

CAYMAN ISLANDS



Supplement No. 2 published with Extraordinary
Gazette No. 25 dated 12 August, 2004.

**THE PUBLIC SERVICE PENSIONS (AMENDMENT) LAW, 2004
(LAW 19 OF 2004)**

ARRANGEMENT OF SECTIONS

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CAYMAN ISLANDS

Law 19 of 2004.

I Assent

James M. Ryan

Acting Governor.

9th August, 2004

A LAW TO AMEND THE PUBLIC SERVICE PENSIONS LAW (2004 REVISION); AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Public Service Pensions (Amendment) Law, 2004.

Short title

2. (1) The Public Service Pensions Law (2004 Revision), in this Law referred to as “the principal Law”, is amended in section 3-

Amendment of section 3 of the Public Service Pensions Law (2004 Revisions)-definitions

- (a) by repealing the definition of “contracted officer’s supplement” and substituting the following-
“ “contracted officer’s supplement” means the supplement paid to employees of the Government, Statutory Authorities and Government companies pursuant to local or overseas contracts;”;
- (b) in the definition of “employer”, by repealing paragraph (b) and inserting the following paragraph-
“(b) a statutory authority or a Government company (approved by the Governor) who has opted to join the Plan;”;
- (c) by repealing the definition of “Other Public Service” and substituting the following-

“Other Public Service” means Service with a statutory authority or Government company that has opted to join the Plan with the approval of the Governor”;

- (d) by repealing the definition of “participant contribution account” and substituting the following -

“participant contribution account” means-

- (a) in relation to a defined contribution participant, the book-keeping account documenting total participant contributions made by a participant under the Plan, or transferred from an approved plan pursuant to section 49, plus the interest credited in accordance with rules prescribed by regulations; and
- (b) in relation to a defined benefit participant, the book-keeping account documenting the following-
- (i) the total participant contributions made by a participant under the Plan; and
- (ii) the participant account opening balance –
- (A) established as at 1st January 1990 and representing the benefit accrued from the date of the participant’s employment in Service or from the date he reaches the age of 18 while employed in Service (whichever date is later) until 31st December 1989; and
- (B) specified in a schedule maintained by the Board pursuant to section 6 (1) (hh); and
- (iii) the interest credited in accordance with rules prescribed by regulations.”.
- (e) by inserting the following definitions in their appropriate alphabetical order-
- (i) “Government company” means-
- (a) a company in which the Government has a controlling interest; and
- (b) in respect of each such company, includes all subsidiary entities of the company; and
- (ii) “Managing Director”, means the managing director of the Board appointed under section 5;”.

(2) The principal Law is amended by repealing the word “Director” wherever it appears and substituting the words “Managing Director”.

Amendment of section
5- Public Service
Pensions Board

3. The principal Law is amended in section 5 by inserting after subsection (1) the following subsections –

“(1a) The Board shall consist of directors appointed in accordance with the First Schedule.

(1b) The directors shall be responsible for the policy and general administration of the affairs and business of the Board.

(1c) The directors in carrying out their duties under this Law shall also comply with the provisions of the Public Management and Finance Law (2003 Revision) and where there is any conflict between the provisions of this Law and the Public Management and Finance Law (2003 Revision) the provisions of the latter Law shall prevail to the extent of the inconsistency.”.

4. The principal Law is amended in section 6 as follows-

Amendment of section 6- powers and duties of the Board

- (a) in subsection (1) as follows-
 - (i) by repealing paragraph (e);
 - (ii) in paragraph (h), by repealing the word “participants” and substituting the word “persons”; and
 - (iii) by inserting after paragraph (h) the following paragraph -
“(hh)adopting and maintaining a schedule setting out the participant account opening balances relating to defined benefit participants”; and
- (b) by inserting after subsection (1) the following subsection-
“(1a)Without prejudice to the generality of subsection (1), in accordance with section 12, the Board shall be responsible for recommending to the Governor contribution rates payable under the Plan from time.”.

