

Notice of proposed amendment

21. (1) Before the registration of an amendment to a defined benefit pension plan which would reduce pension benefits in the future or that would otherwise adversely affect the rights or obligations of a member or former member or of any other person entitled to payment from the pension fund, 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 may not register an amendment until 45 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 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.

Annual statement of pension benefits

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-

- (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.

(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

CAYMAN ISLANDS



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**THE NATIONAL PENSIONS LAW, 1996**  
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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.

#### **DISCLOSURE OF INFORMATION**

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-

Information from  
administrator

- (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 90 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 30 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.

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

- (a) pension benefits or a refund of contributions under the plan to which the administrator is entitled as a member, former member or claimant of 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 shall be paid out of the pension fund.

Information from employer

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.

(2) In subsection (1) “employer” includes a predecessor of the employer.

Advisory Committee.

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.

(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)-

- (a) to monitor the administration of the pension plan;
- (b) to make recommendations to an administrator respecting the administration of pension plan; and
- (c) to 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

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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.

(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 of the administrator appointed by the Superintendent shall be paid out of the pension fund.

17. (1) An administrator shall-

*Diligence, care and skill*

- (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).

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 subsections (1) or (2) is subject to the right to a hearing under section 71 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.

Duties of administrator

16. (1) An administrator shall ensure that-

- (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 6 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 3 years during the continuation of a defined benefit pension plan and every 5 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 6 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 the regulations.

- 41. Commuted value.
- 42. Payment on breakdown of marriage.
- 43. Discrimination on the basis of sex.
- 44. Inflation protection.
- 45. Funding.
- 46. Contribution rate.
- 47. Notice to Superintendent of the arrears of contributions.
- 48. Trust property.
- 49. Accrual.
- 50. Bond.
- 51. Investment of pension fund.
- 52. Refunds.
- 53. Shorter qualification periods.
- 54. Void transactions.
- 55. Exemption from execution, seizure or attachment.
- 56. Commutation or surrender.
- 57. Winding up.
- 58. Winding up order by the Superintendent.
- 59. Wind up report.
- 60. Appointment of administrator to wind up .
- 61. Notice of entitlements.

62. Determination of entitlement.
63. Combination of age and years of employment.
64. Liability of employer on termination.
65. Pension fund continues subject to the Law and the regulations.
66. Continuing pension plan.
67. Continuation of benefits under successor employer.
68. Adoption of a new pension plan.
69. Order by Superintendent.
70. Order for correction.
71. Appeal from Superintendent's decision.
72. Request for appeal etc.
73. Quorum and votes.
74. Costs.
75. Enforcement.
76. Appeal to Grand Court.
77. National Pensions Board.
78. Superintendent.
79. Duty of Superintendent and Board.
80. Research.
81. Information.
82. Liability of members and employees of Board and Superintendent

(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.

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

- (a) the amount, or 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 due and payable to a member or former member of the pension plan.

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

- (a) a written acknowledgement of any application for registration of a pension plan within 30 days after receiving an application for registration under section 9;
- (b) a certificate of registration within 30 days of the registration of a plan; and
- (c) a notice of registration for each amendment to a plan within 30 days of the registration of the amendment.

Acknowledgement of application for registration.

(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.

- (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 board of trustees appointed to administer the pension plan.

Accrual of pension benefits.

11. (1) The Superintendent shall not register a pension plan where-
- (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.

Registration of amendment

12. (1) An administrator shall not amend a plan without the recorded approval and votes of two-thirds of the active members and the former members of the plan which votes shall be recorded in the minutes of the meeting at which such votes were taken.

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

(3) An administrator shall apply to the Superintendent within 30 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.

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

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 in Council acting on the advice of the Superintendent.

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

- (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;



- (b) a pension committee comprising one or more representatives of an employer and one or more representatives of members of the pension plan;
- (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) if the pension plan is established pursuant to a trust agreement, a trustee or a board of trustees appointed pursuant to the pension plan; and in respect of a board of trustees, at least one-half shall be representative of members of the pension plan and a majority shall be Caymanian or 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.

(2) For the purposes of subsection (1) “employer” includes an affiliate or parent company.

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

(4) No person other than a prescribed person shall be a trustee of a pension fund.

