

Amendments to the Cayman Islands National Pensions Law

What employers and employees need to know

The changes in detail

Note: For ease, amounts appearing in the Law are represented in figures rather than words.

The Law does the following:

- it replaces the following words or phrases throughout the Law:
 - "Governor" with "Cabinet";
 - "Superintendent" with "Director";
 - "normal retirement age" with "normal age of pension entitlement"; and
 - "normal retirement date" with "normal pension entitlement date";
- amends s.3 by changing the meaning of the word "employee" so that it has the same meaning as that provided in the Labour Law (2011 Revision) and by inserts the following definitions:

year's maximum pensionable earnings means eighty-seven thousand dollars;

custodian means the person entrusted with the safekeeping of the assets of the pension fund;

Director means the Director of the Department of Labour and Pensions established under section 79;

household domestic has the meaning assigned to those words in the Labour Law (2011 Revision);

investment manager means a person that manages the investment of a pension plan; and

normal age of pension entitlement means sixty-five years of age except that a person who attains sixty years of age, within the time prescribed by Order made by Cabinet, may opt for a normal age of pension entitlement of sixty years of age;"

- amends s.4 to make provision for the establishment of pension plans and to create an obligation for the Director to publish notice of pension plans registered under the Law;
- amends the previous penalties provided in s.4(3) with revised penalties in s.4(4) for failing, without reasonable cause, to provide a pension for an employee; the penalties have been increased, and staggered for repeat offences, as follows:
 - (a) in the case of a first offence, on summary conviction to a fine of CI \$20,000 dollars or to imprisonment for a term of 2 years, or to both;
 - (b) in the case of a second offence, on summary conviction to a fine of CI \$50,000 or to imprisonment for a term of 3 years, or to both; or
 - (c) in the case of a third or subsequent offence, on conviction on indictment to a fine of CI \$100,000 or to imprisonment for a term of 5 years, or to both.

- amends s.6, which prohibits the administration of an unregistered pension plan, by increasing the penalty for the contravention of its provisions;
- increases the penalties on summary conviction provided for in s.7 for any person administering a pension if the registration of that plan has been refused or revoked by the Director to CI \$100,000, or to imprisonment for a term of 5 years, or both;
- amends s.8, which sets out the criteria to be satisfied for a person who administers a pension plan, by imposing a penalty on summary conviction to a fine of CI \$100,000, or imprisonment for a term of 5 years, or both, for the contravention of its provisions;
- amends the registration requirements prescribed in s.9 by requiring the following additional information to accompany an application for registration under the Law:
 - (a) a statement of investment policy in the prescribed manner;
 - (b) evidence of the method utilised to address on-going administrator training;
 - (c) details of the person who has accepted the appointment as auditor of the pension plan;
 - (d) details of any persons, including evidence of the knowledge and skill of the persons, who will carry on the functions of administrator, investment manager, investment adviser, agent of the administrator or custodian of the pension plan;
 - (e) details of all the individuals to be appointed to the pension committee, the board of trustees or the trust company acting as administrator;
 - (f) in the case of a defined benefit pension plan, an original or certified copy of an actuarial report; and
 - (g) any other prescribed information respecting the pension plan and pension fund;
- increases significantly the duties of the administrator of a pension plan provided for in s.16 of the Law and to insert a new s.16A which details the functions of the administrator;
- amends s.17, which refers to diligence, care and skill, to provide that the administrator may employ agents and may provide instructions for the employment of such agents;
- inserts a new s.18A which establishes the obligations of the employer; it reads:
 - “(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 five years from the date on which they are prepared.
 - (4) 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 25, an employer shall keep and maintain records showing -
 - (a) the name of and current contact information for 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 on behalf of the employee and evidence of payment to the pension plan;
- (k) the period over which 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.

(5) 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.

(6) An employer shall retain records required to be kept under subsection (4) for a minimum period of five years from the date on which they are prepared.

(7) An employer shall maintain a written notification, acknowledged by the employee in writing, of the pension plan referred to in section 4(1).

(8) An employer who -

(a) knowingly and wilfully contravenes subsections (1) or (3); or

(b) fails without reasonable cause to comply with subsections (4), (5), (6) or (7), commits an offence and is liable on summary conviction to a fine of ten thousand dollars."

- replaces s. 20 with the following new s.20 (it sets out what information that the administrator is required to keep):

"(1) An administrator shall provide, in writing, to each person who under this Law is required to become a member of a pension plan, immediately upon the person's application for membership in the pension plan -

- (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 returns and expense ratios of the pension fund in the prescribed format; and
- (d) any other information prescribed.

(2) An employer shall, as soon as is reasonably practicable, provide to an administrator the information required to enable the administrator to comply with this section."