5. The principal law is amended in section 11 as follows-

Amendment of section 11- accounts, book-keeping and reporting

- (a) in subsection (2)-
 - (i) by repealing the word “four” and substituting the word “three”; and
 - (ii) by repealing the words “31st December” and substituting the words “30th June;”;
- (b) in subsection (4), by repealing the word “seven” and substituting the word “six”; and
- (c) in subsection (5), by repealing the words “two months” and substituting the words “thirty days”.

6. The principal Law is amended in section 12 as follows-

Amendment of section 12- actuarial valuation

- (a) by repealing the marginal note and substituting the following marginal note-

“Actuarial valuation and contribution rates”;

- (b) by repealing subsection (3) and substituting the following subsection-

“(3) A report of the actuarial review carried out under subsection (1) shall be made to the Board and the Board shall send a copy of the report to the Financial Secretary and may, after considering the report, recommend changes to the contribution rates.”;

- (c) by inserting after subsection (3) the following subsections-

“(3a) After receiving a report under subsection (3) the Financial Secretary shall submit the report to the Governor and the Governor, shall either-

- (a) accept the report and approve, by regulations, the changes to the contribution rates recommended by the Board; or
- (b) within ninety days of receiving the report, cause its own actuarial valuation to be carried out if it determines that there is good reason to do so.

(3b) Where an actuarial valuation carried out by the Governor under subsection (3a) (b) corroborates the report submitted by the Board the Governor shall, no later than six months after receiving the valuation approve, by regulations, the rates recommended by the Board under subsection (3).”;

- (d) by repealing subsection (4) and substituting the following subsection-

“(4) The Financial Secretary shall, immediately after an actuarial report is accepted or corroborated, lay the report on the table of the Legislative Assembly for twenty- one days and shall cause such report to be gazetted; and the Financial Secretary shall not be required to lay any report which has not been so accepted or corroborated.”.

Amendment of section
17- contributions to the
Fund

7. The principal Law is amended in section 17 as follows-

- (a) in subsection (2) as follows-
 - (i) in paragraph (a), by inserting after the words “statutory authorities” the words “and government companies”;
 - (ii) by repealing paragraph (b) and substituting the following-

“(b) When an active participant is transferred to a non-participating Statutory Authority or Government company, the non-participating Statutory Authority or Government company may opt, with the approval of the Governor, to join the Plan and shall, for the

purpose of paying the employer contribution for such active participant, be deemed a participating Statutory Authority or Government company .”;

- (b) in subsection (3)-
 - (i) by repealing the words “Accountant General” wherever they appear and by substituting the word “Government”;
 - (ii) by inserting after the words “statutory authority” wherever they appear the words or Government company”; and
 - (iii) by inserting at the end of the subsection the following words “and such deductions shall be sent to the Administrator no later than the 15th day of the month immediately following the date when the deductions are due”;
- (c) by repealing subsection (4) and substituting the following subsection-

“(4) Any participant contributions which are credited pursuant to this Law to a participant’s account shall be credited to his account on the date such contributions are received by the Administrator.”; and
- (d) in subsection (5), by repealing the words “Accountant General” wherever they appear and by substituting the word “Government”;
- (e) in subsection (6) as follows-
 - (i) by inserting after the words “statutory authority’s” the words “or a Government company’s”; and
 - (ii) by inserting after the words “statutory authority” the words “or the Government company”;

8. The principal Law is amended in section 27 by repealing subsection (2) and substituting the following subsection-

Amendment of section
27 – applicability

- “(2) Any employee–
- (a) who retired or resigned from Service prior to the date of commencement of the former Law and who was entitled to receive pension benefits under the prior law; or
 - (b) who was employed in the Service after 1 January 1940 for a continuous period of ten years or more in a pensionable post and who resigned from Service on or before 31 December 1982 and who was not entitled to receive pensions benefit;

shall be entitled to receive pension benefits under this new Law, pursuant to a schedule of benefits adopted and maintained by the Board pursuant to section 6(1)(h) and-

- (i) in the case of an employee specified in paragraph (a), such pension benefits shall in no event be less than the benefits that would have been accrued or payable on the day immediately prior to the date of commencement of the former Law; and
- (ii) in the case of the participants specified in paragraphs (a) and (b), such pension benefits shall in no event be less than the minimum pension set out in section 39 or less than the minimum ex-gratia pension payable under the Public Service Pensions (Ex-gratia Pensions) Regulations, 2002, whichever is the greater.”.

