

Supplement No. 16 published with Gazette No. 23 of 8th November, 2010.

NATIONAL PENSIONS LAW

(2010 Revision)

Law 10 of 1996 consolidated with Laws 28 of 1997, 8 of 1998, 8 of 1999 and 8 of 2010.

Revised under the authority of the Law Revision Law (1999 Revision).

Originally enacted-

Law 10 of 1996-15th July, 1996
Law 28 of 1997-23rd December, 1997
Law 8 of 1998-9th April, 1998
Law 8 of 1999-23rd April, 1999
Law 8 of 2010-1st March, 2010.

Consolidated and revised this 19th day of October, 2010.

Note (not forming part of the Law): This revision replaces the 2000 Revision which should now be discarded.

NATIONAL PENSIONS LAW

(2010 Revision)

ARRANGEMENT OF SECTIONS

PART I-Introductory

1. Short title
2. Application of Law to certain pension plans
3. Definitions
4. Establishment of pension plans
5. Greater pension benefits and previous pensions

PART IA-Suspension of Pension Contributions

- 5A. Definitions and expiry of Part 1A
- 5B. Suspension of pension contributions
- 5C. Application to be certified as an approved person
- 5D. Certification of approved persons
- 5E. Referral of administrator's decision
- 5F. Construction of the National Pensions Law

PART II-Registration and Administration

6. Prohibitions of administration of an unregistered pension plan
7. Refusal or revocation of registration
8. Administrator
9. Registration
10. Contents of pension plan
11. Accrual of pension benefits
12. Registration of amendment
13. Reduction of benefits
14. Acknowledgement of application for registration
15. Refusal or revocation of registration
16. Duties of administrator
17. Diligence, care and skill
18. Information from employer
19. Advisory Committee

PART III-Disclosure of Information

20. Information from administrator
21. Notice of proposed amendment
22. Annual statement of pension benefits

- 23. Inspection of administrator's documents
- 24. Inspection of filed documents

PART IV-Membership

- 25. Eligibility for membership

PART V-Retirement and Vesting

- 26. Normal retirement date
- 27. Deferred pension for past service
- 28. Deferred pension
- 29. Termination by member

PART VI-Benefits

- 30. Minimum benefit
- 31. Value of deferred pension
- 32. Ancillary benefits
- 33. Early retirement option
- 34. Transfer
- 35. Purchase of pension
- 36. Joint survivor pension benefits
- 37. Information for payment of pension
- 38. Remarriage of spouse
- 39. Pre-retirement death benefit
- 40. Variation of payment to disabled person
- 41. Commuted value
- 42. Cash out of small benefits
- 43. Payment on breakdown of marriage
- 44. Discrimination on the basis of sex
- 45. Inflation protection

PART VII-Contributions

- 46. Funding
- 47. Contribution rate
- 48. Notice to Superintendent of arrears of contributions
- 49. Trust property
- 50. Accrual
- 51. Bond
- 52. Investment of pension fund

PART VIII-Locking In

- 53. Refunds
- 54. Shorter qualification periods

- 55. Void transactions
- 56. Exemption from execution, seizure or attachment
- 57. Commutation or surrender

PART IX-Termination and Winding Up

- 58. Winding up
- 59. Winding up order by the Superintendent
- 60. Wind up report
- 61. Appointment of administrator to wind up
- 62. Notice of entitlements
- 63. Determination of entitlement
- 64. Accrual of pensions during notice of termination
- 65. Liability of employer on termination
- 66. Pension fund continues subject to the Law and the regulations

PART X-Surplus

- 67. Continuing pension plan

PART XI-Sales, Transfers and New Plans

- 68. Continuation of benefits under successor employer
- 69. Adoption of a new pension plan

PART XII-Orders

- 70. Order by Superintendent
- 71. Order for correction

PART XIII-Hearing and Appeal

- 72. Appeal from Superintendent's decision
- 73. Request for appeal, etc.
- 74. Quorum and votes
- 75. Costs
- 76. Enforcement
- 77. Appeal to Grand Court

PART XIV-National Pensions Board

- 78. National Pensions Board
- 79. Superintendent
- 80. Duty of Superintendent and Board
- 81. Research
- 82. Information

- 83. Liability of members and employees of Board and Superintendent
- 84. Audit
- 85. Annual report

PART XV-General

- 86. Extension of time
- 87. Entry onto business premises by the Superintendent
- 88. Obstruction
- 89. Order by Justice of the Peace
- 90. Offences
- 91. Power to restrain
- 92. Service of documents
- 93. Time for actions by administrator
- 94. Conflict
- 95. Regulations

NATIONAL PENSIONS LAW

(2010 Revision)

PART I - Introductory

1. This Law may be cited as the National Pensions Law (2010 Revision). Short title
2. This Law applies to pension plans established and maintained for the benefit of employees in the Islands. Application of Law to certain pension plans
3. In this Law - Definitions
 - “active member”, in relation to a pension plan, means a member of the plan who -
 - (a) has not terminated his employment under the plan;
 - (b) has not exercised his entitlement under section 29; and
 - (c) has not been deemed under section 63(1) to have terminated his employment under the 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 -
 - (a) has qualified as an actuary by examination of the Institute of Actuaries in England, the Faculty of Actuaries in Scotland or the Societies of Actuaries in the United States or Canada and who is a current member in good standing of one of those professional associations; or
 - (b) holds some other actuarial qualification and who is, in the opinion of the Governor, suitable for recognition as an actuary for the purposes 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;
 - “administrator” means a person who manages a pension plan;
 - “ancillary benefit” means any of the benefits described in section 32;
 - “approved provider” means an insurance company or other company licensed to undertake pension plans in the Islands;
 - “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;

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

“Board” means the National Pensions Board established under section 78;

“certified copy” means a copy certified by an attorney-at-law to be a true copy;

“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 plan, is or may be entitled to a right or benefit under such 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 a spouse; or
- (d) a decree of judicial separation.

“continuous”, in relation to employment, membership or service, means continuous notwithstanding regard to periods of temporary suspension of employment, membership or service of less than six months, and notwithstanding periods of lay-off from employment;

“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 in payment;

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

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

“disabled”, 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;

“earnings” means -

- (a) in the case of an employee, any wages, salary, leave pay, fee, commission, bonus (to the extent that the bonus is equivalent to more than twenty per cent of the employee's basic salary or wage for the period in question) or gratuity, expressed in monetary terms, paid or payable by an employer (directly or indirectly) to that employee in consideration of employment, but does not include severance payments, retirement or long service recognition payments or health insurance premiums; and
- (b) in the case of a self-employed person, income of that person prescribed and calculated in accordance with the regulations;

"employee" has the meaning assigned to it by section 2 of the Labour Law (2007 Revision); 2007 Revision

"employer" has the meaning assigned to it by section 2 of the Labour Law (2007 Revision);

"file" means file with the Superintendent;

"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;

"Governor" means Governor in Cabinet;

"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 plan other than an active member;

"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;

"member", in relation to a pension plan, means a person who is or may be entitled to a benefit or refund of the person's contributions under the pension plan as a result of the person's employment or self-employment;

“Minister” means the Minister having responsibility for pensions;

“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;

“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 member or former member of a pension plan, means the entitlement of the member or former member or of another person upon the death of the member or former member to the periodic amounts provided under the pension plan for the lifetime of the member or former member, but does not include an ancillary benefit;

“pension committee” means a committee that is the administrator of a pension plan;

“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) a plan to provide cash withdrawals from the fund or lump sum payments;
- (c) a plan under which all pension benefits are provided by contributions made by members who are not self-employed;
- (d) a fund or plan supplementary to a registered pension plan; or
- (e) 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;