- amends s.22 by changing the requirement for an annual statement of pension benefits to an obligation to provide such a statement semi-annually; the amended s. 22 also provides that the statement can be provided electronically with the member's written permission;
- amends s.23 by creating a requirement that an administrator must make their documents available for inspection "within thirty days of a written request" and by changing the frequency with which such requests can be made from once a year to once every six months;
- amends s.25 by confirming that it applies to all employees between the ages of eighteen years and the normal age of pension entitlement which is defined as being 65 years, by changing the wait period before commencing contributions for non-Caymanian employees from the nine months to six months continuous employment, and by clarifying that a person employed as a "household domestic" is also exempted from pension requirements;
- amends s.26 by replacing the expression "normal retirement date" with "normal pension entitlement date", which latter expression is defined as being not later than 3 months after attaining the "normal age of pension entitlement";
- amends the minimum benefit defined in s.30 by amending the maximum years benefit from forty-two years membership to forty-seven years, and corrects an incorrect cross-reference;
- amends s.33, which makes provision for early retirement options, by providing for a member to continue to receive pension benefits if the member resumes employment after retirement, and by providing that, if a member resumes employment, the member is required to continue to make contributions to the member's pension plan;
- amends s.34, which refers to the options available to a member terminates employment with a specific employer, by providing more options for the member to transfer their benefit;
- amends s.39 by changing the age at which the pre-retirement death benefit can be paid to the surviving spouse to no earlier than 10 years before the spouse attains the age of 65, from "ten years before the spouse attains the age of sixty";
- amends s.47, which refers to the mandatory contribution rates under a pension plan, by imposing a penalty for contravention of the section, and by, generally, providing more flexibility for a member to access their voluntary contributions made over and above mandatory contributions;
- replaces s.48 with a new s. 48 which specifies the requirements to report to the Director any arrears of contributions and which creates additional fee and penalties for failure to pay pension contributions within the specified time;
- replaces s.50 with a new s. 50 as regards to accrual obligations in respect of delinquent contributions by providing that interest is accrued on money that is due to be paid by the employer at 5% above the current prime rate in the Cayman Islands.
- amends s.53, which previously provided for refunds, by requiring that refunds are only provided for on certain occasions when certain conditions have been met;
- amends s.69 by making it an offence for an administrator who contravenes the stated requirements for the adoption of a new plan and by imposing a penalty on summary conviction of a fine of CI \$50,000 or 5% of the assets, whichever is greater, which must be paid by the administrator and not charged to the pension plan;
- inserts a new s.79A which empowers the Director, Deputy Director and any designated person the same powers, privileges and immunities as are conferred on a constable by the Police Law (2014 Revision);
- amends s.80 by removing the authority to administer the Law and the regulations as a duty of the Board;

- increases the fine from CI \$1,000 to CI \$5,000 provided for previously in s.81 for any employer, administrator or member who fails to comply with a request from the Director for information necessary to compile statistical information;
- increases the fines provided for in s.82(3) from “one thousand dollars” to “ten thousand dollars or to imprisonment for a term of one year or to both”, and increases the fines in 82(6) from “five thousand dollars” to “twenty thousand dollars or to imprisonment for a term of two year, or to both”;
- amends s.87 by deleting the words “business premises” wherever they appear and substituting the word “workplaces” and by defining “workplaces” to mean, “any premises in which any employee is employed to work and, without prejudice to the generality of the foregoing, includes any shop, office, licensed premises or factory, but does not include, in respect of a household domestic employed there, a private home”;
- amends s.88, which deals with obstruction in relation to the operation of the Law, by adding a new subsection that makes it an offence for a person who knowingly or wilfully provides false or misleading information in connection with any information the person is required to provide under the Law, and by increasing the associated penalty from “one thousand dollars” to “ten thousand dollars or to imprisonment for a term of one year, or to both”;
- amends s.90(1), which relates to offences generally, in the following respects: by changing the penalty for contravention of the Law from “one thousand dollars” to “ten thousand dollars or to imprisonment for a term of one year, or to both”; by deleting the words “occurred or is alleged to have occurred” and substituting the words “was reported to the Director”; and inserting a new s.90(4) which reads:

“After obtaining the written consent of the Director of Public Prosecutions, the Director or Deputy Director may institute criminal proceedings for any offence under this Law, and may appear before the Court to conduct the prosecution in respect of the offence.”

- inserts a new s.90A which includes a definition of “director” and which provides that when a body corporate commits an offence under the 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 the director’s or other officer’s consent or connivance or that the director or other officer exercised reasonable diligence to prevent the commission of the offence;
- inserts a new s.94(3) which allows the Director to share information with government departments and statutory authorities regarding the compliance with pension plans;
- inserts a new s.94A which provides for protection of employees against victimisation due to their reporting of non-compliance by their employer;
- inserts a new s.95(2)(x) which allows for the making of regulations to prescribe an administrative penalty system; and
- inserts a new s.95A which makes provision for an employer to request from the Director or administrator a verification of compliance.

If you have any questions, please contact the briefing author at the details provided below or your usual Ogier contact.

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