MINISTRY OF
EDUCATION, TRAINING,
& EMPLOYMENT
CAYMAN ISLANDS GOVERNMENT

Government Administration Building Box 108
133 Elgin Avenue Grand Cayman KY1-9000
CAYMAN ISLANDS
t. (345) 244-2417 f. (345) 949-9343
www.education.gov.ky

National Pensions Bill 2012: Explanatory Notes

Introduction

The Ministry of Education, Training & Employment has released the National Pensions Bill 2012 for public consultation. These explanatory notes explain the objectives of the National Pensions Bill 2012 and identify the key provisions contained in the Bill.

Objectives

The objectives of the National Pensions Bill 2012 are to:

- Enhance the process whereby pension contributions are monitored and enforced.
- Improve the regulation of pension plans, pension plan trustees and pension plan administrators.
- Create a new culture of compliance around pensions.
- Better prepare our people for their retirement.

Please note that this legislation deals with pensions in the private sector and does not apply to public sector pensions plans.

Key Provisions

In pursuing these objectives, the National Pensions Bill 2012 contains a number of key provisions.

These key provisions are:

- Improved Pension Regulation
- The Introduction of a Licensing Regime
- Improvements and Additions to Types of Pension Plans
- Improved Administration of Pension Plans
- Enhanced Obligations on Employers to Improve Compliance
- Enhanced Pension Plan Transparency
- Clarifications Regarding Eligibility for Membership
- The Introduction of New Terminology Relating to Pension Entitlement
- An Increase in the Normal Age of Pension Entitlement

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- Refinements to the Arrangements for Benefits
- New Provisions Relating to Designated Voluntary Contributions
- Measures to Improve Operational Efficiency
- The Withdrawal of Pensions by Non-Current Homeowners
- Alterations to the Eligibility Criteria for Refunds on Pension Contributions
- The Introduction of a Fixed Penalty Regime
- Additional Miscellaneous Advances to Improve Compliance

Improved Pension Regulation

The National Pensions Bill 2012 proposes new arrangements for the regulation of pensions. Under the current arrangements, the National Pensions Office is responsible for all of the regulatory functions contained in the National Pensions Law. The National Pensions Bill 2012 envisages that the Cayman Islands Monetary Authority will assume responsibility for the regulation of pension plans, pension plan trustees and pension plan administrators. The Cayman Islands Monetary Authority is better placed to perform this regulatory function, as the function is similar in nature to the regulation already undertaken in respect of other financial services products and entities. In so doing, the Cayman Islands Monetary Authority will nevertheless take into account the special nature of pensions. At the same time, the remaining functions, which relate to employers and employees, will be undertaken by the new Department of Labour and Pensions and its pensions arm. This division of regulatory responsibilities is evident throughout the National Pensions Bill 2012.

The benefits of this reorganization include:

- Increased resources devoted to the overall regulation of pensions.
- The application of the financial expertise and regulatory experience contained within the Cayman Islands Monetary Authority to the regulation of pension plans, pension plan trustees and pension plan administrators.
- The ability to focus all existing pension staff from the National Pensions Office on long-standing compliance challenges.
- Better service to the general public, who will be able to attend to related labour and pensions complaints at the same venue.

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The Introduction of a Licensing Regime

Part 2 of the National Pensions Bill 2012 makes provision for a new licensing regime for pension plans to be administered by the Cayman Islands Monetary Authority. Under the current arrangements, pension plans are presently registered with the National Pensions Office.

The benefits of this introduction include:

- The incorporation of best international practice in the new licensing regime.
- A consistent approach to licensing across similar regulatory functions under the supervision of the Cayman Islands Monetary Authority.

Improvements and Additions to Types of Pension Plans

The National Pensions Bill 2012 also makes provision in Part 2 for standard, international and supplementary pension plans. Under the current arrangements, international pension plans are available to employees of multi-national companies that also meet a series of set criteria. The National Pensions Bill 2012, however, ensures that these plans are subject to local registration and supervision, notwithstanding that they may be regulated elsewhere. As a result, all employees working in the Cayman Islands will participate in a pension plan that is also registered in the Cayman Islands. Supplementary plans are a new provision, designed to provide members with an option to make additional pension provision in a different plan, which is over and above the National Pension Law's basic requirements.