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

1978 Revision

Registration

9. (1) An administrator shall apply to the Superintendent within 60 days after the date on which a pension plan is established to register the pension plan.

(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) 2 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

CAYMAN ISLANDS

Law 10 of 1996.

I assent

JOHN OWEN  
Governor.

7 October, 1996.

A LAW TO PROVIDE FOR THE  
ESTABLISHMENT OF A NATIONAL PENSIONS SYSTEM

ENACTED by the Legislature of the Cayman Islands.

PRELIMINARY

1. (1) This Law may be cited as the National Pensions Law, 1996.

Short title
2. This Law applies to pension plans established and maintained for the benefit of employees in the Cayman Islands.

Application of Law to certain pension plans
3. In this Law unless the context otherwise requires-

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 subsection 62 (1) to have terminated his employment under the plan;
- “actuarial present value” in relation to a pension or a 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 or employer in excess of the amount the member or employer 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 Cayman 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 77;

“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 a benefit, means the value of the pension or benefit calculated in the prescribed manner and as of a fixed date;

“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 6 months, and notwithstanding periods of lay-off from employment;

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

Greater pension benefits and previous pensions.

(2) The Governor in Council may make regulations respecting the administration or wind up of any pension plans which are terminated on the commencement of this Law.

## REGISTRATION AND ADMINISTRATION

6. (1) 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 180 days after the commencement of this Law.

(3) Any person who contravenes subsection (1) commits an offence and shall be liable on summary conviction to a fine of \$5,000 and to a further fine of \$500 for each day in which the plan is administered contrary to subsection (1).

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

Refusal or revocation of registration

(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) Any person who contravenes subsection (1) commits an offence and shall be liable on summary conviction to a fine of \$5,000 and to a further fine of \$500 a day for each day in which the plan is administered contrary to subsection (1).

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

Administrator

- (a) an employer;

from the Islands, and who possesses a current licence under the Trade and Business Licensing Law (1995 Revision);

“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 78;

“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 pensionable service 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;

“year’s maximum pensionable earnings” means earnings totalling in any year \$60,000 or such other amount as may be prescribed.

Establishment of pension plans.

4. (1) Every employer in the Cayman Islands shall provide a pension plan or make contribution to a pension plan for every person employed by him in the Cayman Islands.

(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) 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 commits an offence and is liable on summary conviction to a fine of \$5,000 or on indictment to a fine of \$10, 000.

“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, gratuity, perquisite or allowance (other than a housing allowance or other housing benefit), 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 or long service payments; 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 (1996 Revision);

“employer” has the meaning assigned to it by section 2 of the Labour Law (1996 Revision);

“file” means file with the Superintendent;

“former member” means a person other than a member of a pension plan who has terminated employment or membership in a pension plan, and

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

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

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

“inactive member”, in relation to a pension plan, means a member of the 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 to a 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 employees of 2 or more employers who contribute or on whose behalf contributions are made to a pension fund in accordance with an agreement between the employers, 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 of a pension plan, means the entitlement of the member or of another person upon the death of the member to the periodic amounts provided under the pension plan for the lifetime of the member, 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 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 a retiring allowance;
- (c) a plan under which all pension benefits are provided by contributions made by members; or
- (d) any other prescribed type of plan;

“pensionable earnings” means the average annual rate of earnings received by a member in that consecutive 60 month period during which his earnings were the highest, or if membership is less than 60 months, the average annual rate of earnings over the period of his membership;

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

“reciprocal transfer agreement” means an agreement respecting 2 or more pension plans that provides for the transfer of money, credits for employment or such other matter in respect of individual members;

“registration” means registration under this Law;

“regulations” means all regulations made by the Governor in Council 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

- (a) a pension in accordance with the terms of the pension plan, if, under the pension plan, the member is eligible for immediate payment of the pension benefit;
- (b) a pension in accordance with the terms of the pension plan, beginning at the earlier of;
  - (i) the normal retirement date under the pension plan; or
  - (ii) the date on which the member would be entitled to a pension under the pension plan if the pension plan were not terminated and if the member's membership continued to that date; or
- (c) a reduced pension in the amount payable under the terms of the pension plan beginning on the date on which the member would be entitled to the reduced pension under the pension plan if the pension plan were not terminated and if the member's membership continued to that date.