“prescribed” means prescribed by regulations made under this Law;

“reciprocal transfer agreement” means an agreement respecting two or more pension plans that provides for the transfer of money, credits for employment or

such other matter in respect of individual members who are transferring to and from registered pension plans whether in or outside the Islands;

“registration” means registration under this Law;

“regulations” means all regulations made by the Governor under the powers contained in 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;

“spouse” means a man or a woman who -

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

“Superintendent” means the Superintendent of Pensions appointed under section 79;

“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;

“termination” -

- (a) in relation to employment, includes retirement and death; and
- (b) in relation to a winding up in whole or in part of a pension plan, means the cessation of the accrual of benefits under the plan by members of the plan;

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

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

4. (1) Subject to section 25(2), every employer in the Islands shall provide a pension plan or make contribution to a pension plan for every person employed by him 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) A person shall be deemed to be employed in the Islands -

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

(3) Subject to section 25, an employer who fails without reasonable cause to provide a pension plan or to make contributions to a pension plan for an employee is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or on indictment to a fine of ten thousand dollars.

Greater pension benefits and previous pensions.

5. (1) 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.

(2) The Governor may make regulations respecting the administration of any pension plans which are in existence on the 1st June, 1998.

PART IA - Suspension of Pension Contributions

Definitions and expiry of Part IA

5(A) (1) In this Part -

“approved person” means any employer, employee or self-employed person who is certified as an approved person under section 5D; and

Law 8 of 2010

“pension holiday period” means the period commencing on the date on which the National Pensions (Amendment) Law, 2010 is published in the Gazette and ending on the date on which section 4 of that Law ceases to have effect.

(2) This Part shall cease to have effect -

- (a) in relation to an employee who is a Caymanian, upon the expiration of a period of one year; and
- (b) in relation to an employee who is not a Caymanian, upon the expiration of a period of two years.

(3) Upon the expiration of this Part in relation to a Caymanian employee or a non-Caymanian employee, as the case may be, the respective law in force prior to 26th April, 2010, shall so far as it is amended by that Part, again operate as though that Part had not been passed and the said amendments had not been enacted.

(4) In this section -

2010 Revision

“Caymanian” has the meaning assigned to it by the Immigration Law (2010 Revision); and

2007 Revision

“employee” has the meaning assigned to it by the Labour Law (2007 Revision).

Suspension of pension contributions

5B (1) Where an employer and his employee are certified under section 5D as approved persons, this Part applies and, notwithstanding any other provision of this Law, neither the employer nor the employee is required to contribute to the

pension fund of a pension plan on behalf of the employee in relation to any portion of the pension holiday period.

(2) Where a self-employed person holds an individual retirement account and is certified under section 5D as an approved person, this Part applies and, notwithstanding any other provision of this Law, the self-employed person is not required to contribute to the account in relation to any portion of the pension holiday period.

(3) An employer who is not an approved person and who, in relation to any portion of the pension holiday period, fails without reasonable cause to make contributions to a pension plan for an employee, commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(4) An employer who is an approved person and who -

- (a) for the purpose of making contributions to a pension plan for an employee, withholds money, whether by payroll deduction or otherwise, from money payable to the employee; and
- (b) fails without reasonable cause to make the contributions,

commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(5) A self-employed person who -

- (a) is not an approved person;
- (b) holds an individual retirement account; and
- (c) fails to contribute to the account all money that is due to be paid by him to that account in relation to any portion of the pension holiday period,

commits an offence and is liable on summary conviction to a fine of ten thousand.

5C. (1) A person who is -

- (a) an employer in the Islands;
- (b) an employee in the Islands; or
- (c) a self-employed person,

Application to be
certified as an approved
person

may, in relation to a pension plan, apply to the administrator of the plan to be certified as an approved person.

(2) An employer and an employee who apply under subsection (1)(a) and (b) shall, together with their application, submit to the administrator an agreement made in writing and signed by the employer and the employee, specifying that,

notwithstanding any contract to the contrary, the employer and the employee agree that neither the employer nor the employee shall contribute to the pension fund of a pension plan on behalf of the employee in relation to any portion of the pension holiday period.

(3) Where an application is submitted under subsection (1)(a) and (b) by an employer and his employee, the administrator shall refuse to certify the employer and employee as approved persons if -

- (a) an agreement has not been submitted to the administrator pursuant to subsection (2); or
- (b) at the date of the application, the employer fails to pay arrears of contributions and has made no arrangement for payment of the arrears.

(4) Where an application is submitted under subsection (1)(c) by a self-employed person, the administrator shall refuse to certify him as an approved person if, at the date of the application, the self-employed person fails to pay arrears of contributions and has made not arrangement for payment of the arrears.

Certification of
approved persons

5D (1) An administrator shall, within seven days of receipt of an application under section 5C, notify the applicant and the Superintendent in writing as to whether or not the application has been approved; and, if the application has been approved, the administrator shall certify that the applicant is an approved person by issuing to the applicant a certificate to that effect.

(2) Where an administrator issues a certificate to an employer or a self-employed person who has made an arrangement for the payment of arrears and the administrator determines that the employer or the self-employed person has failed to comply with the terms of the arrangement, the administrator shall revoke the certificate and shall notify the applicant and the Superintendent in writing of his decision to revoke the certificate.

Referral of
administrator's decision

5E (1) An applicant affected by a decision of an administrator under section 5D, may refer the decision to the Superintendent and, upon any such referral, the Superintendent may -

- (a) decide to confirm, vary or rescind the referred decision; or
- (b) substitute his decision for that of the administrator.

(2) The Superintendent shall, by notice in writing, inform the applicant and the administrator of his decision.

Construction of the
National Pensions Law
(2000 Revision)

5F. Parts I and II to XV of the National Pensions Law (2000 Revision), and the regulations made under that Law, shall be construed with necessary changes for the purpose of giving effect to the amendments effected by this Part.

PART II - Registration and Administration

6. (1) Subject to subsections (2), (3) and (4), no person shall administer a pension plan for the benefit of employees unless the plan has been registered by the Superintendent and a certificate has been issued in respect of the plan by the Superintendent.

Prohibitions of
administration of an
unregistered pension
plan

(2) Notwithstanding subsection (1), a pension plan which has not been registered in accordance with subsection (1) may be administered without the required registration during the first two hundred and seventy days after the 1st June, 1998.

(3) Notwithstanding subsection (1), a pension plan which was offered or subscribed to by an employer before the 1st June, 1998, which is acceptable to the Superintendent, may continue to be administered as a supplementary plan without being registered, but only if -

- (a) the employees' participation is voluntary;
- (b) the pension plan is in addition to a registered plan;
- (c) the pension plan is entered into with full information; and
- (d) regular reports are provided to the employees in accordance with guidelines issued, from time to time, by the Superintendent.

(4) (a) Notwithstanding subsection (1), international pension plans, which are defined benefit pension plans at the 1st June, 1998, may continue to operate without registration subject to such conditions as may be imposed by the Superintendent and to the conditions specified in paragraph (c).