The benefits of these arrangements include:

- The local registration of all pension plans operating for the benefit of persons working in the Cayman Islands, without which there could be gaps in the regulatory framework.
- The continued availability of international pension plans to the limited population that they currently serve.
- Ensuring that members of international pension plans do not receive benefits that are in any way less than the requirements of the National Pensions Law.
- The introduction of a mechanism whereby persons can increase their total pension contributions and enhance their retirement savings on terms that are potentially different from those applicable to their standard pension plan.

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Improved Administration of Pension Plans

In addition to making greater information on pension plan performance available, the National Pensions Bill 2012 makes further provisions in Part 2 that seek to improve the administration of pension plans. Foremost amongst these are the introduction of provisions for annual general meetings and on-going trustee training to supplement the regulatory requirements in the current legislation.

The benefits of these improvements include:

- Greater awareness and participation of members in their pension plan.
- More responsive pension plans.
- More knowledgeable and informed trustees, who are better positioned to perform their responsibilities.

Enhanced Obligations on Employers to Improve Compliance

The current arrangements for pensions have been severely undermined by persistent difficulties with compliance. These have been recently articulated in the Report of the Office of the Complaints Commissioner and are a major factor behind a series of new initiatives in the National Pensions Bill 2012, which seek to develop a "compliance culture" for pensions. In order to assist the new Department of Labour and Pensions in monitoring compliance and investigating complaints, the National Pensions Bill 2012 has introduced some new requirements for employers in Part 2 of the Bill. Most importantly, these provide that records, including contributions deducted and paid into a pension plan, must be kept on employees for a period of 7 years.

The benefits of these enhanced obligations on employers include:

- Better protection for employees.
- Access to relevant information for regulation and investigation expressly stipulated.
- Improved compliance and the development of a compliance culture.

Enhanced Pension Plan Transparency

The National Pensions Bill 2012 makes provision in Part 3 for greater information on pension plans and their performance to be made available. While the current legislation does refer to the disclosure of information, the revisions contained in the National Pensions Bill 2012 significantly strengthen these arrangements. The new provisions include a requirement for

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quarterly statements of pension benefits, as opposed to the annual requirement in the current legislation, and an obligation to make details of the performance of the pension fund available in a prescribed format when an application for membership in a pension plan is made.

The benefits of enhanced pension plan transparency include:

- Members will be better informed regarding their pension arrangements.
- The development of a compliance culture.

Clarifications Regarding Eligibility for Membership

The National Pensions Bill 2012 seeks to clarify several issues regarding eligibility for membership, which have presented as operational challenges in the past. Clause 33 of the National Pensions Bill 2012 starts from the premise that all employees between the ages of 18 and the normal age of pension entitlement (formerly normal retirement age) are required to be members of a pension plan. Under the current arrangements, however, there have been complaints that some migrant workers are not initially provided with pension benefits. At the same time, the administrators of pension plans have expressed concern that where a migrant worker is only engaged for a short period, it only adds to administrative costs if they have to be registered only then to be de-registered shortly thereafter. The National Pensions Bill 2012 therefore clarifies that where an employee is engaged on a one year work permit, or greater, that person is immediately pensionable. In order to save on administrative costs, the National Pensions Bill 2012 does, however, permit employees, who are initially engaged on a work permit of less than one year, not to make pension contributions, although it only does so for the first year of their employment in the Cayman Islands. Thereafter, they too become pensionable.

Under the current arrangements, persons employed to do housework in private residences have also been exempt. In practice this has been applied to domestic helpers only. While the National Pensions Bill 2012 does not alter these arrangements, it clarifies that only domestic helpers are indeed exempt and that this does not include the new category of specialist caregivers that has been introduced in a recent amendment to the Immigration Law. For the avoidance of doubt, clause 33(4) of the Bill also specifies that where a domestic helper is capable of retiring in the Islands, a term which is defined in clause 2 of the Bill and discussed later in this survey, then such a person will be pensionable.

