

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE NATIONAL PENSIONS LAW
(2000 REVISION) TO PROVIDE A MECHANISM WHEREBY PENSION
CONTRIBUTIONS CAN BE TEMPORARILY SUSPENDED FOR A
FIXED PERIOD OF TIME IN RELATION TO CAYMANIAN
EMPLOYEES; TO REMOVE THE REQUIREMENT FOR PENSION
PLANS TO BE MAINTAINED FOR THE BENEFIT OF NON-
CAYMANIAN EMPLOYEES; AND TO MAKE PROVISION FOR
RELATED MATTERS**

THE NATIONAL PENSIONS (AMENDMENT) BILL, 2010

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the National Pensions Law (2000 Revision).

Clause 1 of the Bill provides the short title and makes provision in respect of the expiry of clause 4.

Clause 2 amends section 2 of the principal Law to provide that the Law applies to pension plans maintained for the benefit of Caymanian employees. The Law no longer applies in respect of non-Caymanian employees.

Clause 3 amends section 3 of the principal Law to define the term “Caymanian” for the purposes of the legislation.

Clause 4 of the Bill inserts into the principal Law a new Part IA comprised of sections 5A to 5E. The provisions of the new Part provide a ‘pension holiday’, that is, a period during which pension contributions can be temporarily suspended without impeding the subsequent operation of the principal Law.

The pension holiday is voluntary. In the case of an employer-employee relationship, both the employer and his employee must agree to the suspension of the relevant pension contributions, and they must enter into an agreement that supersedes any contractual rights in their employment agreement. Notwithstanding the pension holiday, an employer would still be required to establish a pension plan and employees would still be required to be members of a pension plan.

In addition, an employer who is seeking to temporarily suspend pension contributions must be up to date with all pension contributions or arrangements must be in place for the payment of any arrears.

The provisions of the new Part IA provide a similar opportunity to suspend pension contributions in relation to self-employed persons. As in the case of an employer-employee relationship, a self-employed person who is seeking to temporarily suspend pension contributions must be up to date with all pension contributions or arrangements must be in place for the payment of any arrears.

Clause 5 of the Bill enables the principal Law and all regulations made under the Law, to be construed with necessary changes for the purpose of giving effect to the new Part IA.

THE NATIONAL PENSIONS (AMENDMENT) BILL, 2010

ARRANGEMENT OF CLAUSES

1. Short title and expiry
2. Amendment of section 2 of the National Pensions Law (2000 Revision) - application of Law to certain pension plans
3. Amendment of section 3 - definitions
4. Insertion of Part IA - suspension of pension contributions
5. Construction of the principal Law

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ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the National Pensions (Amendment) Law, Short title and expiry
2010.

(2) Section 4 shall cease to have effect upon the expiration of a period of one year or upon such later date as may be appointed by order made by the Governor in Cabinet.

(3) Upon the expiration of section 4, the law in force immediately prior to the coming into operation of that section shall, so far as it is amended by that section, again operate as though that section had not been passed and the said amendments had not been enacted.

Amendment of section 2 of the National Pensions Law (2000 Revision) - application of Law to certain pension plans

2. The National Pensions Law (2000 Revision) in this Law referred to as the “principal Law”, is amended in section 2 by inserting before the word “employees” the word “Caymanian”.

Amendment of section 3 - definitions

3. The principal Law is amended in section 3 by inserting, after the definition of the word “Board”, the following definition -

“ “Caymanian” has the meaning assigned to it by the Immigration Law (2009 Revision);”.

Insertion of Part IA - suspension of pension contributions

4. The principal Law is amended by inserting after Part I the following Part -

“PART IA - Suspension of Pension Contributions

“Definitions in Part IA

5A. In this Part -

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

“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.

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 dollars.

Application to be
certified as an
approved person

5C. (1) A person who is -

- (a) an employer in the Islands;
- (b) an employee in the Islands; or
- (c) a self-employed 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 no 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.”.

5. Parts I and II to XV of the principal Law, and the regulations made under that Law, shall be construed with necessary changes for the purpose of giving effect to the amendments effected by section 4 of this Law.

Construction of the
principal Law

Passed by the Legislative Assembly the day of , 2010.

Speaker.

Clerk of the Legislative Assembly.