- (b) An employee shall only be eligible to participate in a plan of a type referred to in paragraph (a) if, at the 1st June, 1998, he has been participating in the plan for at least ten years and-
 - (i) there are no more than ten years before his date of compulsory retirement;
 - (ii) he is at least forty-five years of age; or
 - (iii) he is an employee who has been participating in the plan prior to his employment in the Islands.
- (c) The conditions referred to in paragraph (a) are -
 - (i) the employees' participation in the plan shall be voluntary;
 - (ii) the employer shall ensure that-
 - (A) the estimated value of the fund;
 - (B) the investment performance of the fund;
 - (C) changes in the contribution rate, if applicable;
 - (D) amendments to the plan;
 - (E) changes on the Board, Committee, or Trustees who administer the plan;
 - (F) the funding status of the plan; and

- (G) any other relevant information, are provided within a reasonable time to all employees;
 - (iii) arrangements for portability or the payment of benefits in the event of termination of employment or winding up of a plan referred to in paragraph (a) shall have been approved by the Superintendent;
 - (iv) benefits shall either be payable in the form of a pension or valued and transferred to another plan; and
 - (v) benefits may not, under the plan, be able to be commuted and paid in the form of a lump sum cash settlement.
- (d) In this subsection-
“international pension plan” means a pension plan which provides pensions for the employees of an employer, or a group of affiliated employers, in more than one country.

(5) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to a further fine of five hundred dollars for each day in which the plan is administered contrary to subsection (1).

Refusal or revocation of registration

7. (1) No person shall administer a pension plan if the registration of that plan has been refused or revoked by the Superintendent.

(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) is guilty of an offence and liable on summary conviction to a fine of five thousand dollars and to a further fine of five hundred dollars for each day in which the plan is administered contrary to subsection (1).

Administrator

8. (1) For the purposes of this Law, only the following persons may administer a pension plan-

- (a) an employer;
- (b) a pension committee at least fifty per cent of which shall be representatives of members of the pension plan and a majority of which shall hold Caymanian status or be permanent residents of the Islands;
- (c) an approved provider where that provider provides all of the benefits under the pension plan, or a representative or agent of that provider;
- (d) a board of trustees appointed pursuant to the pension plan, at least fifty per cent of which shall be representative of members of

- the pension plan and a majority of which shall hold Caymanian status or be permanent residents of the Islands;
- (e) a board, agency or other person made responsible by this Law or any other law for the administration of the pension; or
- (f) a trust company licensed in accordance with the Banks and Trust Companies Law (2009 Revision).

2009 Revision

(2) For the purposes of subsection (1)-

“employer” includes an affiliate or parent company.

(3) An administrator shall ensure that the administration, custodianship and investment of the pension plan and fund are undertaken by qualified and experienced persons or bodies.

(4) No person who is a receiver or trustee in bankruptcy of an administrator of the pension plan shall administer a pension plan.

(5) An administrator, subject to any approval of the Superintendent to different arrangements given under section 6(3), shall be based or represented in the Islands.

(6) In the event of the bankruptcy of an employer within the meaning of the Bankruptcy Law (1997 Revision), the Superintendent may act as or appoint an administrator of the plan.

1997 Revision

9. (1) An administrator shall apply to the Superintendent within sixty days after the date on which a pension plan is established to register the pension plan.

Registration

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

- (a) the prescribed fee;
- (b) two certified copies of the document constituting the pension plan and the relevant pension fund;
- (c) a certified copy of any reciprocal transfer agreement related to the pension plan;
- (d) a certified copy of the explanation and any other information required under section 20(1); and
- (e) 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 plan as the Superintendent considers relevant.

(3) The form in which an application for registration is to be made or in which any information is to be given pursuant to this section shall be prescribed by regulations made by the Governor acting on the advice of the Superintendent.

- Contents of pension plan
10. (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) termination of membership;
 - (iii) retirement; and
 - (iv) death;
 - (d) the retirement date under the pension plan;
 - (e) the requirements for entitlement under the pension plan to any pension benefit;
 - (f) the contributions and 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 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 administrator 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 plan;
 - (n) particulars of any previous pension plan under which members of the pension plan may be entitled to pension benefits;
 - (o) in the case of a defined benefit pension plan, an original or certified copy of an actuarial survey and report; and
 - (p) any other prescribed information respecting the pension plan and pension fund.
- (2) Where a pension plan is established pursuant to a trust agreement, the documents constituting such agreement shall set out the powers and duties of the trustees.

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

Accrual of pension benefits.

- (a) the 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 Superintendent shall not 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 pension plan is variable otherwise than at the discretion of a majority of the members of the pension plan.

12. (1) An administrator shall not amend a plan without-

Registration of amendment

- (a) the recorded approval and votes of two-thirds of the members and the former members of the plan affected by the proposed amendment either present or voting by proxy, which votes shall be recorded in the minutes of the meeting at which such votes were taken, or voting in a written ballot of those members affected by the proposed amendment; and
- (b) the approval of the employer.

(2) A meeting or ballot process required for the purpose of subsection (1) shall be held in accordance with the rules set out in regulations prescribed by the Governor.

(3) An administrator shall apply to the Superintendent within thirty days after the date on which the pension plan is amended for registration of the amendment.

(4) An application for the registration of an amendment shall be made in the prescribed form and shall be accompanied by-

- (a) the prescribed fee;
- (b) a certified copy of the document;
- (c) certified copies of any other prescribed documents; and
- (d) any other prescribed information.

(5) An amendment of a pension plan is not effective until it is approved by the Superintendent.

(6) The administrator shall, where an amendment is approved, file a certified copy of the amended plan.

(7) Notwithstanding subsection (1), an administrator shall not be required to obtain the approval of the members of a plan for amendments which are, in the opinion of the Superintendent, minor or statutorily required.

(8) An amendment to a pension plan may be made effective from a date before the date on which the amendment is registered.

(9) An amendment 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 written consent of the employer.

Reduction of benefits

13. An amendment of a pension plan is void and of no effect where the amendment purports to reduce-

- (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.

Acknowledgement of application for registration.

14. (1) The Superintendent shall issue to an administrator-

- (a) a written acknowledgement of any application for registration of a pension plan within thirty days after receiving an application for registration under section 9;
- (b) a certificate of registration within thirty days of the registration of a plan; and
- (c) a notice of registration for each amendment to a plan within thirty days of the registration of the amendment.

(2) No person shall contract out of or waive a requirement imposed under this Law upon an employer or administrator of a pension plan in favour of a member, former member or claimant and any such contracting out or waiver is void and of no effect.

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

Refusal or revocation of registration

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

(2) The Superintendent may revoke the registration of a pension plan which is not being administered in accordance with this Law.

(3) The authority of the Superintendent under subsection (1) or (2) is subject to the right to a hearing under section 72 of a person affected by the Superintendent's decision.

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

(5) Where the Superintendent refuses to register a pension plan or revokes the registration of a plan, the administrator shall wind up the pension plan in accordance with this Law and the regulations.

16. (1) An administrator shall ensure that-

Duties of administrator

- (a) the pension plan and pension fund are administered in accordance with this Law and the regulations; and
- (b) the pension plan and any amendment to the plan are administered in accordance with the documents filed with the Superintendent upon registration of such plan or amendment.

(2) An administrator shall-

- (a) upon payment of the prescribed fee, file each year during the continuation of a pension plan an annual information return relating to the pension plan in the prescribed form;
- (b) within six months of the end of a financial year of a pension plan or such longer period as the Superintendent may allow, file the audited accounts of a pension fund;
- (c) every three years during the continuation of a defined benefit pension plan and every five years during the continuation of a defined contribution pension plan with the assistance of an actuary, review the financial operation of the pension plan and file an actuarial report within six months of the completion of the review, or such longer period as the Superintendent may allow; and
- (d) file such additional reports required under this Law or by regulations.

(3) If an administrator fails to comply with any requirement under this section, the Superintendent may dismiss the administrator and act as or may appoint another administrator of the plan.