The benefits of these clarifications include:

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- Greater clarity surrounding when pension contributions must commence.
- Lower administrative costs for pension plans.

The Introduction of New Terminology Relating to Pension Entitlement

Whereas the current arrangements refer to "retirement", the National Pensions Bill 2012 introduces a new term: "pension entitlement". This is defined in clause 2 of the Bill in relation to the "normal age of pension entitlement" and is then dealt with substantively in Part 5 of the Bill. The change is not simply cosmetic. Instead, it seeks to address the perception under the current arrangements for the private sector, whereby when employees reach what was the "normal retirement age", they are then obliged to retire. The new terminology therefore clarifies the date at which persons are entitled to receive their pension, without creating the impression that they must also retire at that time.

The benefits of the new terminology relating to pension entitlement include:

- Clarification for employees that they may continue working after the normal age of pension entitlement and ensuring that the normal age of pension entitlement is not used as an excuse to force some employees out of a job.
- The opportunity to delay receipt of pension or make further pension contributions while continuing to work, thereby improving pension provision upon eventual retirement.

An Increase in the Normal Age of Pension Entitlement

The National Pensions Bill 2012 also recognizes that people need to work longer and make enhanced arrangements for their old age because they are, in many cases, living longer. Whereas under the current arrangements the normal age of retirement is 60 years of age, the National Pensions Bill 2012 sets the normal age of pension entitlement at 65 years of age. While the change is intended to occur immediately, the Bill also makes provision for transitional arrangements, which would enable current workers to access their pension at age 60, if they so wish, for a period of three years. Similar provisions are also provided for early entitlement, which would see this threshold rise from 50 to 55 years of age.

The main benefit of increasing the normal age of pension entitlement is that:

- More contributions to pensions will be made and that, as a result, people will be better placed when they do retire.

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Refinements to the Arrangements for Benefits

Part 6 of the National Pensions Bill 2012 makes provision for benefits under a pension plan. Some of these provisions remain unaltered from the current arrangements. For example, clause 51, which deals with the payment of a pension benefit to a spouse on the breakdown of marriage, mirrors the relevant provision in the existing law. Some improvements have also been incorporated into the National Pensions Bill 2012, particularly in order to ensure that due account is taken of the needs of dependent children. This can be seen in clause 47(4) of the Bill, where, if a former member dies leaving a surviving spouse and dependent children, 50% of the commuted value shall be immediately paid to, and held by, the legal guardian of the dependent children, rather than the full amount passing to the surviving spouse.

The main anticipated benefit arising from the refinements to the arrangements for benefits is that:

- Dependent children will be better protected, irrespective of whether they are the dependent children of the surviving spouse or otherwise.

New Provisions Relating to Designated Voluntary Contributions

The National Pensions Bill 2012 does not propose to alter either the contribution rate or the year's maximum pensionable earnings from the current arrangements. As such, both the employer's and the employee's contribution will remain at 5% and the year's maximum pensionable earnings will stay at $60,000. While there have been some suggestions to the effect that these amounts should be increased, no such increase has been proposed at this time. This decision has been taken in the light of the current economic challenges that the country faces and the additional burden that would be faced by employers and employees alike if these amount were increased.

In the alternative, the National Pensions Bill 2012 seeks to supplement and develop the arrangements for voluntary contributions. To this end, the Bill envisages two types of voluntary contributions. The first, in clause 56(14), permits additional voluntary contributions that will go into a member's pension account, but which will not be accessible until the age of entitlement. The second, in clause 56(15), introduces the concept of designated voluntary contributions that may be withdrawn prior to the age of entitlement for the purpose of health, education and housing, but which, if not, will be available to supplement a member's pension.

The benefits of the new provisions relating to voluntary contributions include:

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- Opportunities for members to supplement their pension for retirement through additional voluntary contributions.
- Opportunities for members to save in a structured and protected fashion for certain major life events, which many people have financial challenges with when they encounter, and, if these challenges do not arise, these contributions will also supplement their pension provision.

