

- (e) the member's required contributions;
- (f) details of the provisions governing members' additional voluntary contributions;
- (g) the employer's contributions;
- (h) the member's rights on retirement, termination, and death before retirement;
- (i) the member's rights on termination of his employment;
- (j) details of provisions made by the plan in relation to death before and after retirement;
- (k) details of spousal entitlements under the plan;
- (l) the name and address of the investment manager or managers;
- (m) details of the process for the selection of investment managers;
- (n) whether or not an advisory committee exists;
- (o) members' options in respect of investments;
- (p) details of when earnings from investments are credited to member accounts;
- (q) the rights of members to inspect plan documents, actuarial reports, and other documents filed in accordance with the Law or regulations made thereunder;
- (r) the name, address, and telephone number of the person to whom enquiries and complaints are to be addressed; and
- (s) the address of the Superintendent.

Notice of explanation
and amendment under
section 21(1) of the Law

21. The administrator shall deliver the notice required under section 21(3) of the Law, and an explanation of the amendment, within 60 days after registration, to each member, former member or other person who is or will be affected by an amendment that is registered.

Explanation of
amendment provided
with annual statement

22. Where an amendment is registered and the Superintendent has dispensed with the notice required under section 21(1) of the Law, the administrator may provide a notice and an explanation of the amendment to members with the next statement required under section 22 of the Law if that is due to be given within the period referred to in regulation 21.

Contents of annual
statement

23. (1) A statement required under section 22 of the Law shall contain, as recorded in the records of the administrator, at least-

- (a) the name of the plan and its registration number;
- (b) the member's name and date of birth;
- (c) the period covered by the statement;
- (d) the date on which the member joined the pension plan, and, except for multi-employer pension plans, the date on which the member was employed by the employer;

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THE NATIONAL PENSIONS (AMENDMENT) LAW, 1998

(Law 8 of 1998)

18. In the event that 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-

Insufficiency after winding up

- (a) the pension benefits and other benefits payable to members shall be reduced in proportion to the funded ratio of the plan on a plan termination basis after the expenses of the winding up are taken into account;
- (b) where payments have been made to former members after the date of the termination or partial termination in amounts exceeding the amounts payable under paragraph (a), amounts not exceeding 10% of the payment shall be withheld from each future payment to such former members until the overpayment has been fully set off; and
- (c) if additional funding is made to the plan after the date of the termination or partial termination in order to make up the deficiency, the amount of pension benefits and other benefits shall be adjusted accordingly.

19. (1) The administrator shall file, within 6 months after the date of termination of the plan, for the period from the end of the most recent financial year to the effective date-

Filing of documents after winding up

- (a) an annual information return under section 16 of the Law; and
- (b) audited financial statements.

(2) Within 30 days after final distribution of the assets of a pension plan under section 59 of the Law, the administrator shall give the Superintendent written notice that all the assets of the plan have been so distributed.

20. (1) The information referred to in section 20(1) of the Law shall be provided-

Disclosure of information under section 20(1) of the Law

- (a) to a person who becomes a member of a pension plan on the date the plan is established, within 60 days after the date the plan is established; and
- (b) to a person who is eligible to become a member of a pension plan upon commencing employment, within 60 days after the person commences employment.

(2) The information to be provided under section 20(1)(c) of the Law is-

- (a) the name of the plan;
- (b) the type of plan;
- (c) a brief explanation of the working of the plan;
- (d) the name and address of the administrator of the plan;

(2) If a pension plan is being wound up in whole or in part, the minimum commuted value for the purposes of section 62(2) of the Law of a pension, deferred pension or ancillary benefit shall be the amount required to purchase the benefit from an insurance company licensed to carry on business in the Islands on the date of termination of the plan.

(3) The administrator shall file the winding up report within 6 months following the date of termination of the plan in whole or in part, or may apply to the Superintendent for an extension, providing him with full details for the cause of the delay, and the Superintendent may or may not approve such application.