(4) The reasonable administration costs of the Superintendent or the administrator appointed by the Superintendent of any action taken under subsection (3) shall be paid out of the pension fund.

Diligence, care and skill

17. (1) An administrator shall-

- (a) 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 person of ordinary prudence would exercise in dealing with the property of another; and
- (b) use in the administration of a pension plan and in the management and investment of a pension fund all relevant knowledge and skill that, by reason of the administrator's profession, business or calling, he ought to possess.

(2) An administrator or, where the administrator is a pension committee or a board of trustees, a member of the committee or board, shall not knowingly permit the administrator's private interests to conflict with his duties and powers in respect of a pension fund.

(3) Where it is reasonable and in the interests of the members of a plan so to do, an administrator may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the management and investment of the pension fund.

(4) Every actuary, accountant or other professional person who provides professional services with respect to the establishment or administration of a pension plan or pension fund, shall be deemed to be an agent of the administrator.

(5) An administrator who employs an agent shall-

- (a) personally select the agent;
- (b) be satisfied of the agent's suitability to perform the acts for which the agent is employed; and
- (c) supervise the agent as far as practicable and reasonable.

(6) An agent of an administrator is subject to the standards that apply to the administrator under subsections (1) and (2).

(7) An administrator is not entitled to any benefit from a pension plan other than-

- (a) pension benefits or ancillary benefits or a refund of contributions under the plan to which the administrator is entitled as a member, former member or claimant under the plan;
- (b) ancillary benefits; and

- (c) such administrative fees and expenses as are provided by a pension plan.

(8) Subsection (7) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or committee made responsible by this Law or any other law for the administration of a pension plan.

(9) An agent of an administrator is entitled to usual and reasonable fees and expenses for services provided in respect of a pension plan and such fees and expenses may be paid out of the pension fund.

18. (1) An employer, who is not an administrator, shall provide to the administrator of the pension plan of which his employees are members any information required by the administrator for the purpose of complying with the terms of the pension plan, of this Law or the regulations.

Information from
employer

- (2) In subsection (1)-

“employer” includes a predecessor of the employer.

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

Advisory Committee.

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

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

- (a) monitor the administration of the pension plan;
- (b) make recommendations to an administrator respecting the administration of pension plan; and
- (c) promote awareness and understanding of a pension plan among members, former members and claimants of the plan and other persons receiving benefits under the pension plan.

(4) An advisory committee or a member of the committee may examine the records of the administrator relating to the administration of the 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.

(5) Subsection (1) does not apply if the pension plan is administered by a pension committee and at least one-third of the members of the committee are appointed by members of the pension plan or where a plan is administered by a board of trustees.

(6) An administrator shall provide to an advisory committee 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 III-Disclosure of Information

Information from
administrator

20. (1) An administrator shall provide, in writing, to each person who is eligible or is required to become a member of a pension plan-

- (a) an explanation of the provisions of the plan that apply to the person;
- (b) an explanation of the person's rights and obligations under the pension plan; and
- (c) any other information prescribed by the regulations.

(2) An administrator shall provide the information mentioned in subsection (1)-

- (a) to each member, within ninety days of the date of establishment of the plan; and
- (b) to each person who becomes eligible to become a member of the pension plan upon being employed by the employer, within thirty days after the date on which the person becomes employed.

(3) An employer, who is not an administrator, shall, as soon as reasonably practicable, provide to an administrator the information required to enable the administrator to comply with this section.

Notice of proposed
amendment

21. (1) Before the registration of an amendment to a pension plan, an administrator shall-

- (a) give notice containing an explanation of the amendment to-
 - (i) each member;
 - (ii) each former member; and
 - (iii) any other person entitled to payment from the pension fund;
- (b) invite the submission of written comments on the amendment to the administrator and the Superintendent; and

- (c) provide the Superintendent with a copy of the notice of the proposed amendment.
- (2) The Superintendent shall not register an amendment until forty-five days after the date of the notice of amendment to members.
- (3) An administrator shall notify each member of the date of registration of an amendment.
- (4) The Superintendent may, upon the written application of an administrator, exempt that administrator from the requirements of subsection (1) where the administrator has been exempted from obtaining the approval of the members of a plan under section 12(7) or where the Superintendent 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.

22. (1) An administrator shall give annually or at such shorter periods as may be specified in a pension plan to each member a written statement containing-

Annual statement of pension benefits

- (a) the prescribed information in respect of the pension plan;
- (b) in the case of a defined benefit pension plan, the member's expected pension benefits as at his normal retirement date or, in the case of 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) An administrator shall, where a member terminates employment with an employer or otherwise ceases to be a member of a 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.

(3) Subsection (2) applies in respect of a multi-employer pension plan where a member ceases to be a member but does not apply where a member terminates employment with an employer but continues to be a member.

23. (1) On written request, an administrator shall make available the prescribed documents and information in respect of a pension plan and the pension fund for inspection without charge to-

Inspection of administrator's documents.

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

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

(2) The prescribed documents and information may be inspected at the premises of the employer of a member or former member or at such other location agreed upon by the administrator and the person making the request.

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

(4) A person described in paragraphs (a) to (g) of subsection (1), may not make a request under this section more than once in any calendar year unless the documents have been changed or amended during the course of the year.

Inspection of filed documents

24. The administrator of a pension plan and the persons mentioned in section 23(1) may inspect at the offices of the Superintendent 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 IV-Membership

Eligibility for membership

25. (1) Subject to subsection (2), all employees between the ages of eighteen years and sixty years shall be members of a pension plan.

(2) Employers are not required to provide pension plans, or to contribute to pension plans, for the benefit of employees who do not have Caymanian status, or who are not permanent residents, within the meaning of the Immigration Law (2010 Revision) and who, in either case-

2010 Revision

- (a) have been working in the Islands for a continuous period of nine months or less; or
- (b) are employed to do housework in private residences.

(3) Every self-employed person shall either be a member of an approved pension plan or shall contribute to an individual retirement account with an approved provider.

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

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

(6) The Superintendent shall approve a separate pension plan referred to in subsection (5) if the Superintendent considers that the separate pension plan provides benefits equivalent to those in the pension plan maintained by the employer for employees of the same class employed in full-time continuous employment.

PART V-Retirement and Vesting

26. (1) The normal retirement date under a pension plan submitted for registration under this Law, in this Law referred to as the normal retirement date, shall be not later than one year after a person has attained sixty years of age. Normal retirement date

(2) Every pension plan established prior to the 1st June, 1998 and registered under this Law, shall be deemed to specify a normal retirement date in respect of pension benefits that accrue after the 1st June, 1998, that is not later than one year after attainment of sixty years of age.

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

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

(5) The first instalment of a pension of a member who makes the election described in subsection (4) 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

27. (1) An active member of a pension plan continued after the 1st June, 1998 who meets the qualifications in subsection (2) is, subject to section 6(3) and (4), entitled to the benefit mentioned in subsection (3).

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

- (a) the member must 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 must have reached the age of forty-five years; and
- (c) the member must terminate his employment with the employer before the normal retirement date under the pension plan.

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

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions payable under plans that are not registered under section 6(3).

Deferred pension

28. (1) An active member of a pension plan brought into existence after the 1st June, 1998 who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

(2) The qualifications are that the member must -

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

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

Termination by member.

29. (1) A person who is an active member -

- (a) of a multi-employer pension plan;
- (b) of a pension plan who is employed by an employer on a part-time basis; or
- (c) of a pension plan who has been laid off by the employer,

may terminate his active membership in the 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 or for such shorter period as may be specified in the pension plan.

