to this subsection.

(6) Where a former member dies leaving dependent children but no surviving spouse, then one hundred per cent of the former member's pension shall be immediately paid to, and held by, the legal guardians of the dependent children to be used for their maintenance, benefit, and education; and for the avoidance of doubt, whenever a child ceases to be a dependent child, the pension benefit shall accrue for the remaining dependent children or dependent child and when there are no more dependent children, any remaining benefit in the pension account shall be paid to the designated beneficiary or beneficiaries or personal representatives of the deceased member or former member in accordance with the provisions of subsections (9) and (10).

(7) In a case where there is need, in the interests of the dependent children, the Department responsible for children and family services shall have power to apply to the Grand Court for an order appointing a trustee to receive and to apply the pension benefit for the benefit of the dependent children in accordance with subsections (4) and (6), in place of the legal guardian specified in those subsections.

(8) For the purposes of this section, the deferred pension or pension benefits to which a member is entitled if the member dies while employed shall be calculated as if the member's employment were terminated immediately before the member's death.

(9) A member or former member may designate a beneficiary and the beneficiary is entitled to be paid an amount equal to the commuted value of the deferred pension mentioned in subsection (1) or (2), if the member or former member does not, on the date of his death, have any dependent child or a spouse.

(10) The personal representative of the estate of a member or former member may receive payment of the commuted value of a pension under this section as the property of the member or former member if the member or former member -

- (a) has not designated a beneficiary in accordance with subsection (9); and
- (b) does not have a spouse or dependent child on the date of the member's or former member's death.

(11) A person entitled to payment under this section shall provide the trustee with the relevant information respecting such payment.

(12) The trustee is discharged from all liabilities on making payment in accordance with the information provided by the person pursuant to subsection (11).

Variation of payment to person with disability

48. A pension plan may provide for the payment of greater benefits under the pension plan to a member whose life expectancy is likely to be reduced because of the mental or physical disability of that member.

Commutated value

49. (1) A standard pension plan or supplementary pension plan shall provide for the payment of a lump sum as prescribed under the pension plan to a member or former member whose life expectancy is likely to be reduced to two years or less provided that when a member or former member has a spouse or dependent children, the payment shall not exceed fifty per cent of the commuted value.

(2) In the case of an international pension plan, the Authority may approve alternative arrangements to that provided by subsection (1) and which meet the objectives of subsection (1).

Cash out of small benefits

50. A pension plan may provide for a lump sum payment to a former member of a portion of the commuted value of a benefit if the annual benefit payable at a normal entitlement date is less than the prescribed minimum pension.

51. (1) A court order made upon a divorce or separation for maintenance or other payments respecting such divorce or separation may provide for the transfer to a member's spouse of a portion of the commuted value of a member's pension benefits but shall not require payment of a pension benefit before the earlier of -

Payment on breakdown of marriage

- (a) the date on which payment of the pension benefit commences; or
- (b) the normal retirement date of the member or former member.

(2) A court order may not provide for the payment to a spouse of more than fifty per cent of the pension benefit calculated in the prescribed manner and accrued by a member or former member during the conjugal period or of the value of the defined contribution account added during the conjugal period of the member or former member and his spouse.

(3) A trustee is discharged from all liabilities upon making payment in accordance with an order under this section.

(4) Where a court order mentioned in subsection (1) affects a pension, the trustee shall revalue the pension in the prescribed manner.

(5) A spouse on whose behalf a certified order is given to a trustee is entitled, on termination of employment by the member or former member, to any option available in respect of the spouse's interest in the pension benefits as the member or former member has in respect of his pension benefits.

52. (1) The sex of a member, former member or other beneficiary under a pension plan shall not be taken into account in -

Discrimination on the basis of sex

- (a) determining the amount of contributions required to be made by a member of the pension plan;
- (b) determining the benefits or the actuarial present value or the commuted value of benefits to which a member, former member or other beneficiary is or may become entitled;
- (c) the provision of eligibility conditions for membership; or
- (d) the provision of ancillary benefits.

(2) In order to comply with subsection (1), the trustee may -

- (a) use annuity factors that do not differentiate as to sex;
- (b) provide for employer contributions that vary according to the sex of the employee; or
- (c) use any other prescribed method of calculation or valuation.

(3) Subsections (1) and (2) apply in respect of contributions, benefits and conditions in relation to -

- (a) employment on or after 1<sup>st</sup> June, 1998; and
- (b) employment before 1<sup>st</sup> June, 1998 in so far as it is dealt with in an amendment made to the pension plan on or after 1<sup>st</sup> June, 1998.

Inflation protection 53. Pension benefits, pensions or deferred pensions shall be adjusted in accordance with internationally accepted formulae respecting inflation increases as specified in the Regulations.

#### PART 7 - CONTRIBUTIONS

Funding 54. (1) A defined benefit pension plan shall not be registered under this Law unless it provides for funding sufficient to provide the benefits and rights under the pension plan in accordance with this Law and the Regulations.

(2) Where a defined benefit pension plan is not fully funded at the date of registration or annually thereafter the trustee shall submit a funding schedule to be approved by the Authority.

Contribution date deadline 55. (1) Subject to section 33(2), a member and his employer shall contribute to the pension fund of a pension plan on behalf of that member from the date that the member is required by this Law to participate in the pension plan at the rates specified section 56(2).

(2) Contributions shall be remitted to employees' pension plans on or before the 15<sup>th</sup> day of the month next following any month in which the employee performs services for the employer, for which he receives or expects to receive remuneration, regardless of the employee's established pay period, and this date shall be known as the "contribution date deadline".

(3) Contributions not remitted by the close of business on the contribution date deadline shall be considered delinquent.

(4) A trustee shall immediately take action to collect any delinquent contributions which for the purposes of this subsection shall include all interest accrued on the delinquent contributions.

(5) Any delinquent contributions not received by the trustee by the 15<sup>th</sup> day of the month next following the contribution date deadline, in this section

referred to as the “reportable date”, shall be reported in writing by the trustee to the Department in the form approved by the Department.

- (6) A trustee shall notify -
  - (a) the Department in writing on or before the 20<sup>th</sup> day of the month next following the month of the contribution date deadline, in this section referred to as “the delinquent notification date”, of any delinquent contributions not received by the reportable date and still outstanding at the date of reporting; and
  - (b) the affected employees in writing of the delinquent contributions reported under paragraph (a) and may advertise in the public news media for employees of employers whose delinquent contributions have not been received by the delinquent notification date.

(7) The Department shall, no later than the 20<sup>th</sup> day of the month next following the delinquent notification date, initiate an action to recover the payment of the delinquent contributions by one or more of the following means -

- (a) by letter of demand to the employer, stating a time certain that the contribution shall be paid into the pension plan, and outlining the action that will be taken if the contribution is not forthcoming within the specified time;
- (b) by letter demanding the appearance of the delinquent employer before the Department for the purpose of explaining the delinquency, disclosing the employer’s banking arrangements, delinquent contributions and payroll records and arriving at an acceptable payment plan, provided that the Department is of the opinion that the delinquency can be rectified and that the employer is acting in good faith;
- (c) by placing a restriction on real estate, caution or lien on the delinquent employer’s bank accounts and any other assets equal to the total amount delinquent, plus any interest, fines and fees arising pursuant to this Law;
- (d) by ordering the payment of a delinquency collection fee equal to the greater of ten per cent of the total amount delinquent or fifty dollars per day, from the contribution date deadline until the total amount of delinquent contributions is paid;
- (e) by commencing legal proceedings in a court of competent jurisdiction to recover the delinquent contributions, any fines and fees arising pursuant to this Law except that no action is necessary for one or more of the following reasons -
  - (i) where the delinquency was reported in error;

- (ii) where the delinquency has been corrected by full payment;  
or
- (iii) where any action has been taken in resolution of the delinquency consistent with this Law and the Regulations;  
or
- (f) by advertising breaches of the Law by employers.

(8) Any charges of the trustee for the additional reporting for the purposes of subsection (5), which shall be approved in advance either generally or specifically by the Department, or any charges authorised pursuant to this Law to be made by the Department for the actions pursuant to subsection (6), shall be borne by the employer concerned and not by the pension plan in general or the employees.

(9) The Department shall have the authority to impose an administrative fee in the prescribed amount to be added to the amount of the delinquent contribution, based on the payment history of the delinquent employer.

(10) An employer who fails to pay contributions into a pension plan within the specified time given by the Department shall, in addition to the delinquent contributions and the fee and charges levied pursuant to subsection (7)(d) and (8), be liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

(11) The Department shall have the authority to investigate the relevant activities of employers failing to timely remit contributions to pension plans, and the Department shall have the authority to share information regarding delinquent employers with the Authority and other Government departments and agencies.

(12) Where pursuant to legal proceedings commenced under subsection (7)(e) funds are restrained for the payment of delinquent contributions to a pension plan the court shall not make an order to allow for the payment of costs, legal and other expenses out of such funds.

(13) Where an employee reasonably believes that an employer has failed to remit contributions to the trustee by the reportable date, the employee may in writing report the employer to the Department and the Department may, after carrying on investigations in accordance with subsection (11), take any action referred to in subsection (7).

Contribution  
requirements

56. (1) Every year during his employment, a self-employed person shall contribute to a standard pension plan or an international pension plan a sum

equivalent to the mandatory contribution rate on his earnings, up to the year's maximum pensionable earnings for that year.

(2) An employee shall not be required to contribute to a standard pension plan or international pension plan that is a defined contribution pension plan more than half the mandatory contribution rate of his earnings but may contribute less with his employer's permission if the aggregate of his contribution and his employer's contribution is equal to not less than the prescribed mandatory contribution rate subject to the year's maximum pensionable earnings.

(3) An employer shall contribute to a standard pension plan or international pension plan that is a defined contribution pension plan such a percentage (being not less than half of the prescribed mandatory contribution rate) of the member's earnings that when added with the employee's contribution equals not less than the prescribed mandatory contribution rate subject to the year's maximum pensionable earnings.

(4) Where an employer contributes to a standard pension plan or international pension plan that is a defined contribution pension plan more than half of the mandatory contribution rate of the member's earnings, the member shall only be required to contribute such an amount as shall, when added to the employer's contribution, equal the mandatory contribution rate of the member's earnings subject to the year's maximum pensionable earnings.