(4) In addition to the winding up report required under section 59 of the Law, the administrator shall file all outstanding annual information returns required to be filed up to the date of termination of the pension plan within 6 months after the date of termination.

(5) Payments of refunds of employee contributions with interest to persons not entitled to a pension, deferred pension or ancillary benefit are prescribed for the purposes of section 59(3) of the Law.

(6) The administrator of a pension plan that is terminated and that provides defined benefits may, after the winding up report required under section 59 of the Law has been approved by the Superintendent and, prior to the completion of any additional funding required under section 64 of the Law, pay an amount equal to-

- (a) the accumulated value of any additional voluntary contributions;
- (b) the accumulated value of required contributions made by a member or former member; and
- (c) the value of any pension, deferred pension or ancillary benefits accrued as of the effective date of termination with respect to employment and remuneration until that date in accordance with the plan provisions, to the extent that such benefits have been funded and after appropriate adjustments for any payment made in accordance with paragraphs (a) and (b).

(7) The money that the employer, or each participating employer, pays into the pension fund under section 64(1) of the Law shall be paid on or before the date of termination and until so paid in shall bear interest from the date of the notice of termination at the Cayman Islands prime rate from time to time plus 5%.

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THE NATIONAL PENSIONS (AMENDMENT) LAW, 1998

ARRANGEMENT OF SECTIONS

1. Short title.
2. Interpretation.
3. Amendment of section 3 - definitions.
4. Amendment of section 4 - establishment of pension plans.
5. Amendment of section 5 - greater pension benefits and previous pensions.
6. Amendment of section 6 - prohibitions of administration of an unregistered pension plan.
7. Amendment of section 8 - administrator.
8. Amendment of section 10 - contents of pension plan.
9. Amendment of section 11 - accrual of pension benefits.
10. Amendment of section 12 - registration of amendment.
11. Amendment of section 13 - reduction of benefits.
12. Amendment of section 16 - duties of administrator.
13. Amendment of section 17 - diligence, care and skill.
14. Amendment of section 21 - notice of proposed amendment.
15. Amendment of section 22 - annual statement of pension benefits.
16. Amendment of section 25 - eligibility for membership.
17. Amendment of section 26 - normal retirement date.
18. Amendment of section 27 - deferred pension for past service.
19. Amendment of section 28 - deferred pension.
20. Amendment of section 29 - termination by member.
21. Amendment of section 30 - minimum benefit.
22. Amendment of section 31 - value of deferred pension.
23. Amendment of section 32 - ancillary benefits.
24. Amendment of section 34 - transfer.
25. Amendment of section 36 - joint and survivor pension benefits.
26. Amendment of section 38 - remarriage of spouse.
27. Amendment of section 39 - pre-retirement death benefit.
28. Insertion of new section - cash out of small benefits.
29. Amendment of section 42 - payment on breakdown of marriage.
30. Amendment of section 46 - contribution rate.
31. Amendment of section 52 - refunds.
32. Amendment of section 54 - void transactions.
33. Amendment of section 55 - exemption from execution, seizure or attachment.

- 34. Amendment of section 56 - commutation or surrender.
- 35. Amendment of section 57 - winding up.
- 36. Amendment of section 61 - notice of entitlements.
- 37. Amendment of section 62 - determination of entitlement.
- 38. Amendment of section 63 - combination of age and years of employment.
- 39. Amendment of section 64 - liability of employer on termination.
- 40. Amendment of section 66 - continuing pension plan.
- 41. Amendment of section 68 - adoption of a new pension plan.
- 42. Amendment of section 78 - Superintendent.
- 43. Repeal and substitution of section 82 - liability of members and employees of the Board and Superintendent.
- 44. Amendment of section 87 - obstruction.
- 45. Amendment of section 94 - regulations.
- 46. Regulations.