(2) In determining the combination of age plus employment or membership, one-twelfth credit shall be given for each calendar month of age and for each calendar month of continuous employment or active membership at the commencement of the winding of the plan.

(3) 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 (1996 Revision).

(4) 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 fund unless the member makes the contributions in respect of the period of notice of termination of employment.

(5) 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.

(6) 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 commencement of this Law.

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 paragraphs (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 subsection (1) (a) to (g), 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.

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.

Inspection of filed documents

**MEMBERSHIP**

Eligibility for membership

25. (1) Subject to subsection (2), all employees between the ages of 18 and 60 years shall be members of a pension plan.

(2) Employers are not required to provide pension plans or contribute towards pension plans for the benefit of employees who

- (a) are not Caymanian, or
- (b) do not have Caymanian status within the meaning of the Immigration Law, and
- (c) who have been working in the Islands for a period of less than 3 months, or
- (d) work as domestic servants in a private home.

(3) Every self-employed person shall be a member of an approved pension plan and shall contribute to the approved pension plan for his own benefit such amount equivalent to the percentage contribution prescribed in respect of his relevant earnings in accordance with the regulations.

(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.

**RETIREMENT AND VESTING**

Normal retirement date

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 1 year after a person has attained 60 years of age.

(2) Every pension plan established prior to this Law and registered under this Law, shall be deemed to specify a normal retirement date in respect of

61. (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-

- (a) the person's entitlement under the pension plan; and
- (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 60 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 section 63 (1) (b), and the administrator of the pension plan shall make payment in accordance with the election or deemed election.

62. (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; and
- (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 61.

(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 and, for this purpose, section 34 (3) does not apply.

63. (1) A member of a pension plan in the Islands whose combination of age plus years of continuous employment or membership in the pension plan equals at least 55, at the commencement of a winding up of the pension plan in whole or in part, has the right to receive-

Combination of age and years of employment

- (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 the regulations; or
  - (b) that 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.

Appointment of administrator to wind up

60. (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.

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

Notice of entitlements

pension benefits that accrue after the commencement of this Law, that is not later than 1 year after attainment of 60 years of age, unless the pension plan specifies a later retirement date.

(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.

27. (1) An active member of a pension plan continued after the commencement of this Law who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

Deferred pension for past service

(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 10 years;
- (b) that the member must have reached the age of 45 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 date of the commencement of this Law in respect of employment in the Islands before the commencement of this Law.

(4) Subsections (1) to (3) do not apply in respect of benefits that result from additional voluntary contributions.

Deferred pension

28. (1) An active member of a pension plan who meets the qualifications in subsection (2) is entitled to the benefit mentioned in subsection (3).

(2) The qualifications are-

- (a) that the member must be a member of a pension plan on or after the date of the commencement of this Law; and
- (b) that the member must 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 date of the commencement of this Law.

Termination by member.

29. (1) A person who is-

- (a) an active member of a multi-employer pension plan; or
- (b) an active member of a pension plan who is employed by an employer on a part-time basis; or
- (c) an active member 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 60 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) do 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 2 pension plans.

(4) For the purposes of determining entitlement to a deferred pension, a member of a multi-employer pension plan who terminates employment with a participating employer shall be deemed not to have terminated employment until the member terminates membership in the pension plan.

(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 benefits; or
- (b) in any other case, be on the date notice is given to members.

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

58. (1) The Superintendent by order may 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 the regulations;
- (c) the employer is bankrupt within the meaning of the Bankruptcy Law (Revised);
- (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
  - (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.

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(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.

59. (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 -

Winding up report

- (a) the assets and liabilities of the pension plan;



(4) Subsections (1), (2) and (3) do not apply to prevent execution, seizure or attachment in satisfaction of a court order respecting maintenance of a spouse in the Cayman Islands to a maximum of one-half of the money payable.

(5) Subsection (4) applies to orders whether made before or after the commencement of this Law.

Commutation or  
surrender

56. (1) A pension or a 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.

(2) A transaction that purports to commute or surrender such a pension, benefit, annuity or prescribed retirement savings arrangement is void and of no effect.

TERMINATION AND WINDING UP

Winding up

57. (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) the advisory committee of the pension plan; and
- (e) 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 the 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.