Amendment of section 28- defined benefit eligibility

9. The principal Law is amended in section in section 28 (3) by inserting after the words “statutory authority” wherever they appear the words “or Government company”.

Amendment of section 38- maximum pensions

10. The principal Law is amended in section 38 by inserting after subsection (3) the following subsections –

“(4) Where a participant –

- (a) is fifty-five years of age or older but less than sixty years of age; and
- (b) he has attained the maximum pension eligibility under this Law,

the pension benefits accrued to him at the date he achieved such pension eligibility shall be determined and frozen and the participant shall be enrolled on that date in the defined contribution plan.

(5) A participant enrolled in the defined contribution plan pursuant to subsection (4) shall contribute to the plan until he reaches normal retirement age or until he ceases to be employed, whichever is earlier.

(6) Where a participant reaches normal retirement age or he ceases to be employed he shall be paid both –

- (a) the pension benefits accrued under the defined pensions benefit plan which have been frozen pursuant to this section; and
- (b) the pension benefits, if any, accrued under the defined contribution plan.

(7) A participant who-

- (a) reaches normal retirement age, is receiving a pension and continues to be employed in Service; or
- (b) reaches normal retirement age, retired from the Service, is receiving a pension and is subsequently re-employed in Service,

shall receive his pension without interruption but shall be ineligible to make contributions or to accrue benefits under the Plan.”.

11. The principal Law is amended in section 39 (1) by repealing the words “to a retired participant whose benefits commenced prior to his attainment of age fifty-five, a deferred vested participant, or”.

Amendment of section 39- minimum pension payments

12. The principal Law is amended by repealing section 46 and substituting the following-

Amendment of section 46- defined contribution eligibility

“46. An employee who is not participating in the defined benefit part shall, unless exempted pursuant to section 26(2) or 26(3), become an active defined contribution participant-

- (a) on or after 1 January, 2000;
- (b) the first day of the month next following the date on which the employee attains the age of eighteen; or
- (c) the date he is first employed in Service,

whichever date is later.”.

13. The principal Law is amended in the First Schedule –

Amendment of First Schedule

- (a) by repealing paragraph 1 and substituting the following paragraph-

“1. The Board shall consist of the following directors -

- (a) the Financial Secretary;
- (b) the Deputy Financial Secretary;
- (c) the Chairman of the Public Service Commission,
- (d) the Deputy Chief Secretary,
- (e) the President of the Cayman Islands Civil Service Association or his substitute;
- (f) the President of the Public Managers Association or his substitute;
- (g) a Crown counsel appointed by the Attorney-General as legal adviser to the Board;
- (h) three directors appointed by the Governor one of whom must have substantial professional investment

experience and another who must be a retired participant under this Plan; and

- (i) the Managing Director appointed in accordance with section 5.”;
- (b) by inserting after paragraph 1 the following paragraph-

“(1A) The Managing Director shall not be a voting member of the Board.”.
- (c) by repealing paragraph 3 and substituting the following paragraph-

“3. (1) The Board shall appoint on such terms and conditions of employment as the Board considers fit, a person not being a director, to be the secretary of the Board.

(2) The secretary to the Board shall be present at all meetings and shall take minutes of the business transacted and such minutes shall record all decisions, resolutions, orders, policies and rules made by the Board.”; and
- (c) by repealing paragraph 7.

Transitional provisions

14. In this Law -

“the former Law” means the principal Law in force immediately before the date of commencement of this Law; and

“this new Law” means the principal Law as amended by this Law.

Passed by the Legislative Assembly the 29th day of July, 2004.

LINFORD A. PIERSON

Speaker.

SHARON SMITH

Acting Clerk of the Legislative Assembly.