SCHEDULE - Regulations

- (ii) where salary is a factor in determining a pension benefit, the salary level utilised for the purpose of determining the benefit;
- (m) the rate of interest credited to contributions required to be made by the member since the date of the last annual statement required under section 22 of the Law;
- (n) the time period in which any option must be exercised;
- (o) if there are insufficient assets to pay all pension benefits, a description of any reductions made to the person's benefits;
- (p) if there are surplus assets, a statement of the method of distribution and, if applicable, the formula for allocation of any surplus among the plan beneficiaries;
- (q) notice where copies of the winding up report are available and information on how copies of the report may be obtained; and
- (r) notice of the person the recipient of the statement may contact with respect to any questions arising out of the statement.

(2) A recipient of a statement referred to in subregulation (1) who is entitled to elect an option shall forward the election to the administrator within 60 days after receipt of the statement.

(3) Except where approval has been given by the Superintendent, the administrator shall comply with an election made by a person on the winding up of a pension plan within 30 days after-

- (a) the receipt of the election; or
- (b) the receipt of the notice that the winding up report has been approved by the Superintendent,

whichever is the later.

17. (1) A winding up report required to be filed under section 59 of the Law shall be prepared by-

Preparation of winding up report etc.

- (a) an actuary; or
- (b) where all pension benefits are defined contribution benefits or the pension plan is a fully insured plan established prior to the commencement of the Law and is underwritten by a contract or contracts with an approved provider and does not require any contributions to be made by employees, by an accountant or by a trust corporation responsible for administering the pension plan or fund.

Notice of entitlements

- provided with an individual statement setting out entitlements and options under the plan.
16. (1) In addition to entitlements under the plan and any options available, a notice provided to each member, former member or any other person entitled under section 61 of the Law shall include-
- (a) the name of the pension plan and its registration number;
 - (b) the member's name and date of birth;
 - (c) the date of the winding up of the plan;
 - (d) the date on which the member joined the pension plan, and, except in the case of multi-employer pension plans, the date the member was employed by the employer;
 - (e) the name of the member's spouse as indicated in the records of the administrator;
 - (f) the amount of required contributions made to the pension fund by a member since the date of the last annual statement required under section 22 of the Law;
 - (g) the accumulated amount of required contributions made to the pension fund by the member, including interest credited to such contributions, to the date of winding up;
 - (h) the amount of additional voluntary contributions made by the member to the pension fund, since the date of the last annual statement required under section 22 of the Law;
 - (i) the accumulated amount of additional voluntary contributions made by the member to the pension fund, including interest credited to such contributions, to the date of winding up;
 - (j) any amount transferred since the date of the last annual statement required under section 22 of the Law from another pension plan on behalf of the member and the pension benefit under the plan attributable to that amount;
 - (k) in the case of a defined contribution pension plan-
 - (i) the amount of employer contributions allocated to the member since the date of the last annual statement required under section 22 of the Law; and
 - (ii) the accumulated amount of employer contributions, including interest credited to such contributions, allocated to the member on the plan records, to the date of winding up;
 - (l) in the case of a defined benefit pension plan-
 - (i) the member's years of employment for the purpose of the calculation of pension benefits including any period credited under section 63(3) of the Law; and

CAYMAN ISLANDS

Law 8 of 1998.

I Assent

JOHN OWEN

Governor.

19 May, 1998.

**A LAW TO AMEND THE NATIONAL PENSIONS LAW, 1996, TO
PROMULGATE THE REGULATIONS MADE UNDER THAT LAW, AND
FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

- 1. This Law may be cited as the National Pensions (Amendment) Law, 1998. Short title
- 2. In this Law, "the principal Law" means the National Pensions Law, 1996. Interpretation
- 3. Section 3 of the principal Law is amended- Amendment of section 3 - definitions
 - (a) in the definition of "additional voluntary contribution" by repealing the words "or employer" wherever they appear;
 - (b) by inserting after the definition of "commuted value" the following definition-

"conjugal period" means a period beginning with the marriage of a man and a woman and ending on either the death of one of them or on the date set out in-

 - (a) a decree of dissolution of the marriage;
 - (b) a decree of nullity of the marriage;
 - (c) a decree of presumption of death of a spouse; or
 - (d) a decree of judicial separation.