BENEFITS

30. (1) A member of a defined benefit pension plan that is continued or established after the date of the commencement of this Law shall be entitled at his normal retirement date to a minimum annual pension equivalent to 1.5 percent of his pensionable earnings for each year that he shall have been in membership of that plan subject to a maximum of 40 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.

31. (1) If the commuted value or the actuarial present value of the contributory benefit that accrued under a defined benefit pension plan before the commencement of this Law, 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 commencement of this Law and the interest thereon to the date of termination, the benefit shall be increased on the date of termination so that the commuted value or the actuarial present value of the benefit is at least equal to the sum of the member's contribution.

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 or the actuarial present value of a contributory benefit under a pension plan in respect of employment before the commencement of the Law-

- (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 or the actuarial present 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 commencement of this Law and the interest thereon to the date of termination of employment of the member shall not be used to provide more than 50 per cent of the commuted value or the actuarial present 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 commencement date of the Law and interest thereon to the date of termination exceeds 50 per cent of the commuted value or the actuarial present value of the member's contributory benefit accrued before the commencement of the Law.
- (5) The sum of the contributions under a pension plan made by a member of the plan after the commencement of this Law and the interest thereon to the date of termination of employment shall not be used to provide more than 50 per cent of the commuted value, or the actuarial present value on the date of termination, of the contributory benefit under the plan that has accrued after the commencement of this Law 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 commencement of this Law and interest thereon to the date of termination exceeds one-half of the commuted value of the actuarial present value, on the date of termination of the contributory benefit that accrued after the commencement of this Law 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;
  - (c) in the case of a multi-employer pension plan that permits a member who has not accrued maximum pension benefits permitted under the plan in a fiscal year of the plan to make contributions to increase the member's pension benefit to the

- (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 2 years or more, and in calculating a period of absence no account shall be taken of a period of residence in the Islands for a period less than 3 months in a calendar year.
  - (c) An administrator may, before paying a member pursuant to this subsection, deduct a sum to compensate the pension fund for actual or anticipated expenses and losses incurred in effecting such withdrawal.
- (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.
53. 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.
54. (1) Any transaction is void if it purports to convey, assign, charge, anticipate or give as security,
- (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.

Shorter qualification periods

Void transactions

55. (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 prescribed retirement savings arrangement or from a life annuity is exempt from execution, seizure, attachment or any other process that is taken by a creditor .

Exemption from execution ,seizure or attachment

(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 49. 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 Cayman Islands prime rate plus 5 per cent, calculated on a daily basis.

Bond 50. 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 51. 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 the regulations.

LOCKING IN

Refunds 52. (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 in respect of employment in the Cayman Islands or interest on such contributions on or after the date of the commencement of this Law.

- (2) (a) Notwithstanding subsection (1) where-
- (i) a member's employment is terminated; and
  - (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 2 years or more
- the member may elect, after the expiration of 2 years from the termination of his employment, to receive a lump sum payment of an amount equal to not less than the amount of the member's contributions and the prescribed interest 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.

maximum permitted for the fiscal year, benefits resulting from such contributions; and

(d) 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 commencement of this Law;
- (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 commencement of this Law 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 commencement of this Law.

(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 provisions of subsections (1) to (8) and section 32 (2) apply as if the member terminated employment at that time.

32. (1) A pension plan may 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 commencement of this Law; and
- (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 10 years of the normal retirement date.

(2) An active member who is within 10 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 10 year period mentioned in subsection (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 commencement of this Law, 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-

- (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

(10) 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.

47. (1) The administrator or an agent of an administrator shall notify the Superintendent in writing of any contribution which is in arrears within 45 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 2 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 not exceeding \$500 for each day in which the contributions are in arrears.

48. (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.

(3) A member shall not be required, without his express consent, to contribute to a pension plan more than 5 per cent of his earnings and the employer shall contribute an amount equal to 5 per cent of the member's earnings.

(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 3 months after the end of the fiscal year in which the overpayment is made.

(8) A member shall not be required to contribute at a rate higher than that prescribed in the regulations with respect to any year's maximum pensionable earnings.