(5) For a standard pension plan or international pension plan that is a defined benefit pension plan, the member shall not be required, without his express consent, to contribute more than the amount stipulated in the actuarial report up to a maximum of half of the mandatory contribution rate of his earnings subject to the year's maximum pensionable earnings and the employer shall contribute an amount equal to the amount contributed by the member in accordance with the actuarial report, except in cases where a shortfall exists where the employer shall compensate for this underfunding.

(6) The employer shall deduct the employee's contribution from his earnings and pay the same, together with the employer's contribution, directly into the standard pension plan or international pension plan established for the employee pursuant to the requirements of this Law.

(7) All contributions shall be deemed to be due and payable into the pension fund on each payroll date.

(8) In the case of a defined benefit pension plan, an employer may apply to the Department for payment out of the pension fund of an overpayment by the employer into the pension fund.

(9) The Department may consent to a payment refund under subsection (8) to an employer if the application is made by the employer within three months after the end of the fiscal year of the pension plan in which the overpayment is made.

(10) A member who works beyond the normal age of pension entitlement may defer receipt of his pension benefits and continue to make contributions to his current plan, and such contributions will be considered additional voluntary contributions.

(11) A pension plan, or an individual entitlement account in the case of a self-employed person, established prior to, on or immediately after 1<sup>st</sup> June, 1998 may -

- (a) allow employees forty years of age or younger to pay reduced contributions for a period of four years after 1<sup>st</sup> June, 1998;
- (b) allow employees between ages forty-one and forty-five to pay reduced contributions for two years after 1<sup>st</sup> June, 1998; and
- (c) allow self-employed persons to pay reduced contributions for four years after 1<sup>st</sup> June, 1998.

(12) The rates of contributions payable under subsection (11)(a) shall be on a graduated scale prescribed.

(13) A member may continue in membership of a pension plan after the normal age of pension entitlement and, in such event, the employee's contributions shall continue to be payable at the rate or rates prescribed by the pension plan.

(14) A member may make additional voluntary contributions prior to entitlement.

(15) A member may make designated voluntary contributions at any time prior to entitlement and on application to the trustee such designated voluntary contributions may, subject to the Regulations, be withdrawn by a member for the purpose of health, education or housing.

(16) An employer may, subject to the obligation to compensate for underfunding contained in subsection (5), during the period that any employee is contributing at a rate less than the rate prescribed by the pension plan, contribute to a pension fund on behalf of that employee an amount equal to that contributed by the employee.

(17) Notwithstanding any contract to the contrary, an employer shall not deduct from the salary, wage or other remuneration of an employee or otherwise recover from an employee, the contributions paid by the employer in respect of the employee.

(18) A person who contravenes a provision of this section commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

57. (1) Where an employer receives money from an employee under an arrangement that the employer will pay the money into a pension fund as the employee's contribution under the pension plan, the employer shall be deemed to hold the money in trust for the employee until the employer pays the money into the pension fund.

Trust property

(2) Money withheld by an employer, whether by payroll deduction or otherwise, from money payable to an employee shall be deemed to be money received by the employer from the employee.

(3) An employer who is required to pay contributions to a pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer's contributions due and not paid into the pension fund.

(4) Where a pension fund is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer's contributions accrued on the date of the winding up but not yet due under the pension plan or the Regulations.

(5) An administrator has a lien and charge on assets of the employer in an amount equal to the amounts deemed to be held under subsections (1), (3) and (4).

(6) Subsections (1), (3) and (4) apply whether or not the money has been kept separate and apart from other money or property of the employer.

(7) An employer shall not pay a fine or penalty payable pursuant to this Law out of monies held in trust under this section or out of any assets of a pension plan.

Accrual

58. (1) An employer shall be liable to pay interest to a pension fund, from the contribution date deadline up to the date of actual payment to the fund, on all money that is due to be paid by him to that pension fund at eighteen per cent per annum calculated and compounded on a monthly basis in addition to any other fees, fines and penalties specified by this Law or ordered by a court of competent jurisdiction.

(2) For the purposes of section 55, the amount of any delinquent contribution to be collected and paid, shall be inclusive of the accrued interest calculated in accordance with this section.

(3) The trustee of a fund shall ensure that all interest due on delinquent contributions has been properly calculated as stipulated in this section and received in accordance with the provisions of this Law and paid into the pension plan of the employee.

Prescribed level of capital

59. The Authority shall require a trustee to have the prescribed level of capital.

Investment of pension fund

60. Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with the criteria set out in this Law and the Regulations.

#### PART 8 - WITHDRAWAL OF PENSION FUNDS BY NON-CURRENT HOMEOWNERS

Definitions

61. For the purposes of this Part -

(2010 Revision)

“building society” means a society incorporated under the Building Societies Law (2010 Revision);

(2004 Revision)

“Cayman Islands Development Bank” means the Cayman Islands Development Bank established under section 3 of the Development Bank Law (2004 Revision);

(2009 Revision)

“class A bank” means a bank holding an “A” licence under the Banks and Trust Companies Law (2009 Revision);

(2001 Revision)

“credit union” has the meaning assigned to that expression under the Cooperative Societies Law (2001 Revision);

“deposit” means all monies required by a financial institution as a condition for a person to obtain a loan (which includes any legal fees and stamp duty) the proceeds of which will be used to purchase an existing dwelling unit, construct a new dwelling unit, or purchase residential land, in the Islands;

“dwelling unit” means two or more rooms used or intended for the domestic use of one or more individuals living as a single housekeeping unit, with exclusive cooking, eating, living, sleeping and sanitary facilities;

“financial institution” means a building society, credit union or class A bank carrying on business in the Islands or the Cayman Islands Development Bank;

“non-current home owner” means a person who does not currently own a dwelling unit in the Islands;

“residential land” means any lot, plot, tract, area, piece or parcel of land including any building used exclusively or intended to be used as a dwelling unit; and

“room” means a compartment within a building enclosed by -

- (a) a floor;
- (b) a ceiling; and
- (c) walls or partitions.

62. (1) Notwithstanding sections 71 and 72, but subject to the remaining provisions of this section, a person who is a Caymanian and non-current home owner may withdraw from his account in a standard pension plan or a supplementary pension plan an amount not exceeding thirty-five thousand dollars as a deposit.

Withdrawal of amount from pension account as a deposit

(2) Notwithstanding subsection (1), a person who is a non-current home owner but who owns land in the Islands shall not be entitled to withdraw an amount from his account in a standard pension plan or a supplementary pension plan as a deposit to purchase other land in the Islands.

(3) A person who wishes to withdraw an amount as a deposit pursuant to subsection (1) shall, subject to subsection (4), make an application to the relevant trustee in the form prescribed in Schedule 1.

Schedule 1

- (4) An application under subsection (3) shall be accompanied by -
- (a) evidence that the person is a Caymanian;

- (b) a declaration in the form prescribed in Part B of Schedule 1 that the person is a non-current home owner; and
- (c) a copy of a letter issued by a financial institution addressed to the person making the application (whether or not solely to that person), showing approval in principle of a loan to purchase an existing dwelling unit, construct a new dwelling unit or purchase residential land in the Islands and the deposit required.

(5) For the avoidance of doubt, two or more persons who are Caymanians and non-current home owners approved in principle by a financial institution may, in accordance with this section, withdraw the amount of the deposit required from their respective accounts in a standard pension plan or supplementary pension plan up to the maximum of thirty-five thousand dollars each towards a single loan from a financial institution for the purchase of an existing dwelling unit, construction of a new dwelling unit or purchase of residential land in the Islands.

(6) Where an application is made under subsection (3), the trustee -

- (a) shall, within forty-five days of the application being submitted, issue the deposit in the form of a cheque payable to the relevant financial institution and deliver it to the applicant if satisfied that the applicant is entitled under subsection (1) to withdraw the amount applied for; or
- (b) shall, if not satisfied that all the requirements under subsection (4) have been correctly provided by the applicant, refuse the application and shall, within seven days of the application being submitted, give reasons for the refusal to the applicant, by letter in writing.

(7) A trustee who contravenes subsection (6) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both; and if the offence is a continuing one to a fine of one thousand dollars for every day or part of a day during which the offence has continued.

(8) A trustee shall provide to the Department monthly -

- (a) a list of all persons who have withdrawn amounts as deposits from their respective accounts in a standard pension plan or supplementary pension under this section, stating the amount of each deposit;

- (b) a list of all persons who applied for amounts as deposits under this section;
- (c) a copy of each letter to persons stating the reason for refusal under subsection (6)(b); and
- (d) in the form approved by the Department, a report with respect to each person who has withdrawn an amount as a deposit from his account in a standard pension plan or supplementary pension plan under this section.

(9) A trustee who contravenes subsection (8) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

(10) Where before attaining the normal age of pension entitlement, a person sells the dwelling unit purchased or constructed or the residential land purchased through the use of a deposit under this section, the person shall upon completion of the sale return the original amount of deposit or ten per cent of the fair market value of the dwelling unit or residential land, whichever is greater, back to his pension plan account.

(11) A person who contravenes subsection (10) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

63. (1) Notwithstanding sections 71 and 72 but subject to the remaining provisions of this section, a person who is a Caymanian may withdraw from his account in a standard pension plan or a supplementary pension plan an amount not exceeding thirty-five thousand dollars required to pay off an existing mortgage on a dwelling unit in the Islands so that the dwelling unit is free from any encumbrance.

Withdrawal of amount  
from pension account to  
pay off an existing  
mortgage

(2) A person who wishes to withdraw an amount required to pay off an existing mortgage pursuant to subsection (1) shall, subject to subsection (3), make an application to the relevant trustee in the form prescribed in Schedule 1.

Schedule 1

(3) An application under subsection (2) shall be accompanied by -

- (a) evidence that the person is a Caymanian;
- (b) evidence that the applicant has legal title to the dwelling unit; and
- (c) a copy of a letter issued by the financial institution holding the mortgage, addressed to the person making the application (whether or not solely to that person), showing approval in principle for paying off the existing mortgage and the amount to be paid off.