Measures to Improve Operational Efficiency

Part 7 of the National Pensions Bill 2012 also introduces a range of measures to improve operational efficiency and further facilitate compliance. These include clarification that pension plan trustees must submit delinquency reports on a monthly basis, on a specific date each month, along with new provisions that require trustees to notify employees of any delinquency and enable trustees to advertise a list of delinquent employers. In addition, the employer will also be obliged to pay for any delinquency costs. The Department of Labour and Pensions will then have a range of new enforcement options, as outlined in clause 55(7), and now has the express authority to share information with other government agencies.

The benefits of these measures to improve operational efficiency include:

- The establishment of a clear and structured process for the monthly evaluation of whether pension contributions have been made.
- Improved awareness for employees as to whether their contributions have been submitted.
- New enforcement options for the Department of Labour and Pensions, which will enable the Department to, for example, require the appearance of a delinquent employer with payroll and other records and permit a restriction on real estate in order to secure delinquent contributions, along with any interest, fines and fees arising.
- Improved communication between government agencies.
- The development of a compliance culture.

The Withdrawal of Pensions by Non-Current Homeowners

Part 8 of the National Pensions Bill 2012 provides for the withdrawal of pension by non-current homeowners. These provisions were recently introduced by way of amendment to the existing Law and the Bill now simply incorporates these into the one new Bill.

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The benefits of the incorporation of the provisions relating to the withdrawal of pensions by non-current homeowners include:

- The continued availability of the option to withdraw pensions by non-current homeowners.
- Greater home ownership, which will also be advanced in combination with the targeted savings facilitated by designated voluntary contributions.
- One consolidated National Pensions Law.

Alterations to the Eligibility Criteria for Refunds on Pension Contributions

Clause 69 of the National Pensions Bill 2012 seeks to alter the current arrangements relating to the payment of refunds in order to prevent any person capable of retiring in the Cayman Islands from obtaining a refund. This is significant as it is important to ensure that as many people as possible who will retire in the Cayman Islands will have some pension provision for their retirement. A "person capable of retiring in the Islands" is defined in clause 2 of the Bill and means, key employees, Caymanians, permanent residents and the spouses thereof.

The benefits of the alterations to the eligibility criteria for refunds on pension contributions include:

- All persons who are Caymanian, or who are in the process by which they could become Caymanian, would be treated similarly.
- All such persons would then have at least some pension provision that is available to them when they reach the age of entitlement.
- A potential future burden to the Government will be reduced.

The Introduction of a Fixed Penalty Regime

While the National Pensions Bill 2012 generally contains increases in the penalties associated with the range of pension offences, so as to serve as a more effective deterrent than that contained in the current arrangements, clause 102 of the Bill also designates certain offences as ticketable offences as part of a fixed penalty regime. In so doing, the Bill will make the enforcement process more efficient without decriminalizing offences and turning them into mere administrative fines. Under this regime, where it is satisfied beyond reasonable doubt that the offence has been committed, the Department of Labour and Pensions will be able to issue a ticket in respect of one of the designated offences. Following this, the burden will be on the person who has received the ticket. They may request a trial or simply accept liability. If

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the latter option is chosen, a smaller fine is available, along with payment of the arrears. If neither option is taken, the person must attend court on the appointed date and is potentially liable for higher penalties, as provided for in the Bill. There is thus an incentive to accept liability, which will ensure that the primary objective – namely the payment of any arrears – is achieved.

The benefits of the alterations to the introduction of a fixed penalty regime include:

- New enforcement option.
- Swifter resolution of non-compliance.
- Maintenance of the seriousness of pension offences.
- Quicker collection of pension arrears.

Additional Miscellaneous Advances to Improve Compliance

Part 14 of the National Pensions Bill also makes provision for various other miscellaneous matters, which seek to improve on the current arrangements. These include amending the period within which summary proceedings may be filed from 5 years after the date when the incident occurred to 7 years after the date that it was reported, making specific provision for the liability of directors where a corporate body commits an offence and introducing a whistleblower clause that will facilitate employees in making complaints without fear of victimization.

The benefits of these additional miscellaneous advances include:

- Greater opportunity to recover pension arrears for members.
- Protection for employees who wish to make a complaint against an employer.
- The development of a compliance culture.