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

(3) 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 VI-Benefits

30. (1) A member of a defined benefit pension plan that is continued or established after the 1st June, 1998 shall, subject to subsection (4), be entitled at his normal retirement date to a minimum annual pension equivalent to 1.5 per cent of his pensionable earnings for each year that he shall have been in membership of that plan subject to a maximum of forty-two years membership.

Minimum benefit

(2) Where a member elects to retire before the normal retirement 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.

(4) The minimum annual pension entitlement referred to in subsection (1) shall, in the case of an employee who makes reduced contributions under section 47(9), be reduced in accordance with guidelines to be issued, from time to time, by the Superintendent.

31. (1) If the commuted value of the contributory benefit that accrued under a defined benefit pension plan before the 1st 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 plan before the 1st June, 1998 to the date of termination, the benefit shall be increased on the date of 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.

Value of deferred pension

(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 the 1st 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 plan that-

- (a) the sum of the member's contributions under the pension plan made before the 1st 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 termination of the contributory benefit under the plan to which the member is entitled on the date of 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 the 1st June, 1998 and interest thereon to the date of termination exceeds fifty per cent of the commuted value accrued before the 1st June, 1998 .

(5) The sum of the contributions under a pension plan made by a member of the plan after the 1st 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 plan that has accrued after the 1st 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 after the 1st June, 1998 and interest thereon to the date of termination exceeds fifty per cent of the commuted value of the contributory benefit that accrued after the 1st June, 1998 and to which the member is entitled on the date of termination.

(7) 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.

(8) 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 the 1st June, 1998;
- (b) any increase in pension benefits and ancillary benefits related to employment before the date of the amendment to a plan resulting from an amendment to such plan made on or after the 1st June, 1998 but that are not included in calculating commuted value under subsection (2); 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 the 1st June, 1998.

(9) 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.

32. (1) A pension plan may only provide the following ancillary benefits-

Ancillary benefits

- (a) disability benefits;
- (b) death benefits in excess of those referred to in section 39;
- (c) benefits arising from additional voluntary contributions which have provided a retirement fund in excess of the minimum as prescribed;
- (d) early retirement options and benefits in excess of those provided by section 33; 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, on 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.

Early retirement option

33. (1) An inactive member of a pension plan is entitled to elect at any time to receive an early retirement pension under the pension plan if the member-

- (a) terminates employment on or after the 1st June, 1998;
- (b) is entitled, at the time of election, to a deferred benefit under the pension plan; and
- (c) is at the time of election, within ten years of the normal retirement date.

(2) An active member who is within ten years of the normal retirement 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 retirement pension.

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

(4) The actuarial present value of a member's early retirement pension shall be not 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.

(5) An inactive or active member may require the commencement of the payment of the early retirement pension at any time after making the election and within the ten year period mentioned in subsections (1) and (2).

(6) An election under subsection (1) or (2) may be made in writing, signed by the member and delivered to the administrator of the plan.

Transfer

34. (1) A member of a pension plan who, on or after the 1st June, 1998, terminates employment and who is entitled to a deferred benefit may require the administrator to pay an amount equal to the commuted value of the deferred benefit or the balance in the member's defined contribution account -

- (a) to another pension plan, if the administrator of the other pension plan agrees to accept the payment;
- (b) into a prescribed retirement savings arrangement; or
- (c) 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.

(2) The entitlement under subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds.

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

(4) Subject to the compliance with the requirements of this section and the regulations, the administrator shall comply with the direction not later than forty-five days after the date of delivery of the direction.

(5) The administrator shall not make payment-

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

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

(7) The Superintendent may approve a payment under subsection (6) subject to such terms and conditions as the Superintendent thinks fit in the circumstances.

(8) Where-

- (a) a payment that does not meet the limitations prescribed in relation to transfer of funds from pension funds is made without the approval of the Superintendent; or
- (b) there is a failure to comply with a term or condition of the approval given under subsection (7),

the Superintendent 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.

(9) 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.

(10) Subject to section 72 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.

(11) An administrator is discharged from all responsibilities and liabilities in respect of a payment made under this section and in compliance with this Law and the regulations.

Purchase of pension.

35. (1) Subject to section 34 and any limitations on transfer of funds from pension plans, an administrator who is required by a pension plan to provide a pension or benefit, may purchase the pension or benefit from an approved provider.

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

(3) The Superintendent may approve a purchase under this section subject to such terms and conditions as the Superintendent 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 Superintendent; or
- (b) there is a failure to comply with a term or condition attached to the Superintendent's approval under subsection (3),

the Superintendent 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 in the regulations.

(5) Subject to section 72, 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

36. (1) 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 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 paid to the member.

(2) 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).

(3) Subsections (1) and (2) do not apply-

- (a) in respect of a pension benefit if payment of the pension has commenced before the 1st June, 1998; or
- (b) in respect of the portion of a pension that relates to a prescribed ancillary benefit.

(4) Where-

- (a) prior to the 1st 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 the 1st 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.

(5) Where a former member dies leaving a surviving spouse and dependent children, the spouse shall receive and hold fifty per cent of the spouse's pension to be used for their maintenance, benefit and education until such time as the children attain the age of twenty-three or cease their full-time education, whichever shall be the earlier.

(6) In a case where there is need, in the interests of the children, the Director of Social Services shall have power to apply to the Court for an order appointing a trustee to receive up to fifty per cent of the pension payable to the surviving spouse and to apply it for the benefit of the children in accordance with subsection (5).

37. (1) An administrator or his agent 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.

Information for payment
of pension

(2) An administrator 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 administrator.

Remarriage of spouse

38. (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 after the 1st June, 1998.

Pre-retirement death benefit

39. (1) If a member or former member of a pension plan dies before the commencement of payment of a pension, the person who is the spouse of the member or former member on the date of the death of the member or former member is entitled 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) The surviving spouse may elect that either-

- (a) the pension in respect of the deferred benefit described in subsection (1) shall be paid to the spouse-
 - (i) no earlier than ten years before the spouse attains the age of sixty; or
 - (ii) no later than the spouse's normal retirement age under the plan; or
- (b) the commuted value of the defined benefit shall be paid by the administrator to one of the vehicles or for one of the purposes specified in section 34(1).

(3) If a member continues in employment after the normal retirement date under the pension plan and dies before the commencement date of the payment of benefits, the person who is the spouse of the member on the date of death of the member is entitled 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.

(4) 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.

(5) 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 (3), if the member or former member does not have-

- (a) any dependent child or children; and
- (b) a spouse on the date of death.

(6) 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 (5); and
- (b) does not have a spouse on the date of the member's or former member's death.

(7) If the pension plan provides for payment of pension benefits to or for a dependent child or dependent children of the member or former member, upon the death of the member or former member, the commuted value of the payments may be deducted from the entitlement of a beneficiary designated under subsection (5) or of a personal representative under subsection (6).

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

(9) The administrator is discharged from all liabilities on making payment in accordance with the information provided by the person pursuant to subsection (8).

(10) In this section-

“personal representative” has the meaning assigned to it by section 2 of the Succession Law (2006 Revision).

2006 Revision

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

Variation of payment to disabled person

41. 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 retirement date is more than the prescribed minimum pension.

Commutated value

42. Notwithstanding any provision of this Law to the contrary, if the commuted value of the pension benefit on termination is less than five thousand dollars or

Cash out of small benefits

such other sum as may be prescribed, the administrator may distribute such benefit to the former member, or, if the member is deceased, to his spouse, dependent child or designated beneficiary, as appropriate, in a single lump sum cash payment payable on the date of termination.