(4) For the avoidance of doubt, two or more persons who are Caymanians approved in principle by a financial institution may, in accordance with this section, withdraw the amount required from their respective accounts in a standard pension plan or supplementary pension plan up to the maximum of thirty-five thousand dollars each towards paying off an existing mortgage.

(5) Where an application is made under subsection (2), the trustee -

- (a) shall, within forty-five days of the application being submitted, issue the amount required to pay off the existing mortgage in the form of a cheque payable to the relevant financial institution and deliver it to the applicant if satisfied that the applicant is entitled under subsection (1) to withdraw the amount applied for; or
- (b) may, if not satisfied that all the requirements under subsection (3) have been correctly provided by the applicant, refuse the application and shall, within seven days of the application being submitted, give reasons for the refusal to the applicant, by letter in writing.

(6) A trustee who contravenes subsection (5) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both; and if the offence is a continuing one to a fine of one thousand dollars for every day or part of a day during which the offence has continued.

(7) A trustee shall provide to the Department monthly -

- (a) a list of all persons who have withdrawn amounts from their respective accounts in a standard pension plan or supplementary pension plan under this section, stating each amount withdrawn;
- (b) a list of all persons who applied for a withdrawal under this section;
- (c) a copy of each letter to persons stating the reason for refusal under subsection (5)(b); and
- (d) in the form approved by the Department, a report with respect to each person who has withdrawn an amount from his account in a standard pension plan or supplementary pension plan under this section.

(8) A trustee who contravenes subsection (7) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

(9) Where, before attaining the normal age of pension entitlement, a person sells the dwelling unit acquired through the use of an amount withdrawn pursuant to this section, the person shall upon completion of the sale return the amount withdrawn or ten per cent of the fair market value of the dwelling unit, whichever is greater, back to his pension plan account.

(10) A person who contravenes subsection (9) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

(11) In this section “encumbrance” has the meaning assigned to that expression under section 2 of the Registration (Land) Law (1996 Revision). (1996 Revision)

64. (1) Notwithstanding section 56 or any other Law in force in the Islands to the contrary, where a person makes a withdrawal from his account in a standard pension plan or supplementary pension plan pursuant to section 62 or 63, the person shall, in addition to the amount that the person is required to contribute to a pension plan pursuant to section 56, contribute an additional amount of one per cent of his earnings to the pension plan from the month immediately following the date of issuance of the cheque pursuant to section 62(6)(a) or 63(5)(a) - Additional contributions

- (a) until the expiry of ten years from the date of issuance of the cheque pursuant to section 62(6)(a) or 63(5)(a);
- (b) until the total additional contributions equal the actual amount withdrawn; or
- (c) until the person attains the normal age of pension entitlement,

whichever is earlier.

(2) Notwithstanding subsection (1), an employer shall not be required to make any additional contributions to a pension plan on the basis of additional contributions made by a person pursuant to that subsection.

(3) Where a person is required to make additional contributions under subsection (1), the person shall -

- (a) if he is an employee, inform his employer in writing of the requirement and the employer shall deduct such additional contributions from the employee’s earnings and pay the same into the employee’s account in the pension plan; or
- (b) if he is self-employed deduct such additional contributions from his earnings and pay the same into his account in the pension plan.

(4) A person who contravenes subsection (1) or (3) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

Withdrawal not to exceed thirty-five thousand dollars in the aggregate

65. (1) Where a person contributes or has contributed to more than one standard pension plan or supplementary pension plan under this Law, that person shall not withdraw more than a total of thirty-five thousand dollars in the aggregate from his accounts in the pension plans under section 62 or 63.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

Restriction

(2004 Revision)

66. Where a withdrawal is made pursuant to section 62 or 63, the Department shall make an application to the Registrar of Lands for a restriction to be entered with respect to the dwelling unit or residential land that is the subject of the withdrawal and the Registrar of Lands shall enter the restriction in accordance with the Registered Land Law (2004 Revision).

Removal of restriction (2004 Revision)

67. Notwithstanding section 134 of the Registered Land Law (2004 Revision), a restriction entered pursuant to section 66 shall not be removed unless the total amount withdrawn under section 62 or 63 is repaid as additional contributions or on the sale of the dwelling unit or residential land.

Defence

68. It shall be a defence to a prosecution under section 62, 63, 64 or 65 that a person took all reasonable steps to comply with section 62, 63, 64 or 65, as the case may be.

#### PART 9 - LOCKING IN

Refunds

69. (1) Except as otherwise provided under this Law, no member or former member is entitled to a refund from a pension fund of contributions made by that member or on that member's behalf in respect of employment in the Islands or investment earnings on such contributions or otherwise to receive a payment or transfer from the pension plan on or after 1<sup>st</sup> June, 1998.

(2) For the purposes of subsection (3), except in regard to transfers, persons capable of retiring in the Islands, are excluded from the provisions of this section.

(3) Notwithstanding subsection (1), where -

- (a) a member's employment is terminated;
- (b) the member ceases to reside in the Islands; and
- (c) no contributions have been made to a pension plan by or on behalf of the member for a period of two years or more,

the member may elect, in the case of a defined contribution pension plan, to receive a lump sum payment of an amount equal to not less than the amount of the contributions made by or on behalf of a member and the investment earnings on the contributions made under the pension plan or to have the units allocated to his account realised by the approved provider and to have the amount transferred to another pension plan, and in the case of a defined benefit plan, to receive a lump sum payment of the commuted value of his accrued pension benefits.

(4) For the purposes of subsection (3), a person shall be deemed to have ceased to be resident in the Islands when he 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 residence in the Islands for an aggregate period less than three months.

(5) A trustee shall, on making a payment or transfer under section 42 of this section, make such a deduction from that payment or transfer, subject to a prescribed maximum fee, exclusive of any wire transfer fees charged by the pension plan's bankers, in respect of actual and ascertainable administrative expenses incurred in making the payment or transfer as is -

- (a) provided for in the pension plan to be made in respect of all such transfers and withdrawals; and
- (b) approved by the Authority,

and the Authority shall not approve a provision in a pension plan that purports to enable different levels of deduction to be made in respect of different classes of members.

(6) Notwithstanding subsection (1), on application by the trustee, contributions and interest thereon may be refunded to a member with the consent of the Authority if -

- (a) the pension plan provides for the refund; and
- (b) the pension plan meets prescribed requirements.

70. A pension plan may provide for shorter qualification periods for entitlement to a deferred pension other than those set out in section 35 or 36 in respect of employees who are transferring benefits to another approved pension plan.

Shorter qualification periods

71. (1) Any transaction is void if it purports to convey, assign, charge, anticipate or give as security -

Void transactions

- (a) a right to receive money that is or may become payable under a pension plan; or
- (b) assets being transferred from a pension fund.

(2) Subsection (1) does not apply with respect to a transfer required by a court order relating to the transfer of assets on a divorce, legal separation or decree of nullity.

Exemption from execution, seizure or attachment

72. (1) Money payable under a pension plan is exempt from execution, seizure, attachment or any other process that is taken by a creditor.

(2) Money transferred from a prescribed fund to a prescribed entitlement savings arrangement or for the purchase of a life annuity under this Law is exempt from execution, seizure, attachment or any other process that is taken by a creditor.

(3) Money payable from a prescribed entitlement savings arrangement or a life annuity is exempt from execution, seizure, attachment or any other process that is taken by a creditor.

(4) Subsections (1), (2) and (3) do not apply, subject to section 51, to prevent execution, seizure or attachment in satisfaction of a court order made upon a divorce or separation for maintenance or other payments respecting divorce or separation.

(5) Subsection (4) applies to orders whether made before on or after 1<sup>st</sup> June, 1998.

Commutation or surrender

73. Except as provided by or under this Law -

- (a) a pension or benefit of a person under a pension plan, a prescribed entitlement savings arrangement or a life annuity purchased for a person under a pension plan shall not be commuted or surrendered during the person's life; and
- (b) a transaction that purports to commute or surrender such a pension, benefit, annuity or prescribed entitlement savings arrangement is void and of no effect.

#### PART 10 - TERMINATION AND WINDING UP

Winding up

74. (1) A trustee may terminate and voluntarily wind up a pension plan in whole or in part.

(2) In the case of a pension plan to be wound up in whole, the trustee shall notify the Authority of the proposal and furnish the Authority with drafts of the prescribed information in the notice specified in subsection (11) for approval.

(3) In the case of a proposal to terminate and wind up only part of a pension plan, the trustee is not required to give written notice of the proposal to members, former members or other persons entitled to payment from the pension fund if, in the opinion of the Authority, they will not be affected by the proposed partial winding up.

(4) The Authority, may, by order, where the Authority deems it necessary, change the commencement date of the winding up of a pension plan.

(5) The trustee shall give written notice of the approved proposal to terminate and wind up the pension plan to -

- (a) each member;
- (b) each former member;
- (c) each participating employer;
- (d) the advisory committee of the pension plan; and
- (e) any other person entitled to a payment from the pension fund.

(6) The notice of proposal to terminate and wind up shall contain the information prescribed by the Regulations and a copy shall, at the same time, be furnished to the Authority.

(7) When giving notice of a proposal to terminate and wind up a pension plan to the Authority, the trustee shall pay the prescribed fee.

(8) The Authority may waive the fee payable under subsection (7) if the liabilities of the pension plan exceed the assets of the pension fund.

(9) The date of termination of a pension plan that is being wound up shall -

- (a) not be earlier than the date the members' contributions, if any, cease to be deducted, in the case of contributory pension plans; or
- (b) in any other case, be on the date notice is given to members.

(10) The Authority shall cause the notice of the proposed winding up of a pension plan under this section or section 75 to be published in a newspaper of local publication twice over a period of fourteen days ending no later than fourteen days before the date of the winding up.

(11) A notice pursuant to subsection (10) shall contain -

- (a) the name of the pension plan;
- (b) the date of the winding up;
- (c) the person or class of persons to whom the trustee shall give notice of the order; and
- (d) the information that shall be given in the notice to the relevant parties.