- (c) in the definition of “earnings”, by repealing paragraph (a) and substituting the following paragraph-
 - “(a) in the case of an employee, any wages, salary, leave pay, fee, commission, bonus (to the extent that the bonus is equivalent to more than 20% of the employee’s basic salary or wage for the period in question), or gratuity, expressed in monetary terms, paid or payable by an employer (directly or indirectly) to that employee in consideration of employment, but does not include severance payments, retirement or long service recognition payments, or health insurance premiums;”;
- (d) in the definition of “former member” by-
 - (i) repealing “other than” and substituting “who was a”; and
 - (ii) by inserting “and” after “pension plan” where it first appears;
- (e) in the definition of “multi-employer pension plan”-
 - (i) by inserting after “maintained for” the words “self-employed persons or”; and
 - (ii) by repealing “in accordance with an agreement between the employers,”;
- (f) in the definition of “pension benefit” by inserting “or former member” after “member” wherever it appears;
- (g) by repealing the definition of “pension plan” and substituting the following definition-

“ “pension plan” includes a defined benefit pension plan or a defined contribution pension plan constituted and administered to provide pension benefits for employees but does not include-

 - (a) an employee’s profit sharing plan or a deferred profit sharing plan;
 - (b) a plan to provide cash withdrawals from the fund or lump sum payments;
 - (c) a plan under which all pension benefits are provided by contributions made by members who are not self-employed;
 - (d) a fund or plan supplementary to a registered pension plan; or
 - (e) any other prescribed type of plan;”;
- (h) in the definition of “pensionable earnings” by inserting at the end “subject, in either case, to a prescribed maximum”;

13. An insurance contract under which a deferred or immediate life annuity will be provided under section 34(1)(c) of the Law resulting from the transfer of the commuted value of a pension benefit or as the result of a purchase from a retirement savings arrangement shall set out that-

Insurance contract

- (a) no money transferred, including interest, will be assigned, charged anticipated, or given as security except as permitted by the Law;
- (b) any transaction purporting to assign, charge, anticipate, or give as security the money transferred except as permitted by the Law, is void;
- (c) in the case of the unexpired period of a guaranteed annuity, the annuitant may commute a benefit provided under the annuity only for the purpose of transferring it into an individual retirement account except as permitted under sections 40 and 52 of the Law;
- (d) a transaction that contravenes paragraph (c) is void;
- (e) where the annuitant has a spouse at the time payments commence, the annuity shall be in the form of a joint and survivor annuity;
- (f) the amount of the life annuity will be determined on a basis that does not take into account the sex of the annuitant;
- (g) on the death of the annuitant before the payment of the annuity, the financial institution providing the annuity will administer the annuity in accordance with section 39 of the Law; and
- (h) that larger periodic payments will be paid to a member whose life expectancy is likely to be reduced because of a mental or physical disability.

14. The requirement to be met before contributions or interest thereon may be refunded to a member under section 52(3) of the Law are that either the contributions and additional voluntary contributions, or the benefits which the pension plan is liable to pay after the proposed refund of contributions, will remain fully funded.

Refunds

15. A notice of proposal to wind up a pension plan required under section 57 of the Law shall include-

Notice of proposal to wind up pension plan

- (a) the name of the plan and its registration number;
- (b) the proposed date of winding up; and
- (c) notice that each member, former member or claimant entitled to a pension, deferred pension, any other benefit or a refund will be