(9) (a) A pension plan established on or immediately after the commencement of this Law may-

- (i) allow employees 40 years of age or younger to pay contribution at rates which are less than the prescribed minimum contribution rate for a period of 5 years after the commencement of this Law;
- (ii) allow employees between ages 41 and 45 to pay contributions at rates which are less than the prescribed minimum for 3 years after the commencement of this Law.
- (b) The rates of contributions payable under paragraph (a) shall be on a graduated scale prescribed by the regulations.
- (c) Members 45 years of age or older may elect to pay an amount in excess of the prescribed minimum rate up to the normal retirement date and thereafter the member may, if he continues in membership of a plan, contribute at the prescribed minimum rate.

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) Subsection (1) does not apply to a former member whose employment is terminated and who is entitled to immediate payment of a pension benefit under the pension plan.

(4) Subsection (1) does not apply with respect to any defined contribution benefit in respect of which the member has elected to purchase a deferred life annuity from an approved provider if-

- (a) the pension plan permits the election;
- (b) the election is made after the commencement of this Law;
- (c) the member makes the election in a form supplied by the Superintendent; and
- (d) the member is within 15 years of attaining the normal retirement date when the member makes the election.

(5) 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.

(6) Subject to the compliance with the requirements of this section and the regulations, the administrator shall comply with the direction not later than 45 days after the date of delivery of the direction.

(7) The administrator shall not make payment-

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

(8) 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.

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

(10) 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 (9),

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

(11) 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.

(12) Subject to section 71 an order for payment under subsection (10) may be enforced in the same manner as a judgement of the Grand Court for the payment of money.

(13) 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.

(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; or
- (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) This section applies in respect of contributions, benefits and conditions in relation to-

- (a) employment after the commencement of this Law; and
- (b) employment before the commencement of this Law in so far as it is dealt with in an amendment made to the pension plan after the commencement of this Law.

44. 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

CONTRIBUTIONS

45. (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 5 years of the commencement of this Law.

(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.

46. (1) 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 at regular periods during his employment. The Governor in Council may make regulations respecting the pension plans of self-employed persons.

1995 Revision	(10) In this section “personal representative” has the meaning assigned to it by section 2 of the Succession Law (1995 Revision).
Variation of payment to disabled person	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.
Commutated value	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.
Payment on breakdown of marriage	42. (1) A court order made upon a divorce or separation for maintenance or other payments respecting such divorce or separation shall not require payment of a pension benefit before the earlier of- <ul style="list-style-type: none"> <li>(a) the date on which payment of the pension benefit commences; or</li> <li>(b) the normal retirement date of the member or former member.</li> </ul> <p>(2) A court order mentioned in subsection (1) may not provide for the payment to a spouse of more than 50 per cent of the pension benefit calculated in the prescribed manner and accrued by a member or former member during the conjugal period of the member or former member and his spouse.</p> <p>(3) An administrator is discharged from all liabilities upon making payment in accordance with an order under this section.</p> <p>(4) Where a court order mentioned in subsection (1) affects a pension, the administrator shall revalue the pension in the prescribed manner.</p> <p>(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.</p>
Discrimination on the basis of sex.	43. (1) The sex of a member, former member or other beneficiary under a pension plan shall not be taken into account in- <ul style="list-style-type: none"> <li>(a) determining the amount of contributions required to be made by a member of the plan;</li> <li>(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;</li> <li>(c) the provision of eligibility conditions for membership; or</li> </ul>

(4) Where-	<ul style="list-style-type: none"> <li>(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</li> <li>(b) there is a failure to comply with a term or condition attached to the Superintendent’s approval under subsection (3),</li> </ul> <p>the Superintendent by order may 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.</p> <p>(5) Subject to section 71, an order for payment under subsection (4) may be enforced in the same manner as a judgement of the Grand Court for the payment of money.</p>
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.	Joint survivor pension benefits
(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-	<ul style="list-style-type: none"> <li>(a) in respect of a pension benefit if payment of the pension has commenced before the operation of this Law; or</li> <li>(b) in respect of the portion of a pension that relates to a prescribed ancillary benefit.</li> </ul>
(4) Where-	<ul style="list-style-type: none"> <li>(a) prior to the date of the commencement of this Law a deferred life annuity has been purchased from an approved provider for a person entitled to a deferred pension under this Law; and</li> <li>(b) payments have not commenced under the annuity on the date of the commencement of this Law; and</li> <li>(c) the recipient of the payments has a spouse on the date payments commence,</li> </ul>

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

Information for payment of pension

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.