Winding up order

75. (1) The Authority may, by order, require the termination and winding up of a pension plan in whole or in part if -

- (a) in the case of a single employer pension plan -
  - (i) there is a cessation or suspension of employees' contributions to the pension fund;
  - (ii) the employer fails to make contributions to the pension fund as required by this Law or the Regulations;
  - (iii) the employer is adjudged bankrupt under the Bankruptcy Law (1997 Revision); or
  - (iv) a significant number of members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganisation of the business of the employer;
- (b) in the case of a multi-employer pension plan -
  - (i) there is a significant reduction of the number of members; or
  - (ii) there is a cessation of contributions under the pension plan or a significant reduction in such contributions; or
- (c) any other prescribed event or circumstance occurs.

(1997 Revision)

(2) In an order under subsection (1), the Authority shall specify -

- (a) the date of the winding up;
- (b) the person or class of persons to whom the trustee shall give notice of the order; and
- (c) the information that shall be given in the notice.

Winding up report and notice by Authority to Department

76. (1) A trustee of a pension plan that is to be wound up in whole or in part shall file with the Authority a winding up report that sets out -

- (a) the assets and liabilities of the pension plan;
- (b) the benefits to be provided under the pension plan to members, former members and claimants;

- (c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and
- (d) such other information as may be prescribed.

(2) No payment shall be made out of the pension fund related to the pension plan in respect of which notice of proposal to wind up has been given until the Authority has approved the winding up report.

(3) Subsection (2) does not apply -

- (a) to prevent continuation of payment of a pension or other benefit, the payment of which commenced before the giving of the notice of proposal to wind up the pension plan; or
- (b) to prevent any other payment that is prescribed or that is approved by the Authority.

(4) A trustee shall not make payment out of the pension fund except in accordance with the winding up report approved by the Authority.

(5) The Authority may, by order, refuse to approve a winding up report that -

- (a) does not meet the requirements of this Law and the Regulations; or
- (b) does not protect the interests of the members and former members of the pension plan,

except that, in the case of an international pension plan, the Authority may accept a winding up report prepared in accordance with the laws of the country where the international pension plan is established.

(6) On the partial winding up of a pension plan, members, former members and claimants entitled to benefits under the pension plan shall have rights and benefits that are not less than the rights and benefits they would have on a full winding up of the pension plan on the commencement of the partial winding up.

(7) The Authority shall notify the Department of the winding up of a pension plan and the effective date of the winding up.

77. (1) Where a standard pension plan or a supplementary pension plan is being wound up, the Authority may appoint a trustee as is appropriate to carry on the winding up in a timely manner.

Appointment of trustee  
to wind up

(2) The reasonable costs of the Authority or the trustee appointed by the Authority under subsection (1) may be paid out of the pension fund.

Notice of entitlements

78. (1) On the winding up of a pension plan in whole or in part, the trustee shall give to each person entitled to a benefit or to a refund in respect of the pension plan a statement setting out -

- (a) the person's entitlement under the pension plan;
- (b) the options available to the person; and
- (c) any other prescribed information.

(2) Where a person to whom notice is given under subsection (1) is required to make an election, the person shall make the election within sixty days of receiving the notice or shall be deemed -

- (a) to have elected to receive immediate payment of a pension benefit, if eligible therefor; or
- (b) if not eligible to receive immediate payment of a pension benefit, to receive a pension commencing at the earliest date consistent with this Law and the Regulations,

and the administrator of the pension plan shall notify the Authority and the Department in writing of the election or deemed election and shall make payment in accordance with the election or deemed election in accordance with the prescribed procedures.

Determination of entitlement

79. (1) For the purpose of determining the amounts of pension benefits and any other rights, benefits and entitlements on the winding up of a pension plan, in whole or in part -

- (a) the employment of each member affected by the winding up shall be deemed to have been terminated on the commencement of the winding up;
- (b) each member's pension benefits at the commencement of the winding up shall be determined as if the member had satisfied all eligibility conditions for a pension benefit; and
- (c) provision shall be made for the entitlements referred to in section 78.

(2) A person entitled to a benefit on the winding up of a pension plan, other than a person who is receiving a pension, is entitled to the rights under section 42(1) of a member who terminates employment.

80. (1) Membership in a pension plan that is wound up in whole or in part includes the period of notice of termination of employment required under the Labour Law (2011 Revision).

Accrual of pensions during notice of termination (2011 Revision)

(2) Subsection (3) does not apply for the purpose of calculating the amount of a pension benefit of a member who is required to make contributions to the pension plan unless the member makes the contributions in respect of the period of notice of termination of employment.

(3) For the purposes of this section, where -

- (a) under a pension plan the consent of an employer is an eligibility requirement to receive payment of an ancillary benefit; and
- (b) the member would meet all other eligibility requirements,

the employer shall be deemed to have given the consent.

(4) This section and other sections relating to entitlement and benefits apply in respect of the winding up, in whole or in part of a pension plan where the commencement of the winding up is on or after 1<sup>st</sup> June, 1998.

81. (1) Where a pension plan is terminated in whole or in part, the employer or each participating employer shall pay into the pension fund an amount equal to the total of all payments that, under this Law, the Regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund.

Liability of employer on termination

(2) The employer shall pay the money due under subsection (1) in the prescribed manner and at the prescribed times.

(3) Where -

- (a) any warrant of distress is executed against the property of an employer and the property is seized or sold in pursuance of the execution; or
- (b) on the application of a secured creditor or the Department, the property of an employer is sold,

the proceeds of the sale of the property shall not be distributed to any person entitled thereto until the court ordering the sale has made provision for the payment into a pension fund of any amounts due in respect of both contributions payable by the employer and employees' contributions deducted from the payroll but not credited to the pension fund.

(4) Notwithstanding subsections (1) and (3), with the approval of the Department such amounts due shall be paid directly to another registered pension plan for the benefit of the relevant members.

Pension fund continues to be subject to Law and Regulations

82. (1) The pension fund of a pension plan that is wound up continues to be subject to this Law and the Regulations until all the assets of the pension fund have been disbursed.

(2) In the case of a defined benefit pension plan where the money in a pension fund, after exhausting all revenues of collecting amounts due or accrued under section 81 or otherwise, is not sufficient to pay all the pension benefits on the winding up of the pension plan in whole or in part, the pension benefits and other benefits shall be reduced in the prescribed manner.

Surrender of licence

83. An administrator may apply to the Authority to surrender its licence if it -

- (a) has ceased to carry on the business in respect of which the licence was granted, its liabilities in respect of that business have been extinguished and all pension fund assets held or administered by it have been transferred to the satisfaction of the Authority; or
- (b) is being wound up voluntarily and produces evidence that it is solvent and able forthwith to repay all its creditors, and has transferred all pension fund assets held or administered by it,

and the Authority may, where an application is made, approve the surrender and cancel the licence and publish the cancellation in the Gazette.

#### PART 11 - SURPLUS

Continuing pension plan

84. (1) No surplus under a defined benefit pension plan shall be paid to any employer and such surplus shall be used solely for the benefit of members, former members and claimants of a pension plan as prescribed.

(2) Notwithstanding subsection (1), on the winding up of a defined benefit plan where a surplus existed prior to 1<sup>st</sup> June, 1998, this section does not apply to the extent of the amount of that surplus.

PART 12 - SALES, TRANSFERS AND NEW PENSION PLANS

85. (1) No transfer or release of the employer's pension liabilities shall be made under this section without the prior consent of the Department and the Authority.

Continuation of benefits  
under successor  
employer

(2) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of his business or all or part of the assets of his business, and a member of the pension plan as a result becomes an employee of the successor employer and becomes a member of the pension plan provided by the successor employer, that member -

- (a) continues to be entitled to the benefits provided under the employer's pension plan in respect of employment in the Islands up to the date of the completion of the sale, assignment or disposition without further accrual;
- (b) is entitled to credit in the pension plan of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and
- (c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.

(3) Subsection (2)(a) does not apply if the successor employer assumes responsibility for the accrued pension benefits of the employer's pension plan and the pension plan of the successor employer shall be deemed to be a continuation of the employer's plan with respect to any benefits or assets transferred.

(4) Where a transaction described in subsection (1) occurs, the employment of the employee shall be deemed, for the purposes of this Law, not to be terminated by reason of the transaction.

(5) Subject to subsection (6), where a transaction described in subsection (1) occurs and the successor employer assumes responsibility in whole or in part for the benefits provided under the employer's pension plan, a transfer of assets shall be made from the pension fund related to the employer's pension plan to the pension fund related to the pension plan provided by the successor employer in accordance with the prescribed terms and conditions.

(6) The Authority shall not approve a transfer of assets that does not -

- (a) protect the pension benefits and any other benefits of the members and former members of the employer's pension plan; or
- (b) meet the prescribed requirements and qualifications.

(7) The Authority may by order, require a transferee to return to the pension fund, with interest at a rate to be prescribed, assets transferred without the prior consent required by subsection (1).

(8) Subject to section 91, an order for return of assets under subsection (7) may be enforced in the same manner as a judgment of the Grand Court for the payment of a sum of money.

(9) In this section -

“successor employer” means the person who acquires the business or the assets of the employer.

Adoption of a new  
pension plan

86. (1) Where a pension plan is established or utilised by an employer to be a successor to an existing pension plan, the rights of members under section 78(2) shall not arise and the assets and liabilities of the existing plan shall be transferred to the new plan.

(2) The benefits and rights under the original pension plan in respect of employment before the establishment of the new pension plan shall be carried forward and included in the new pension plan.

(3) Subsection (2) applies whether or not the assets and liabilities of the original pension plan are consolidated with those of the new pension plan.

(4) An administrator shall not transfer assets from the pension fund of the original pension plan to the pension fund of the new pension plan without the prior consent of the Authority and in accordance with the prescribed terms and conditions.

(5) The Authority shall not approve a transfer of assets that does not protect the pension benefits and any other benefits and rights of the members, former members and claimants of the original pension plan.

(6) The Authority may, by order, require a transferee to return to the pension fund assets, with interest at a rate calculated in accordance with the Regulations, transferred to him by the administrator without the prior consent of the Authority or transferred contrary to the prescribed terms or conditions.

(7) Subject to section 88, an order for return of assets under subsection (6) may be enforced in the same manner as a judgment of the Grand Court for the payment of a sum of money.