Payment on breakdown
of marriage

43. (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-

- (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) An administrator 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 administrator shall revalue the pension in the prescribed manner.

(5) A spouse on whose behalf a certified order is given to an administrator 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.

Discrimination on the
basis of sex.

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

- (a) determining the amount of contributions required to be made by a member of the 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 administrator 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 the 1st June, 1998; and
- (b) employment before the 1st June, 1998 in so far as it is dealt with in an amendment made to the pension plan after the 1st June, 1998.

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

PART VII-Contributions

46. (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. Funding

(2) Subject to subsection (3), every defined benefit pension plan registered under this Law must be fully funded within five years of the 1st June, 1998.

(3) An administrator shall, where a defined benefit pension plan is not fully funded at the date of registration, submit together with the documents specified under section 9 a funding schedule to be approved by the Superintendent.

47. (1) Subject to section 25(2), a member and his employer shall contribute to the pension fund of a pension plan on behalf of that member from the date of the commencement of that member's employment by that employer at the rates specified in subsection (3). Contribution rate

(2) A self-employed person shall contribute to a pension plan or an individual retirement account every year during his employment a sum equivalent to ten per cent of his earnings, up to the year's maximum pensionable earnings for that year. The Governor may make regulations respecting the pension plans and individual retirement accounts of self-employed persons.

(3) (a) A member shall not be required, without his express consent, to contribute to a defined contribution pension plan more than five per cent of his earnings up to the year's maximum pensionable earnings.

(b) An employer may not contribute to a defined contribution plan less than five per cent of the member's earnings up to the year's maximum pensionable earnings.

(c) Where an employer contributes to a defined contribution plan more than five per cent of the member's earnings, the member

shall only, subject to paragraph (a) of subsection (9), be required to contribute such an amount as shall, when added to the employer's contribution, equal ten per cent of the member's earnings up to the year's maximum pensionable earnings.

- (d) For 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 five per cent of his earnings up to the year's maximum pensionable earnings in any one year, 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.

(4) A member's contribution shall be payable at regular periods during each year of his employment, and the employer's contribution shall be payable at the same time as the member's contribution.

(5) The employer shall deduct the relevant part of the member's contribution from his earnings and pay the same, together with the employer's contribution, directly into the pension fund or, if the pension benefits under the pension plan are paid by an approved provider, to the approved provider.

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

(7) The Superintendent may consent to a payment under subsection (6) to an employer if the application is made by the employer within three months after the end of the fiscal year in which the overpayment is made.

(8) (a) A pension plan, or an individual retirement account in the case of a self-employed person, established prior to, on or immediately after the 1st June, 1998 may-

- (i) allow employees forty years of age or younger to pay reduced contributions for a period of four years after the 1st June, 1998;
 - (ii) allow employees between ages forty-one and forty-five to pay reduced contributions for two years after the 1st June, 1998; and
 - (iii) allow self-employed persons to pay reduced contributions for four years after the 1st June, 1998.
- (b) The rates of contributions payable under paragraph (a) shall be on a graduated scale prescribed by regulations.

- (c) A member may, with the agreement of the employer (in the case of an employed person) continue in membership of a pension plan after normal retirement age and, in such event, the employee's contributions will continue to be payable at the rate or rates prescribed by the plan.
- (d) Members may make additional voluntary contributions at any time prior to retirement.
- (e) An employer may, subject to the obligation to compensate for underfunding contained in subsection (3), during the period that any employee is contributing at a rate less than the rate prescribed by the plan, contribute to a pension fund on behalf of that employee an amount equal to that contributed by the employee.

(9) 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 such person, the contributions paid by the employer in respect of such person.

48. (1) The administrator or an agent of an administrator shall notify the Superintendent in writing of any contribution which is in arrears within forty-five days of becoming aware that such contribution has not been paid.

Notice to Superintendent
of arrears of
contributions

(2) Where the Superintendent is notified in accordance with subsection (1), the Superintendent shall direct the relevant employer to pay the arrears within two weeks, failing which the Superintendent may commence or direct the administrator to commence proceedings in a court of competent jurisdiction for the recovery of the arrears.

(3) An employer who fails to pay arrears of contributions within the time given by the Superintendent shall, in addition, be liable to a fine of five hundred dollars for each day in which the contributions are in arrears.

49. (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 plan or 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.

Accrual 50. An employer shall be liable to pay interest to a pension fund on all money that is due to be paid by him to that pension fund at the current prime rate in the Islands plus five per cent, calculated on a daily basis.

Bond 51. The Superintendent may require an administrator or any person who receives contributions to a pension fund to be bonded in an amount specified by the Superintendent and to provide a guarantor to be approved by the Superintendent.

Investment of pension fund 52. 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 prescribed by regulations.

PART VIII-Locking In

Refunds 53. (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 plan on or after the 1st June, 1998.

- (2) (a) Notwithstanding subsection (1), where-
- (i) a member's employment is terminated;
 - (ii) that member ceases to reside in the Islands; and
 - (iii) 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, after the expiration of two years from the termination of his employment, 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.

- (b) For the purposes of paragraph (a), 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 six months or more, and, in calculating a period of absence, no account shall be taken of a period of residence in the Islands for a continuous period less than three months.
- (c) An administrator shall, on making a payment or transfer under section 34 or this section, make such a deduction from that payment or transfer in respect of actual and ascertainable administrative expenses incurred in making the transfer or payment as is-
 - (i) provided for in the plan to be made in respect of all such transfers and withdrawals; and
 - (ii) approved by the Superintendent,and the Superintendent shall not approve a provision in a plan that purports to enable different levels of deduction to be made in respect of different classes of member.

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

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

54. A pension plan may provide for shorter qualification periods for entitlement to a deferred pension than those set out in section 27 or 28 in respect of employees who are transferring benefits to another approved pension plan.

Shorter qualification periods

55. (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

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

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

(3) Money payable from a prescribed retirement 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 43, 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 or after the 1st June, 1998.

Commutation or surrender

57. Except as provided by or under this Law-

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

PART IX-Termination and Winding Up

Winding up

58. (1) An administrator may terminate and wind up a pension plan in whole or in part.

(2) The administrator shall give written notice of the proposal to terminate and wind up the pension plan to-

- (a) the Superintendent;
- (b) each member;
- (c) each former member;

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

(3) In the case of a proposal to terminate and wind up only part of a pension plan, the administrator 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 Superintendent, they will not be affected by the proposed partial winding up.

(4) The notice of proposal to terminate and wind up shall contain the information prescribed by regulations.

(5) When giving notice of a proposal to terminate and wind up a pension plan to the Superintendent, the administrator shall pay the prescribed fee to the Board.

(6) The Superintendent may waive the fee payable under subsection (5) if the liabilities of the pension plan exceed the assets of the pension fund.

(7) 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.

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

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

Winding up order by the Superintendent

- (a) there is a cessation or suspension of employees' contributions to the pension fund;
- (b) the employer fails to make contributions to the pension fund as required by this Law or regulations;
- (c) the employer is bankrupt within the meaning of the Bankruptcy Law (1997 Revision);
- (d) 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;
- (e) in the case of a multi-employer pension plan -
 - (i) there is a significant reduction of the number of members;or

1997 Revision

- (ii) there is a cessation of contributions under the pension plan or a significant reduction in such contributions; or
- (f) any other prescribed event or circumstance occurs.

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

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

Winding up report

60. (1) An administrator of a pension plan that is to be wound up in whole or in part shall file 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 is 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 Superintendent 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 Superintendent.