(2) An administrator is discharged from all liabilities upon making the payment-

- (a) in accordance with information provided by the person entitled pursuant to 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 widow or widower 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 widow or widower.

(2) Subsection (1) applies in respect of pensions which are first paid after the commencement of this Law.

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 a deferred pension the commuted value of which is at least equal to the value of the deferred pension of the member or former member.

(2) The pension in respect of the deferred benefit described in subsection (1) shall be paid to the spouse-

- (a) no earlier than 10 years before the spouse attains the age of 60; or
- (b) no later than the normal retirement date under the plan.

(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) Subject to a court order providing for the maintenance of a spouse, 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

- (a) the member or former member does not have any dependent child or children;
- (b) the member or former member does not have a spouse on the date of death; or
- (c) the member or former member is living separate and apart from his or her 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-

- (a) the member or former member has not designated a beneficiary in accordance with subsection (5); and
- (b) the member or former member 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).



- (u) prescribing terms and conditions governing the conversion of a defined benefit to a defined contribution benefit; and
- (v) 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 in Council considers necessary, any code, formula, standard or procedure as appear to the Governor in Council to be expedient for the purposes of this Law or the regulations.

(5) The Governor in Council may, after consultation with the employees of the Government, make an order providing that this Law shall apply to the Government.

(6) Regulations under this Law shall be subject to affirmative resolution.

Commencement

95. (1) This Law shall come into force on such date as may be appointed by order of the Governor in Council published in the Official Gazette and different dates may be appointed for different provisions of this Law and in relation to different cases.

(2) Any order made under this section may contain such incidental or supplementary provisions as appear to the Governor to be necessary or expedient for the orderly implementation of the provisions and purposes of this Law.

Passed by the Legislative Assembly the 15th day of July, 1996.

Sybil McLaughlin  
Speaker.

Georgette Myrie  
Clerk of the Legislative Assembly.

(7) A person affected by a winding up who elects to receive a benefit under subsection (1) is not entitled to payment of any refund of contributions or interest.

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

Liability of employer on termination

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

(3) 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 contributions payable by the employer.

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

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.

SURPLUS

66. 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

## SALES, TRANSFERS AND NEW PLANS

Continuation of benefits  
under successor  
employer

67. (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-

- (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) Subsection (1) (a) does not apply if the successor employer assumes responsibility for the accrued pension benefits of the employer's pension plan and the pension plan of the successor'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.

- (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 the regulations from the date the payment is due and prescribing the rate of interest and the method of calculating interest if such rate or method is not otherwise specified;
- (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 commencement of this Law or that is attributable to employment after the commencement of this Law;
- (q) prohibiting or regulating the reduction or the variation of pension benefits by reference to benefits payable under any approved plan;
- (r) 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;
- (s) exempting pensions plans, pension funds, employees, administrators or other persons from the application of this Law or the regulations or any section thereof;
- (t) governing the receiving, holding and disbursing of benefits by any agency established or designated under this Law;

Time for actions by administrator

(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 3 days after the notice or other document is posted.

Conflict

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

93. (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.

Regulations

94. (1) The Governor in Council may make regulations prescribing any matter referred to in this Law as to be prescribed by regulations.

(2) Notwithstanding the generality of subsection (1), the Governor in Council 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 the 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 meeting of members, former members and claimants of pension plans;

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

(7) The Superintendent by order may 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 71, an order for return of assets under subsection (7) may be enforced in the same manner as a judgement 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.

68. (1) Where a pension plan is established by an employer to be a successor to an existing pension plan and the employer ceases to make contributions to the original pension plan, the original pension plan shall be deemed not to be wound up and the new pension plan shall be deemed a continuation of the original pension plan.

Adoption of a new pension 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 deemed to be benefits and rights under the new pension plan.

(3) Subsection (2) applies whether or not the assets and liabilities of the original pension 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 or that does not meet the prescribed requirements and qualifications.

(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 71, an order for return of assets under subsection (6), may be enforced in the same manner as a judgement of the Grand Court for the payment of a sum of money.

## ORDERS

Order by Superintendent 69. (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.