(8) Where an administrator contravenes this section, the administrator commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or five per cent of the assets transferred whichever is greater and this fine shall be paid by the administrator and shall not be charged to the pension plan.

#### PART 13 - POWERS AND DUTIES OF THE AUTHORITY

87. (1) It is the duty of the Authority -

Duties of Authority

- (a) to maintain a general review of pensions in the Islands;
- (b) from time to time to examine by way of scrutiny of regular returns, on-site inspections or auditors' reports, or in such other manner as the Authority may determine, the affairs or business of any administrator, trustee or any pension plan for the purpose of a general review under paragraph (a) or for the purpose of satisfying itself that this Law or any regulations made under this Law or the Proceeds of Crime Law, 2008 are being complied with and that the administrator is carrying on business in a fit and proper manner and that the trustee is discharging its duties in a fit and proper manner;
- (c) to examine the annual information returns and annual returns submitted to the Authority under sections 22 and 25; and
- (d) in accordance with this Law, to carry out examinations and make determinations in respect of -
  - (i) applications for licences under section 12;
  - (ii) the fitness and propriety of trustees under section 9(1)(a), having regard to section 7;;
  - (iii) the registration of pension plans under section 14;
  - (iv) proposals for the revocation of licences under section 89;
  - (v) revocation of the registration of a pension plan under section 89;
  - (vi) the exercise of powers under sections 89 and 90; and
  - (vii) applications for approval of auditors.

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(2) In the performance of its functions under this Law, the Authority shall be entitled at all reasonable times -

- (a) to have access to such books, records, vouchers, documents, cash and securities of any administrator, trustee or board of trustees or

books, records, vouchers, documents, cash and securities related to any pension plan; and

- (b) to request any such information, matter or thing from any person who it has reasonable grounds to believe is carrying on business as an administrator in contravention of section 10, is acting as trustee in contravention of section 9 or is administering, managing or operating an unregistered pension plan in contravention of section 14,

as the Authority may reasonably require for the purpose of enabling it to perform its functions under this Law.

(3) The Authority may take all necessary action to ensure the proper and just implementation of this Law, and may authorize in writing any other person to assist it in the performance of its functions.

(4) For the purpose of performing its duties under subsection (1)(b), the Authority may in writing authorize any person, at the expense of the person or pension plan being examined, to examine the affairs or business of any administrator, trustee or pension plan and to report to the Authority the results of the examination.

(5) Where the Authority considers it necessary for the proper supervision of an administrator, the provisions of subsections (1)(b) and (2) may be applied to activities or transactions of any member of the administrator's corporate group.

Directions by Authority

88. (1) The Authority may, in the circumstances mentioned in subsection (2), direct a trustee or an administrator to take or cease or refrain from taking any action in respect of a pension plan or a pension fund as in the opinion of the Authority is necessary to remedy or ameliorate the situation.

(2) The Authority may give a direction under subsection (1) if the Authority is of the opinion that -

- (a) the pension plan or pension fund is not being administered in accordance with this Law, the Regulations, the documents constituting the pension plan or the information contained in the application for the registration of a pension plan subject to such amendments as may be approved by the Authority from time to time;
- (b) the pension plan is not in compliance with this Law and the Regulations;

- (c) a trustee or administrator of a pension plan is contravening or about to contravene a requirement of this Law or the Regulations;
- (d) the trustee or administrator is committing, or about to commit, an act that is an unsafe or unsound practice in conducting the business of the administrator or in managing or administering the pension plan or pension fund; or
- (e) an entity is carrying on business as an administrator in contravention of section 10, is acting as trustee in contravention of section 9 or is administering, managing or operating an unregistered pension plan in contravention of section 14.

(3) A person, who without reasonable cause, fails to comply with a direction given by the Authority under subsection (1) commits an offence and is liable -

- (a) on summary conviction to a fine of one hundred thousand dollars or to imprisonment for a term of five years or to both; and
- (b) on conviction on indictment to a fine of five hundred thousand dollars or to imprisonment for a term of ten years, or to both,

and if the offence of which he is convicted is continued after conviction he commits a further offence and is liable to a fine of ten thousand dollars for every day on which the offence is so continued.

89. (1) The Authority may immediately do any of the things provided in subsection (2) where the Authority is of the opinion that - Powers of Authority

- (a) a corporate trustee or an administrator is or appears likely to become unable to meet its obligations as they fall due;
- (b) a trustee or administrator is acting or carrying on business in a manner detrimental to the public interest, to the interest of creditors or the interests of the members of a pension plan;
- (c) a trustee or administrator has contravened this Law, the Regulations or the Money Laundering Regulations (2010 Revision); (2010 Revision)
- (d) an administrator has failed to comply with a condition of its licence;
- (e) the administration, direction or management of the pension plan has not been conducted in a fit and proper manner or in accordance with this Law or the Regulations;
- (f) a person holding a position as a director, manager or officer of an administrator's business is not a fit and proper person to hold that position;
- (g) a person holding or acquiring control or ownership of an administrator is not a fit and proper person to have such control or ownership; or

- (h) a person holding or acquiring the position of trustee on a board of trustees is not a fit and proper person to hold that position.
- (2) Where subsection (1) applies, the Authority may by order -
- (a) require the trustee or administrator immediately to take steps to rectify the matter;
  - (b) suspend the administrator's licence pending a full enquiry into the administrator's affairs;
  - (c) revoke the administrator's licence;
  - (d) revoke the registration of a pension plan;
  - (e) impose conditions with respect to decisions made by the trustee or administrator;
  - (f) impose conditions or further conditions, upon the trustee or administrator or in respect of any pension plan and amend or revoke any such condition;
  - (g) require the removal of any trustee or administrator, or any officer, director or manager of a corporate trustee or administrator;
  - (h) at the expense of the trustee or administrator, appoint a person to advise the trustee or administrator on the proper conduct of its affairs or the affairs of the pension plan;
  - (i) subject to section 10(3), at the expense of the administrator, appoint a receiver or person to assume control of the administrator's affairs who shall have all the powers necessary to administer the affairs of the administrator including the power to terminate the pensions business of the administrator;
  - (j) subject to section 77, appoint a trustee to assume control of a pension plan who shall have all the powers necessary to administer the pension plan in accordance with the documents constituting the pension plan, including the power to wind up the pension plan in accordance with this Law and the Regulations; or
  - (k) require such action to be taken by the administrator or trustee as the Authority considers necessary.
- (3) Notwithstanding subsection (1), an administrator may, within seven days of the decision, apply to the Authority for a reconsideration of its decision to revoke a licence under subsection (2)(c).
- (4) A person appointed in respect of a trustee, administrator or pension plan under subsection (2)(h), (i) or (j) shall -

- (a) when requested to do so by the Authority, supply the Authority with such information as is specified by the Authority;
  - (b) within three months of his appointment, or within such other period as the Authority may specify, prepare and supply to the Authority a report on the affairs of the administrator, trustee or pension plan, as the case may be, making, where appropriate, recommendations in respect of the administrator, trustee or pension plan; and
  - (c) if his appointment is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Authority such other information, reports and recommendations as the Authority specifies.
- (5) On receipt of a report under subsection (4), the Authority may -
- (a) revoke the appointment of the person appointed under subsection (2)(h), (i) or (j);
  - (b) extend the period of his appointment;
  - (c) subject to such conditions as the Authority may impose, allow the administrator to re-organise its affairs in a manner approved by the Authority or allow the trustee to reorganise the affairs of a pension plan in a manner approved by the Authority;
  - (d) revoke the administrator's licence or the registration of a pension plan; or
  - (e) apply to the Grand Court for an order that the administrator be forthwith wound up by that Court in which case the provisions of the Companies Law (2011 Revision) relating to the winding up of a company by that Court shall apply. (2011 Revision)
- (6) The Authority may revoke a licence if the administrator -
- (a) has ceased to carry on business; or
  - (b) goes into liquidation or is wound up or otherwise dissolved.
- (7) Where the Authority revokes a registration, suspends a licence under subsection (2)(b) or revokes a licence under subsection (2)(c) or subsection (5), the Authority shall cause notice of the suspension or revocation to be published in the Gazette, and may also cause the notice to be published, whether within the Islands or elsewhere, in such newspaper or other publication as the Authority may consider necessary in the circumstances.
- (8) In an order made under this section the Authority may specify the time or times when or the periods of time within which the persons to whom the order is directed shall comply with the order.

(9) Where the Authority suspends or revokes the licence of an administrator, the Authority may appoint such other person or entity to administer the pension plan until the trustees appoint a new administrator.

(10) An order under this section is not valid unless the reasons for the order are set out in the order.

(11) The Authority shall issue a notice to the Department of -

- (a) the registration of a pension plan;
- (b) the revocation of the registration of a pension plan;
- (c) the revocation of a licence of an administrator;
- (d) a change in the administrator of a pension plan;
- (e) the approval of a trustee of a pension plan;
- (f) the administrator of a pension plan;
- (g) a change in the trustee of a pension plan; or
- (h) the winding up of a pension plan in accordance with section 75 and 76.

Order for correction

90. (1) The Authority may, in the circumstances mentioned in subsection (2) order an administrator to take the action specified in subsection (3).

(2) The Authority may make an order under this section where the Authority is of the opinion that -

- (a) the assumptions or methods used by the administrator in the preparation of a report required under this Law or the Regulations in respect of a pension plan are inappropriate for a pension plan;
- (b) the assumptions or methods used in the preparation of a report required under this Law or the Regulations in respect of a pension plan do not accord with accepted actuarial principles approved by the Authority or such other requirements as may be prescribed; or
- (c) a report submitted in respect of a pension plan does not meet the requirements of this Law, the Regulations or the pension plan.

(3) An order under this section may include requiring the preparation of a new report and specifying the assumptions or methods or both that shall be used in the preparation of the new report.

Order for preservation

91. (1) Where the Authority has exercised its powers under section 90, the Authority may apply ex parte to the Grand Court for an order that the assets,

books or papers of the administrator be preserved, not moved or otherwise disposed of and the Grand Court may, if it is satisfied that the assets, books or papers are liable to be moved, destroyed or otherwise disposed of, make an order that they shall be preserved, and not be moved or otherwise disposed of until a further order of that Court.