(4) An administrator shall not make payment out of the pension fund except in accordance with the winding up report approved by the Superintendent.

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

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

(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.

61. (1) If a pension plan that is to be wound up in whole or in part does not have an administrator or the administrator fails to act, the Superintendent may act as or may appoint an administrator.

Appointment of
administrator to wind up

(2) The reasonable administration costs of the Superintendent or the administrator appointed by him may be paid out of the pension fund.

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

Notice of entitlements

- (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 mentioned in paragraph (b) of section 64(1),

and the administrator of the pension plan shall make payment in accordance with the election or deemed election.

63. (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-

Determination of
entitlement

- (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 62.

(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 34 (1) of a member who terminates employment.

Accrual of pensions
during notice of
termination

2007 Revision

64. (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 (2007 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 the 1st June, 1998.

Liability of employer on
termination

65. (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.

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

(3) In any case 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 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.

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

Pension fund continues subject to the Law and the regulations

(2) In the case of a defined benefit pension plan, where the money in a pension fund 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.

PART X-Surplus

67. (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 by the regulations.

Continuing pension plan

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

PART XI-Sales, Transfers and New Plans

68. (1) 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 the 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-

Continuation of benefits under successor employer

- (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.

(2) Paragraph (a) of subsection (1) 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's employer shall

be deemed to be a continuation of the employer's plan with respect to any benefits or assets transferred.

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

(4) Subject to subsection (5), 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 plan provided by the successor employer in accordance with the prescribed terms and conditions.

(5) The Superintendent 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) that does not meet the prescribed requirements and qualifications.

(6) No transfer shall be made under subsection (4) without the prior consent of the Superintendent.

(7) The Superintendent 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 (5).

(8) Subject to section 72, 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

69. (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 63(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 Superintendent or contrary to the prescribed terms and conditions.

(5) The Superintendent 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 Superintendent 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 Superintendent or transferred contrary to the prescribed terms or conditions.

(7) Subject to section 72, 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.

PART XII-Orders

70. (1) The Superintendent, in the circumstances mentioned in subsection (2), may order an administrator or any other person to take or refrain from taking any action in respect of a pension plan or a pension fund. Order by Superintendent

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

- (a) the pension plan or pension fund is not being administered in accordance with this Law, the regulations or the pension plan;
- (b) the pension plan does not comply with this Law and the regulations; or
- (c) the administrator of the pension plan, the employer or any other person dealing with a pension plan is contravening a requirement of this Law or the regulations.

(3) In an order made under this section the Superintendent may specify the time or times when the periods of time within which the persons to whom the order is directed must comply with the order.

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

- Order for correction
71. (1) The Superintendent, in the circumstances mentioned in subsection (2), may order an administrator to take the action specified in subsection (3).
- (2) The Superintendent may make an order under this section where he 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 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 regulations in respect of a pension plan do not accord with accepted actuarial principles 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, but is not limited to, 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.

PART XIII-Hearing and Appeal

- Appeal from Superintendent's decision
72. (1) A person affected by a decision of the Superintendent may appeal to the Board.
- (2) In subsection (1)-
- “decision” includes-
- (a) an order;
 - (b) an approval;
 - (c) a consent;
 - (d) a refusal to register a pension plan or an amendment to a pension plan;
 - (e) the revocation of a pension plan or an amendment to a pension plan; and
 - (f) the appointment of an administrator.
- Request for appeal etc.
73. (1) A person affected by a decision of the Superintendent may make an appeal under section 72 by notice in writing and shall deliver such notice to the Board not later than thirty days after the receipt of the Superintendent's decision by the person.
- (2) On receipt of a notice of appeal under subsection (1), the Board shall appoint a time for the hearing of the appeal provided that the Board may refuse to

hear an appeal if there are reasonable grounds to conclude that the appeal is frivolous and vexatious.

(3) For the purposes of this section the parties to an appeal are-

- (a) the person who requests the hearing;
- (b) the Superintendent;
- (c) an administrator;
- (d) any trustees of the pension plan;
- (e) any member of the pension plan; and
- (f) any employer who contributes to the pension plan.

(4) Upon hearing an appeal, the Board-

- (a) may confirm, vary or rescind the decision appealed against; or
- (b) substitute its decision for that of the Superintendent's,

and may attach such terms and conditions to its order as the Board considers necessary.

(5) The Board shall, by notice in writing, inform the parties to an appeal of its decision.

(6) The Board may grant a stay of the decision appealed against on such terms and conditions as the Board considers appropriate in the circumstances.

(7) A party to an appeal shall be given notice by the Board of the appeal and afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(8) Documents in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the conclusion of the hearing.

74. (1) Three members of the Board constitute a quorum for the purposes of a hearing before the Board under section 73, and decisions in such hearings require the vote of a majority of the members of the Board present at the hearing. Quorum and votes

(2) The Board may sit in two or more panels simultaneously for the purposes of such proceedings.

(3) The Chairman of the Board shall assign the members of the Board to its panels and may change an assignment at any time.

(4) The Governor may make regulations with respect to the practice and procedure of the Board.

(5) Where a hearing is commenced before the Board and the term of office on the Board of a member sitting for the hearing expires or is terminated other than for cause before the hearing has been concluded but after the evidence has been heard, the person shall be deemed to remain a member of the Board for the purpose of completing the hearing in the same manner as if his term of office had not expired or been terminated.

Costs

75. (1) The costs of and incidental to any proceedings before the Board are in the discretion of the Board and shall be assessed by the Board in any hearing.

(2) The Board may, by order, direct to whom and by whom costs, if any, are to be paid.

(3) The Board may establish a scale under which such costs shall be assessed.

Enforcement

76. An order of the Superintendent or the Board may be filed in the Grand Court and is, upon such filing, enforceable as an order of that court.

Appeal to Grand Court

77. (1) A party to any proceedings before the Board under this Law may appeal to the Grand Court against the decision or order of the Board.

(2) Upon the request of a person to appeal to the Grand Court, the Board shall furnish that person with a certified copy of the record of the proceedings, including the documents received in evidence and the decision from which an appeal is requested.

PART XIV-National Pensions Board

National Pensions Board

78. (1) The National Pensions Board is hereby established.

(2) The Board shall consist of-

- (a) a Chairman;
- (b) a Deputy Chairman; and
- (c) such other members being not less than five nor more than nine.

(3) The members of the Board shall be appointed by the Governor.

(4) The appointment of the members of the Board shall be published in the Gazette.

(5) The Governor may fill any vacancy in the membership of the Board or in the offices of Chairman or Deputy Chairman of the Board.

- (6) The Governor may make regulations with respect to-
 - (a) the tenure of members and vacation of office by members of the Board; and
 - (b) the appointment of staff to assist the Board in carrying out the business of the Board.

(7) Subject to section 74(1), a majority of the members of the Board constitutes a quorum.

(8) The Governor may, by directions, designate such further functions of the Board as are considered necessary for the effective administration of this Law and regulate the procedure and functions of the Board.

79. (1) There is established the office of the Superintendent of Pensions.

Superintendent

(2) The Superintendent is the chief administrative officer of the Board and shall exercise the powers and perform the duties that are vested in or imposed upon the Superintendent by this Law and the regulations.

80. The Board shall-

Duty of Superintendent
and Board

- (a) administer this Law and the regulations;
- (b) promote the establishment, extension and improvement of pension plans throughout the Islands;
- (c) advise the Minister in respect of the business of the Board; and
- (d) make recommendations to the Minister in respect of pension plans.

81. (1) The Board shall conduct surveys and research programmes and compile statistical information related to pensions and pension plans.