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

- (a) that the pension plan or pension fund is not being administered in accordance with this Law, and the regulations or the pension plan; or
- (b) that the pension plan does not comply with this Law and the regulations; or
- (c) that 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 70. (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 the regulations in respect of a pension plan are inappropriate for a pension plan; or
- (b) the assumptions or methods used in the preparation of a report required under this Law or the regulations in respect of a pension

89. (1) Except where specifically provided otherwise, any person who contravenes this Law, or any order made under this Law commits an offence and is liable on summary conviction to a fine of \$5,000. 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 5 years after the date when the subject matter of the proceeding occurred or is alleged to have occurred.

90. Where a provision of this Law or the 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 restrained by action at the instance of the Board, of the Superintendent or of the administrator of the pension plan affected by the contravention. Power to restrain

91. (1) Any notice, order or other document which is required to be served under this Law or the regulations may be served- Service of documents

- (a) by delivering it to the person on whom it is to be served;
- (b) by leaving it at the usual or last known place of abode of that person;
- (c) by sending it by prepaid post addressed to that person at his usual or last known postal address; or
- (d) in the case of a body corporate, by delivering or sending it by prepaid post to the 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 the regulations are so numerous; or
- (b) for any other reason,

it is not reasonable to serve the notice or document on all or any of the persons individually, the 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) 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 under section 88 has been issued relating to such private residence.

Order by Justice of the Peace

88. (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 86 (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 86 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.

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.

## HEARING AND APPEAL

71. (1) A person affected by a decision of the Superintendent may appeal to the Board.

Appeal from Superintendent's decision

(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.

72. (1) A person affected by a decision of the Superintendent may make an appeal under section 71 by notice in writing and shall deliver such notice to the Board not later than 30 days after the receipt of the Superintendent's decision by the person.

Request for appeal etc.

(2) On receipt of a notice of appeal in accordance with 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; or

- (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
  - (c) 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.

## Quorum and votes

73. (1) Three members of the Board constitute a quorum for the purposes of a hearing before the Board under section 72, and decisions in such hearings require the vote of a majority of the members of the Board present at the hearing.
- (2) The Board may sit in 2 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.

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; or
  - (b) instructs the Superintendent or the designated person to leave the premises; or
  - (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 88.

(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.

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

(2) A person who contravenes subsection (1) commits an offence and shall be liable on summary conviction to a fine of \$1,000.

GENERAL

Extension of time

85. The Superintendent or the Board may extend any time limit under this Law, or the regulations, not including the time limit specified under section 91 (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.

Entry onto business premises by the Superintendent

86. (1) The purposes mentioned under this section are the following:
- (a) the administration of this Law and the regulations;
  - (b) the enforcement of any section of this Law or the regulations;
  - (c) the exercise of a power or the carrying out of a duty under this Law or the regulations; and
  - (d) the carrying out of an order made under this Law;
- (2) For any of the purposes mentioned in subsection (1), the 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; and
  - (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

74. (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. Costs

- (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.

75. 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. Enforcement

76. (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. Appeal to Grand Court

(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.

NATIONAL PENSIONS BOARD

77. (1) The National Pensions Board is hereby established. National Pensions Board
- (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 in Council.
- (4) The appointment of the members of the Board shall be published in the Gazette.
- (5) The Governor in Council 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 in Council 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 73 (1) a majority of the members of the Board constitutes a quorum.

(8) The Governor in Council 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.

Superintendent

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

(2) The Superintendent shall be appointed by the Governor in Council and notice of the appointment shall be published in the Official Gazette.

(3) 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.

Duty of Superintendent and Board

79. The Board shall-

- (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.

Research

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

(2) The Superintendent may request an employer or 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) Where an employer, an administrator or a member fails to comply with a request under subsection (2), he commits an offence and shall be liable on summary conviction to a fine which shall not exceed \$1,000.

81. (1) The Superintendent or the Board may require an employer, an administrator or any other person to supply to the Superintendent or the Board such information and within such time limits as they may specify for the purpose of ascertaining compliance with this Law and the regulations.

Information.

(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) commits an offence and shall be liable on summary conviction to a fine which shall not exceed \$1,000.

(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) commits an offence and shall be liable on summary conviction to a fine which shall not exceed \$5,000.

82. The Superintendent or a member of the Board or of the staff of the Board is not personally liable for anything done in good faith in the execution or intended execution of a duty or authority under this Law or the regulations or for alleged neglect or default in execution in good faith of such a duty of authority.

Liability of members and employees of Board and Superintendent

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

Audit

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

Annual report

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