(2) Where an order has been made by the Grand Court under subsection (1), the administrator may apply to the Grand Court at any time for the discharge of the order and the Grand Court may thereupon discharge, vary or confirm the order.

#### PART 14 – MISCELLANEOUS PROVISIONS

92. (1) The Department shall conduct surveys and research programmes and compile statistical information related to pensions and pension plans. Research

(2) The Department may request a trustee, an employer, an administrator or a member of a pension plan to provide information necessary to compile the statistical information, and such persons shall comply with the request within a reasonable period of time.

(3) The Department shall use the information only for the purpose of compiling the statistical information.

(4) A trustee, an employer, an administrator or a member who fails to comply with a request under subsection (2) commits an offence and is liable on summary conviction to a fine of five thousand dollars.

93. (1) The Authority may require a trustee, an administrator or any other person - Information required by Authority

- (a) to supply to the Authority such information and within such time limits as the Authority specifies for the purpose of ascertaining compliance with this Law and the Regulations; or
- (b) to appear before the Authority with the information required to be supplied under paragraph (a).

(2) A person to whom a request is made under subsection (1) shall comply with the request within the time specified by the Authority.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

- Information required by Department
94. (1) The Department may require an employer or other person -
- (a) to supply to the Department such information and within such time limits as the Department may specify for the purpose of ascertaining compliance with this Law and the Regulations; or
  - (b) to appear before the Department with the information required under paragraph (a).
- (2) A person to whom a request is made under subsection (1) shall comply with the request within the time specified by the Department.
- (3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.
- Appraisal
95. (1) The Authority may require a trustee to secure an appraisal of any or all of the assets of the pension fund by one or more independent valuers, or the Authority may obtain the appraisal at the expense of the trustee.
- (2) The trustee shall deliver the appraisal to the Authority within the period of time specified in the requirement or within such other period of time as the Authority may specify.
- (3) A trustee who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.
- Liability of Authority or Department, etc.
96. The Authority, the Department, or an officer or employee of the Authority or Department shall not be liable in damages for anything done or omitted in the discharge or the purported discharge of their respective functions, responsibilities, powers and duties under this Law unless it is shown that the act or omission was in bad faith.
- Extension of time
97. The Authority or Department may extend any time limit under this Law or the Regulations, excluding the time limit specified under section 106(3), if the Authority or Department is satisfied that there are reasonable grounds for applying for the extension, and the Authority or Department may give such directions required as a result of such extension except that where there is any disagreement between the Authority and Department in respect of any extension or proposed extension or the terms thereof, the Authority shall make the final decision.

98. (1) The purposes mentioned under this section are -

Entry onto business  
premises

- (a) the administration of this Law and the Regulations;
- (b) the enforcement of any section of this Law or the Regulations;
- (c) the exercise of a power or the carrying out of a duty under this Law or the Regulations; and
- (d) the carrying out of an order made under this Law.

(2) For any of the purposes mentioned in subsection (1), the Authority, the Department or an authorized officer may, during normal business hours -

- (a) enter and have access to, through and over any business premises, where the Authority, the Department or the authorized officer has reasonable grounds to believe papers or other documents are kept that relate to a pension plan or pension fund;
- (b) make examinations, investigations and inquiries, and may require the production of any book, paper or other document related to a pension plan or pension fund; and
- (c) make, take, remove or require the making, taking and removal of copies or extracts related to an examination, investigation or inquiry.

(3) The Authority, the Department or an authorized officer shall not, pursuant to subsection (2), enter a private residence without the consent of the occupier.

(4) The Authority, the Department or an authorized officer may, for any purpose specified under this section, remove, upon giving a receipt, any books, papers or other documents respecting a pension plan or pension fund or any contribution paid out or which ought to have been paid in accordance with the provisions of this Law and may copy such books, papers or other documents within a reasonable period of time and return them as soon as reasonably practicable after the copying is completed.

(5) A copy of any book, paper or other document respecting a pension plan or pension fund and made under this section by the Authority, the Department or an authorized officer in the course of any examination, investigation or inquiry, and certified by the Authority, the Department or an authorized officer, is admissible in evidence in any action for all purposes for which the original would have been admissible.

(6) Where an owner or occupier of premises -

- (a) denies entry or access to, through or over premises to the Authority, the Department or an authorized officer;

- (b) instructs the Authority, the Department or an authorized officer to leave the premises;
- (c) obstructs the Authority, Department or authorised officer; or
- (d) refuses to comply with a request for the production of any book, paper or other document the production of which is requested for the purpose of examination, investigation or inquiry or for a purpose mentioned in subsection (1),

the Authority, the Department or an authorized officer may apply to a Justice of the Peace for an inspection order under section 100.

(7) A person exercising a power under this section shall provide identification at the time of entry.

(8) Where any documents are stored electronically, the powers of the Authority, the Department or the authorized officer to require the supply of information and production of documents shall include powers -

- (a) to require any person having charge of, or otherwise concerned with, the operation of an electronic device which is or has been in use in connection with such information or documents, to afford to the Authority, Department or an authorized officer such assistance as the Authority, Department or authorized officer may reasonably require; and
- (b) to require the documents to be produced or copied in any form which the Authority, Department or authorized officer may reasonably request.

Obstruction, false information etc.

99. (1) A person shall not hinder or obstruct any person lawfully carrying out a duty under this Law.

(2) A refusal of consent to enter a private residence is not and shall not be deemed to be hindering or obstructing within the meaning of subsection (1) unless an inspection order under section 100 has been issued relating to such private residence.

(3) A person shall not knowingly or wilfully provide false or misleading information in connection with any information the person is required to provide under this Law.

(4) A person who contravenes subsection (1) or (3) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

100. (1) Where a Justice of the Peace is satisfied on evidence upon oath or affirmation by the Authority, the Department or an authorized officer -

Order by Justice of the Peace

- (a) that there are reasonable and probable grounds for believing that it is necessary-
  - (i) to enter and have access to, through and over any premises;
  - (ii) to make examinations, investigations or inquiries;
  - (iii) to make, take and remove photographs, samples, copies or extracts related to an examination, investigation or inquiry; or
  - (iv) to do any such things, for a purpose mentioned in section 98(1); and
- (b) that the Authority, the Department or the authorized officer -
  - (i) has been denied entry to the premises;
  - (ii) has reasonable grounds to believe that entry to the premises will be denied;
  - (iii) has been instructed to leave the premises;
  - (iv) has been obstructed; or
  - (v) has been refused production of any book, paper or other document related to an examination, investigation or inquiry, by the occupier of the premises,

the Justice of the Peace may issue an inspection order authorising the Authority, the Department or the authorized officer to enter the premises and to do anything specified under subsection (1)(a) together with such police officers as the Authority, the Department or the authorised officer may deem necessary.

(2) An inspection order issued under this section -

- (a) shall be executed between the hours of 6:00 a.m. and 9:00p.m. unless the Justice of the Peace otherwise authorizes in the order; and
- (b) shall state the date on which it expires, which shall be a date not later than fifteen days after the issue of the inspection order.

(3) A Justice of the Peace may receive and consider an application for an inspection order under this section without notice to and in the absence of the owner or occupier of the premises.

101. (1) Where the Department is of the opinion that an employer is contravening a requirement of this Law or the Regulations, the Department may make an order requiring the employer to take or refrain from taking action in respect of a pension plan or pension fund.

Order by Department

(2) The Department may in an order made under subsection (1) specify the time for compliance with the order.

(3) An order under this section is not valid unless the reasons for the order are set out in the order.

(4) An order under this section may be filed in the Grand Court and is, upon such filing, enforceable as an order of that court.

Offences

102. (1) Except where specifically provided otherwise, a person who contravenes this Law or any order made under this Law commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

(2) Where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an approved provider, the court shall, in addition to imposing any fine, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund or to the approved provider.

(3) Notwithstanding any other Law to the contrary, no summary proceedings under this Law shall be commenced after seven years after the date when the subject matter of the proceeding occurred or is alleged to have occurred or was reported to the Authority or Department.

Fixed penalty offences  
Schedule 2

103. (1) Notwithstanding any other provision of this Law, the offences listed in Schedule 2 are designated as ticketable offences for which proceedings may be commenced by ticket under this Law.

Schedule 3

(2) Where the Department is satisfied beyond reasonable doubt that a person has committed a ticketable offence under this Law, the Department may, subject to subsection (3), issue a ticket in the form specified in Schedule 3 and shall serve or cause it to be served on the person.

(3) A ticket shall -

- (a) contain a statement signed by the Department certifying that the Department is satisfied beyond reasonable doubt that an offence has been committed;
- (b) include a description of the offence;
- (c) specify the amount of arrears of contributions, if any;

- (d) indicate with reasonable precision, having regard to all the circumstances, the time and place at which the offence was committed;
- (e) set out the amount equal to the fixed penalty for the offence;
- (f) set out the options that the person served with the ticket has in responding to it, the time within which the person shall respond; and
- (g) state that the ticket may be used as the evidence of the Department.

(4) The fixed penalty in respect of proceedings commenced by a ticket shall be as specified in Schedule 2.

Schedule 2

(5) Service of a ticket on the person who the Department is satisfied beyond reasonable doubt committed an offence is effected by a police officer delivering a copy of the ticket to the person or by leaving it at the last known place of business or abode of the person or by posting it to the last known place of business or abode of the person.

(6) A police officer who serves a ticket shall complete and sign a certificate of service stating that the ticket was, on the day set out in the certificate, served on the person whom the Department is satisfied beyond reasonable doubt committed the offence.

(7) A certificate referred to in subsection (6) is evidence that, on the day set out in the certificate, a ticket was served on the person who the Department believes committed the offence.

(8) A police officer shall cause a ticket to be filed in the court office as soon as practicable, but in any event, within twenty-eight days, after the ticket is served.

- (9) Within twenty-eight days after being served a ticket, a person may -
- (a) plead guilty and pay the total amount set out in the ticket in accordance with subsection (10); or
  - (b) request a trial in accordance with subsection (12).