Research

(2) The Superintendent may request 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 Board shall use the information only for the purpose of compiling the statistical information.

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

82. (1) The Superintendent or the Board may require an employer, an administrator or any other person to supply to the Superintendent or the Board

Information.

such information and within such time limits as they may specify for the purpose of ascertaining compliance with this Law and regulations.

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

(3) A person who contravenes subsection (2) is guilty of an offence and liable on summary conviction to a fine of one thousand dollars.

(4) The Superintendent or the Board may require an administrator to secure an appraisal of any or all of the assets of the pension fund by one or more independent valuers, or the Superintendent or the Board may obtain the appraisal at the expense of the administrator.

(5) The administrator shall deliver the appraisal to the Board within the period of time in the requirement or within such other period of time as the Superintendent or the Board may specify.

(6) An administrator who fails to deliver an appraisal contrary to subsection (5) is guilty of an offence and liable on summary conviction to a fine of five thousand dollars.

Liability of members
and employees of Board
and Superintendent

83. Neither the Superintendent nor a member of the Board or of the staff of the Board shall be personally liable for anything done in good faith in the execution or intended execution of a duty or authority under this Law or regulations or for alleged neglect or default in execution in good faith of such a duty or authority.

Audit

84. The Auditor General shall examine annually the accounts and financial transactions of the Superintendent and the Board.

Annual report

85. (1) The Superintendent and the Board shall report annually to the Minister on the business of the Superintendent and the Board.

(2) The Minister shall submit the annual report to the Governor and shall then lay the report before the Legislative Assembly at the meeting of the Legislative Assembly immediately following the submission of the report.

PART XV-General

Extension of time

86. The Superintendent or the Board may extend any time limit under this Law or regulations, not including the time limit specified under section 92(4), if the Superintendent or the Board is satisfied that there are reasonable grounds for applying for the extension, and may give such directions required as a result of such extension.

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

Entry onto business
premises by the
Superintendent

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

(2) For any of the purposes mentioned in subsection (1), the Superintendent or a person designated by the Superintendent ("the designated person") in writing may, during normal business hours -

- (a) enter and have access to, through and over any business premises, where that person 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 Superintendent or the designated person may not, pursuant to subsection (2), enter a private residence without the consent of the occupier.

(4) The Superintendent or the designated person 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 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 Superintendent or the designated person in the course of any investigation, examination or inquiry, and certified by the Superintendent, 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 Superintendent or the designated person;
- (b) instructs the Superintendent or the designated person to leave the premises;
- (c) obstructs such person; 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 and investigation or inquiry or for a purpose mentioned in subsection (1),

the Superintendent may apply to a Justice of the Peace for an inspection order under section 89.

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

(8) For the purposes of this Law-

“document” includes any document held or kept by means of a computer.

(9) Where any documents are held in or kept by means of a computer the powers of the Superintendent or the designated person 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 a computer or associated apparatus which is or has been in use in connection with such information or documents, to afford to the Superintendent or the designated person such assistance as he may reasonably require; and
- (b) to require the documents to be produced or copied in any form which the Superintendent or the designated person may reasonably request.

Obstruction

88. (1) No person shall hinder or obstruct any person lawfully carrying out a duty under this Law.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine of one thousand dollars.

(3) 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 89 has been issued relating to such private residence.

Order by Justice of the Peace

89. (1) Where a Justice of the Peace is satisfied on evidence upon oath or affirmation by the Superintendent or the designated person-

- (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;

- (iv) or to do any such things, for a purpose mentioned in section 87(2); and
- (b) that the Superintendent or the designated person-
 - (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 Superintendent or the designated person to enter the premises and to do anything specified under section 87 together with such police officers as the Superintendent may deem necessary.

(2) An inspection order issued under this section-

- (a) shall be executed between the hours of 6 a.m. and 9 p.m. unless the Justice of the Peace otherwise authorises 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.

90. (1) Except where specifically provided otherwise, a person who contravenes this Law or any order made under this Law is guilty of an offence and liable on summary conviction to a fine of five thousand dollars.

Offences

(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 may, 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) No summary proceedings under this Law shall be commenced after five years after the date when the subject matter of the proceeding occurred or is alleged to have occurred.

91. Where a provision of this Law or regulations or an order or approval of the Board or the Superintendent under this Law is contravened, in addition to any other remedy and to any penalty imposed by law, the contravention may be

Power to restrain

restrained by action at the instance of the Board, of the Superintendent or of the administrator of the pension plan affected by the contravention.

Service of documents

92. (1) Any notice, order or other document which is required to be served under this Law or regulations may be served-

- (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 secretary of that body at its registered office or other place of business.

(2) Where the Superintendent is of the opinion that-

- (a) the persons who are to be given any notice or document under this Law or 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 Superintendent 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 or otherwise as the Superintendent 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.

Time for actions by administrator

93. An administrator of a pension plan who is required to take action under this Law or regulations shall take the action within the prescribed period of time.

Conflict

94. (1) Subject to subsection (2), 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.

1995 Revision

(2) Subsection (1) does not apply to the Confidential Relationships (Preservation) Law (1995 Revision) which shall prevail over this Law.

95. (1) The Governor may make regulations prescribing any matter referred to in this Law as to be prescribed by regulations and for carrying this Law into effect. Regulations

(2) Notwithstanding the generality of subsection (1), the Governor may make regulations in particular-

- (a) prescribing the times or the last dates for filing, giving, serving, submitting or transmitting of documents that are required to be filed, given, served, submitted or transmitting under this Law or regulations;
- (b) prescribing reports that shall be submitted to the Superintendent, the contents and the method of preparation of the reports and the persons and their qualifications by whom the reports must be prepared;
- (c) prescribing and regulating pension benefits and required contributions;
- (d) prescribing procedures that shall govern the appointment of members of pension committees;
- (e) prescribing procedures that shall govern the establishment of Advisory Committees and the appointments of members of the Advisory Committees;
- (f) 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;
- (g) prescribing fees;
- (h) prescribing the method for the establishment of a pension fund and the methods of calculating the values of assets and liabilities of pension funds;
- (i) regulating the disposal of surplus funds;
- (j) 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;
- (k) regulating or prohibiting the investment of money from pension funds and prescribing investments or classes of investments in which such money may be invested;
- (l) prescribing requirements for retirement savings contracts between members of pension plans and trustees from whom administrators may make payment when required in accordance with this Law;
- (m) requiring the payment of interest on any amount required to be paid under the Law or 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;

- (n) prescribing forms and records required to be prescribed under this Law and time limits for retention of such records;
- (o) 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;
- (p) prescribing the manner of determining the portion of a pension benefit, pension, deferred pension or ancillary benefit that is attributable before the 1st June, 1998 or that is attributable to employment on or after the 1st June, 1998;
- (q) prescribing the manner of division and transfer of pension benefits by court orders under section 43;
- (r) prohibiting or regulating the reduction or the variation of pension benefits by reference to benefits payable under any approved plan;
- (s) 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;
- (t) 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.

(3) A regulation may be general or particular in its application and may be limited as to the time or place or both.

(4) A regulation may adopt by reference and may require compliance with, in whole or in part, such changes as the Governor considers necessary, any code, formula, standard or procedure as appears to the Governor to be expedient for the purposes of this Law or regulations.

(5) The Governor 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.
- (6) Regulations under this Law are subject to affirmative resolution.

Publication in consolidated and revised form authorised by the Governor in Cabinet this 19th day of October, 2010.

Kim Bullings
Clerk of Cabinet

(Price \$ 12.80)