(10) A person who is served with a ticket may plead guilty by paying the amount of delinquent contributions and interest, if any, to the pension plan and delivering a copy of the ticket, and the total amount set out in the ticket together with a receipt for the delinquent contributions and interest to the court specified in the ticket within the time specified in subsection (9).

(11) Payment of the total amount within the time specified in subsection (9) constitutes a plea of guilty and endorsement of payment on the ticket constitutes a conviction and the imposition of a fine of that amount.

(12) A person who is served with a ticket may request a trial by signing the request for trial on the ticket and delivering it to the court office specified in the ticket.

(13) As soon as practicable after a person requests a trial under subsection (12), the clerk of the court shall fix the time and place of the trial and have the defendant and the prosecution notified of its time and place.

(14) Where a person who the Department is satisfied beyond reasonable doubt committed an offence has been served with a ticket under this section and has not exercised any of the options referred to in subsection (9), the person shall attend at the court for trial of the matter on the court date being the date specified in the ticket which shall be no less than twenty-eight days after the date the ticket was served on the person and the notice of the court date on the ticket served shall be notice to the defendant and the prosecution of the same.

(15) A ticket filed in the court office is evidence of the facts alleged in the ticket without proof of the signature or official character of the person appearing to have completed the ticket.

(16) Except as otherwise provided, a notice or document required or authorized to be given or delivered under this section may be given or delivered personally by ordinary mail or by other prescribed means.

(17) Evidence that a notice or document required or authorised to be given or delivered to a person under this section was sent by ordinary mail or any other prescribed means to the person at his last known abode or business address appearing on a ticket, certificate of service or other document in the court file, is evidence that the notice or document was given or delivered to the person.

(18) A person who is convicted of a ticketable offence in a trial requested under subsection (9) or in a trial as a result of a failure to exercise the options under subsection (9) is liable to a fine greater than the fixed penalty provided for that ticketable offence but not exceeding the maximum fine provided for that ticketable offence under this Law.

104. (1) Where a body corporate commits an offence under this Law, every director or other officer concerned in the management of the body corporate commits that offence unless the director or other officer proves that the offence was committed without his consent or connivance or that he exercised reasonable diligence to prevent the commission of the offence.

Liability of directors, etc. where offence is committed by a body corporate

(2) In subsection (1), “director” in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

105. Where a provision of this Law or the Regulations or an order or approval of the Authority or Department under this Law is contravened, in addition to any other remedy and to any penalty imposed by law, the contravention may be restrained by action at the instance of the Authority, the Department or the administrator of the pension plan affected by the contravention.

Power to restrain

106. (1) Any notice, order or other document which is required to be served under this Law or the Regulations may be served -

Service of documents

- (a) by delivering it to the person on whom it is to be served;
- (b) by leaving it at the usual or last known place of abode of that person;
- (c) by sending it by prepaid post addressed to that person at his usual or last known postal address; or
- (d) in the case of a body corporate, by delivering or sending it by prepaid post to the person authorised to accept documents on behalf of that body corporate at its registered office or other place of business.

(2) Where the Authority or the Department is of the opinion that -

- (a) the persons who are to be given any notice or document under this Law or the Regulations are so numerous; or
- (b) for any other reason, it is not reasonable to serve the notice or document on all or any of the persons individually,

the Authority or the Department may authorise the serving of the notice or document or reasonable notice of the contents of the notice or document to the persons by public advertisement in a newspaper in general circulation in the Islands or otherwise as the Authority or Department may direct.

(3) The date on which the notice or document or the reasonable notice of the contents is first published or otherwise given as directed shall be deemed to be the date on which the notice or document is delivered.

(4) Service effected by post shall be deemed to have been effected three days after the notice or other document is posted.

(5) Notices of cease and desist orders issued to anyone under this Law, the revocation or termination of the registration of a pension plan, or of the removal or of the suspension or revocation of the approval of an administrator or other approved provider, shall be published by the Authority in the Gazette and may be published via any other media as the Authority determines necessary.

Time for action by trustee or administrator

107. A trustee or administrator of a pension plan who is required to take action under this Law or the Regulations shall take the action within the prescribed period of time.

Appeal

108. (1) An appeal shall lie to the Grand Court against any decision of the Authority or the Department under this Law.

(2) An appeal under this section shall not operate as a stay of any decision appealed against.

(3) The Rules Committee of the Grand Court may make rules of procedure governing the conduct of appeals under this section.

Victimization

109. (1) Where an employee reasonably believes that an employer has failed to comply with this Law or the Regulations, the employee may in writing make a disclosure of information to the Department or an authorized officer.

(2) An employer shall not subject or threaten to subject an employee to any victimization on account of a disclosure made under subsection (1).

(3) An employee shall not be considered to be subject to victimization where the employer has the right under any law in force in the Islands to take the action complained of or the action is demonstrably unrelated to the protected disclosure made.

(4) An employee who reasonably believes that he has been victimized as a result of his disclosure under subsection (1) may make a complaint to a Labour Tribunal in accordance with the Labour Law (2011 Revision).

(2011 Revision)

(5) In this section -  
“victimization” includes -

- (a) dismissal;
- (b) suspension;
- (c) denial of promotion;
- (d) demotion;
- (e) redundancy;
- (f) intimidation; or
- (g) subjection to any discriminatory by employer or employee the employer; or
- (h) threaten with any matter referred to in paragraphs (a) to (g).

110. (1) Where there is any conflict or inconsistency between this Law and any other Law, this Law shall prevail unless the other Law expressly provides otherwise. Conflict

(2) Subsection (1) does not apply to the Confidential Relationships (Preservation) Law (2009 Revision) which shall prevail over this Law. (2009 Revision)

(3) Notwithstanding subsection (2), the Department is not limited to the sharing of information among Government departments and statutory authorities regarding the failure of employers to provide pension benefits or make timely contributions in accordance with this Law.

111. (1) The Governor in Cabinet may make Regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law and in particular - Regulations

- (a) with respect to the administration of supplementary pension plans or international pension plans;
- (b) prescribing the times or the last dates for filing, giving, serving, submitting or transmitting documents that are required to be filed, given, served, submitted or transmitted under this Law or the Regulations;
- (c) prescribing reports that shall be submitted to the Department or with respect to Authority, the contents and the method of preparation of the reports and the persons and their qualifications by whom the reports shall be prepared;
- (d) prescribing and regulating pension benefits and required contributions;
- (e) prescribing procedures that shall govern the appointment of members of pension committees;
- (f) prescribing procedures that shall govern the establishment of advisory committees and the appointment of members of the advisory committees;

- (g) prescribing procedures, including the times for notice, method of counting votes and such other matters as may be required for the holding of meetings of members, former members and claimants of pension plans;
- (h) prescribing fees;
- (i) prescribing the method for the establishment of a pension fund and the methods of calculating the values of assets and liabilities of pension funds;
- (j) regulating the disposal of surplus funds;
- (k) prescribing the rate or the method of determining the rate at which an employer shall pay money due from the employer under this Law on the winding up of a pension plan, and related matters;
- (l) regulating or prohibiting the investment of money from pension funds and prescribing investments or classes of investments in which such money may be invested;
- (m) prescribing requirements for entitlement savings contracts between members of pension plans and trustees from whom administrators may make payment when required in accordance with this Law;
- (n) requiring the payment of interest on any amount required to be paid under the Law or the Regulations from the date the payment is due and prescribing the rate of interest and the method of calculating interest if such rate or method is not otherwise specified;
- (o) prescribing forms and records required to be prescribed under this Law and time limits for retention of such records;
- (p) providing for the audit of pension plans and pension funds and prescribing the persons or classes of persons who may perform the audits and the manner of performing the audits and for connected matters;
- (q) prescribing the manner of determining the portion of a pension benefit, pension, deferred pension or ancillary benefit that is attributable before 1<sup>st</sup> June, 1998 or that is attributable to employment on or after 1<sup>st</sup> June, 1998;
- (r) prescribing the manner of division and transfer of pension benefits by court orders under section 51;
- (s) prohibiting or regulating the reduction or the variation of pension benefits by reference to benefits payable under any approved plan;
- (t) governing the winding up or partial winding up of pension plans or classes of pension plans and prescribing priorities or the

method of determining priorities on winding up, including priorities in the allocation of assets and related matters;

- (u) exempting pension plans, pension funds, employees, administrators or other persons from the application of this Law or regulations or any section thereof;
- (u) governing the receiving, holding and disbursing of benefits by any agency established or designated under this Law;
- (v) prescribing terms and conditions governing the conversion of a defined benefit to a defined contribution benefit; and
- (w) prescribing the manner of calculating the commuted value of a deferred pension or a pension benefit.

(2) A regulation may be general or particular in its application and may be limited as to the time or place or both.

(3) A regulation may adopt by reference and may require compliance with, in whole or in part, such changes as the Governor in Cabinet considers necessary, any code, formula, standard or procedure as appears to the Governor in Cabinet and to be expedient for the purposes of this Law or the Regulations.

(4) The Governor in Cabinet may, after consultation with the employees of the Government, make an order providing that this Law shall apply to-

- (a) the Government;
- (b) a statutory authority;
- (c) a corporation wholly owned by the Government; or
- (d) a corporation, the majority of the shares of which are owned by the Government.

(5) Regulations made under this section are subject to affirmative resolution.

112. The National Pensions Law (2010 Revision) is repealed.

Repeal of National Pensions Law (2010 Revision)

#### PART 15 - SAVINGS AND TRANSITIONAL PROVISIONS

113. In this Part -

Definition for Part 15

“repealed Law” means the National Pensions Law (2010 Revision).

(2010 Revision)

114. (1) Where -

Pending offences

- (a) prior to the coming into force of this Law, a person accused of an offence is convicted following a trial or a plea of guilty to the offence, irrespective of when the offence was committed; and

- (b) at the coming into force of this Law, no judgment or sentence has been passed upon him in respect of the offence,

the accused person shall, for the purpose of the judgment or sentence, be dealt with in all respects as if this Law had not come into force.

(2) Subject to subsections (1) and (3), where, at the coming into force of this Law, any trial or any proceedings in respect of an offence are pending before a court, the trial or proceedings shall, after that date, be dealt with in all respects under this Law, irrespective of when the offence was committed, and the provisions of this Law are to apply accordingly.

(3) Where, on or after the coming into force of this Law, a person accused of an offence is convicted following a trial or a plea of guilty to the offence, the accused person shall, for the purpose of judgment or sentence in respect of the offence -

- (a) if the offence was committed before that date, be dealt with in all respects as if this Law had not come into force; and  
(b) if the offence is committed on or after that date, be dealt with in all respects under this Law and the provisions of this Law are to apply accordingly.

(4) A person, who attains the age of sixty years before the coming into force of this Law and who exercises his right to entitlement or early entitlement on or before the coming into force of this Law shall be deemed to have exercised such right under the repealed Law.

(5) Notwithstanding subsection (4), where after the coming into force of this Law, a person, regardless of having attained the normal age of pension entitlement, continues to be employed the provisions of this Law shall apply.

Licences etc.

115. Every application for a licence, dispensation, approval or other matter made under the repealed Law that has not been wholly dealt with by the Authority or the Department when this Law comes into force shall be taken to be an application made under this Law, and this Law shall apply accordingly.

Continuance of civil proceedings

116. Except as otherwise expressly provided in this Law every civil matter and proceeding commenced in any court under the repealed Law and pending or in progress immediately before the coming into force of this Law may be continued, completed and enforced under this Law.

117. Subject to section 118, every licence, dispensation, approval or direction made or granted under the repealed Law and in force immediately before the coming into force of this Law shall continue in force after this Law comes into force on the same conditions and with the same effect as if this Law had not come into force. Saving of licences, etc.

118. An employer, trustee or administrator existing at the coming into force of this Law who is not in compliance with one or more of the conditions specified in this Law, that were not specified in the repealed Law, as may be applicable to him shall so comply within six months of the coming into force of this Law or such longer period as the Authority or the Department may for good cause shown permit. Implementation of new conditions

119. Every form issued or prescribed for use under the repealed Law is to be regarded as issued or approved for use under this Law until another form is issued or prescribed for use under this Law in place of that form. Saving of forms in use

120. Where any period of time specified in a provision of the repealed Law is current at the coming into force of this Law, and there is a corresponding provision in this Law, this Law shall have effect as if that corresponding provision had been in force when that period began to run. Periods of time

(2) Notwithstanding section 111, the Governor in Cabinet may make regulations to provide for such further savings, transitional and consequential provisions to have effect in connection with the coming into force of any provision of this Law as are necessary or expedient.

(3) Regulations made under subsection (2) may be given retrospective operation to a day not earlier than the day this Law comes into force.

(4) Subsections (2) and (3) shall expire one year after they come into force.

(5) Regulations made under this section shall be subject to affirmative resolution.

SCHEDULE 1

FORMS

(Sections 62(3) and 63(2))

THE NATIONAL PENSIONS LAW

APPLICATION FOR WITHDRAWAL OF DEPOSIT UNDER SECTION 62  
OR AMOUNT TO PAY OFF AN EXISTING MORTGAGE UNDER SECTION  
63 OF THE LAW

<b>PART A - GENERAL</b>				
A1	Name and address of the Applicant			
A2	Name(s) and Address(es) of the Applicant's Employer(s)		1.	
			2.	
A3		Name(s) and Address(es) of the Administrator(s) of the Pension Plan(s) to which the Applicant is currently contributing	Name(s) and Address(es) of the Pension Plan(s) to which the Applicant is currently contributing and the Pension Plan Account Number(s)	Amount of contribution(s) currently being made
	1		Name and Address	\$
			Account No. :	
	2		Name and Address	\$

			Account No.:			
A4		Name(s) and Address(es) of the Administrator(s) of the Pension Plan(s) from which the Applicant is requesting withdrawal	Name(s) and Address(es) of the Pension Plan(s) from which the Applicant is requesting withdrawal and the Pension Plan Account Number(s)			Amount of withdrawal(s) required from the Pension Plans(s) <i>(shall not be more than \$35,000 in total)</i>
	1		Name and Address			\$
			Account No. :			
	2		Name and Address			\$
			Account No.:			
	3		Name and Address			\$
			Account No. :			
	4		Name and Address			\$
			Account No.:			
A5	Type of withdrawal applied for ( <i>Tick one</i> ).	Deposit to purchase an existing dwelling unit <input type="checkbox"/>	Deposit to construct a new dwelling unit <input type="checkbox"/>	Deposit to purchase residential land <input type="checkbox"/>	Amount to pay off existing mortgage <input type="checkbox"/>	



A10	<b>PART C - GENERAL DECLARATION</b>
	<p>I [INSERT NAME AND ADDRESS] hereby declare that this application is accordingly hereby made for the withdrawal of [*deposit / amount to pay off an existing mortgage] as specified above and it is certified that all particulars contained in this application and in the documents accompanying it or otherwise furnished in support hereof are true and correct.</p> <p>Any changes occurring before a decision is made regarding the granting or refusal of the withdrawal will be notified to the Administrator(s).</p> <p>Dated this ____ day of _____ 2 _____</p> <p style="text-align: center;">_____</p> <p style="text-align: center;"><i>Name of Applicant</i>)</p> <p>Signed: _____</p>
A11	<b>PART D -WITNESS</b>
	<p>WITNESS: _____</p> <p style="text-align: center;">Signature of witness to declaration[s]</p> <p>Name: _____</p> <p>Occupation: _____</p> <p>Address: _____</p>
*Delete where not applicable.	

SCHEDULE 2

(Section 103(1) and (4))

TICKETABLE OFFENCES

Description of offence	Section	Fixed Penalty
1. Failure, without reasonable cause, to notify the Department.	4(4)	\$2,500
2. Failure, without reasonable cause, to provide a pension plan or to make contributions to a pension plan for an employee (first offence).	5(2)(a)	\$5,000

3	Failure without reasonable cause to maintain written notification, acknowledged by the employee, of a pension plan.	5(4)	\$2,500
4.	Failure without reasonable cause to - (a) keep records under section 5(5); (b) state contributions clearly, etc. under section 5(6); or (c) retain books and records for a minimum period of seven years from the date on which they are prepared under section 5(7).	5(8)	\$2,500
5.	Failure to pay contributions into a pension plan within the timeframe specified by the Department.	55(10)	\$5,000
6	Contravention of contribution requirements.	56(18)	\$5,000
7.	Failure to comply with a request of the Department to provide information necessary to compile statistical information.	92(4)	\$1,000
8.	Failure to comply with a requirement of the Department to supply such information within such time limits as the Department may specify for the purpose of ascertaining compliance with this Law and the Regulations.	94(3)	\$2,500
9.	Hindering or obstructing any person lawfully carrying out a duty under the Law	99(4)	\$1,000
10.	Contravention of the Law or an order made under the Law	102(1)	\$2,500.

SCHEDULE 3

(Section 103(2))

FORM OF TICKET

FRONT OF TICKET

TICKET NUMBER	TIME:
DATE:	EMPLOYER NUMBER:
LOCATION:	NAME OF EMPLOYER:
<p>I, the undersigned [authorized officer of the Department], believe beyond reasonable doubt that</p> <p><i>Name of Employer</i></p> <p>has committed the following ticketable offence with the following fixed penalty:</p>	

	Description of ticketable offence.	Section	Fixed penalty	Tick
1.	Failure without reasonable cause to notify the Department.	4(4)	\$2,500	<input type="checkbox"/>
2.	Failure, without reasonable cause, to provide a pension plan or to make contributions to a pension plan for an employee (first offence).	5(2)(a)	\$5,000	<input type="checkbox"/>
3.	Failure without reasonable cause to maintain written notification acknowledged by the employee of the pension	5(4)	\$2500	<input type="checkbox"/>

	plan.			
4.	Failure without reasonable cause to -	5(8)	\$2,500	<input type="checkbox"/>
	(a) keep records under section 5(5);			
	(b) state contributions clearly, etc. under section 5(6); or			
	(c) retain books and records for a minimum period of seven years from the date on which they are prepared under section 5(7).			
5.	Failure to pay contributions into a pension plan, within the timeframe specified by the Department.	55(10)	\$5,000	<input type="checkbox"/>
6.	Contravention of contribution requirements	56(18)	\$5,000	<input type="checkbox"/>
7.	Failure to comply with a request of Department to provide information necessary to compile statistical information.	92(4)	\$1,000	<input type="checkbox"/>
8.	Failure to comply with a requirement of the Department to supply such information within such time limits as the Department may specify for the purpose of ascertaining compliance with the Law and the Regulations.	94(3)	\$2,500	<input type="checkbox"/>
9.	Hindering or obstructing any	99(4)	\$1,000	<input type="checkbox"/>

person lawfully carrying out a duty under the Law.

10. Contravention of the Law or an order made under the Law. 102(1) \$2,500

BACK OF TICKET

PLEASE READ CAREFULLY

1. PAYMENT

You may plead guilty by paying the amount of delinquent contributions and interest, if any, to the pension plan and delivering a copy of this ticket, and the total amount of the penalty set out in this ticket together with a receipt for the delinquent contributions and interest to the court at the address indicated below prior to the court date displayed on the back of this ticket.

Payments by check or money order are to be made payable to the general revenue of the Islands. *Please print the ticket number on the front of the check or money order.*

2. PLEA OF NOT GUILTY

If you wish to plead not guilty, you shall notify the court at the address as shown below WITHIN 28 DAYS after being served with this ticket. When responding to this ticket, you may indicate that the attendance of the Department is required for the purpose of cross-examination at trial.

Check box for attendance of the Department.

3. FAILURE TO PAY

Consequent on your failure to pay the fixed penalty specified in paragraph 1 you, are hereby bound over to appear before the magistrate of the court sitting at the address shown below at 10:00 a.m. on the day \_\_\_\_\_ of \_\_\_\_\_ to answer the complaint.

If your fail to appear, the magistrate may issue a warrant of arrest to compel your attendance.

**NOTICE**

This ticket may be used as evidence of the Department

Submit or send payment to:	Department responsible for national pensions	Hours of operation
		8:30 a.m. - 12:00 p.m.
		1:00 p.m. - 5:00 p.m.
Phone:		

Passed by the Legislative Assembly the            day of            , 2012.

Speaker.

Clerk of the Legislative Assembly.