- annuities under an insurance contract that meets the requirements of regulation 13, provided that the annuity does not commence on a date earlier than 10 years prior to the normal retirement date specified in section 26 of the Law; or
- (iv) subject to maxima to be prescribed from time to time by the Superintendent;
 - (b) that no money transferred, including interest, may be assigned, charged, anticipated or given as security except as permitted by sections 54(2) and 55(4) of the Law;
 - (c) that any transaction purporting to assign, charge, anticipate or give as security money transferred except as permitted under sections 54(2) and 55(4) of the Law, is void;
 - (d) that except as permitted in sections 40 and 52 of the Law, no money transferred including interest, may be commuted or surrendered during the lifetime of the former member;
 - (e) that any transaction that contravenes paragraph (d) is void;
 - (f) that the transferee may not permit any subsequent transfer except-
 - (i) where the transfer is permitted under the Law and the regulations; and
 - (ii) the subsequent transferee agrees to administer the amount transferred as a pension or deferred pension in accordance with the Law and the Regulations;
 - (g) that the transferee will advise in writing any subsequent transferee that the amount transferred must be administered as a pension or deferred pension under the Law and this regulation;
 - (h) that on the death of the holder of the registered retirement savings arrangement, the transferee will administer the money in accordance with section 39 of the Law, which shall be applied to mean the balance of the money in the individual retirement account at the time of death;
 - (i) that larger periodic amounts will be paid to a member whose life expectancy is likely to be reduced because of a mental or physical disability; and
 - (j) the name of the beneficiary or beneficiaries.
- (3) An immediate or deferred life annuity that is purchased with funds from a prescribed saving arrangement shall not differentiate on the basis of sex of the beneficiary.

- (i) in the definition of “reciprocal transfer agreement” by inserting at the end “who are transferring to and from registered pension plans whether in or outside the Islands”; and
 - (j) by repealing the definition of “termination” and substituting the following definition-
 - “ “termination”,
 - (a) in relation to employment, includes retirement and death, and
 - (b) in relation to a winding up in whole or in part of a pension plan, means the cessation of the accrual of benefits under the plan by members of the plan;”.
4. Section 4 of the principal Law is amended-
- (a) in subsection (1)-
 - (i) by inserting at the beginning “Subject to section 25(2)”; and
 - (ii) by inserting at the end “which shall, at the employer’s discretion, be either a defined benefit pension plan or a defined contribution pension plan.”; and
 - (b) in subsection (2) by inserting at the beginning of paragraph (b) “if he is normally resident in the Islands, and”.
5. Section 5 of the principal Law is amended in subsection (2)-
- (a) by repealing “or wind up”; and
 - (b) by repealing “terminated” and substituting “in existence”.
6. Section 6 of the principal Law is amended-
- (a) in subsection (1) by inserting at the beginning “Subject to subsections (2), (2a) and (2b),”;
 - (b) in subsection (2) by repealing “180” and substituting “270”; and
 - (c) by inserting after subsection (2) the following subsections-
 - “(2a) Notwithstanding subsection (1), a pension plan which was offered or subscribed to by an employer before the commencement of this Law, which is acceptable to the Superintendent, may continue to be administered as a supplementary plan without being registered, but only if-
 - (a) the employees’ participation is voluntary;
 - (b) the pension plan is in addition to a registered plan;
 - (c) the pension plan is entered into with full information; and

Amendment of section 4
- establishment of a pension plan

Amendment of section 5
- greater pension benefits and previous pensions

Amendment of section 6
- prohibitions of administration of an unregistered pension plan

- (d) regular reports are provided to the employees in accordance with guidelines issued from time to time by the Superintendent.
- (2b) (a) Notwithstanding subsection (1), international pension plans, which are defined benefit pension plans at the commencement of this Law, may continue to operate without registration subject to such conditions as may be imposed by the Superintendent and to the conditions specified in paragraph (c).
- (b) An employee shall only be eligible to participate in a plan of a type referred to in paragraph (a) if, at the date of commencement of this Law, he has been participating in the plan for at least 10 years and-
 - (i) there are no more than 10 years before his date of compulsory retirement;
 - (ii) he is at least 45 years of age; or
 - (iii) he is an employee who has been participating in the plan prior to his employment in the Islands.
- (c) The conditions referred to in paragraph (a) are-
 - (i) the employees' participation in the plan shall be voluntary;
 - (ii) the employer shall ensure that-
 - (A) the estimated value of the fund;
 - (B) the investment performance of the fund;
 - (C) changes in the contribution rate, if applicable;
 - (D) amendments to the plan;
 - (E) changes on the Board, Committee, or Trustees who administer the plan;
 - (F) the funding status of the plan; and
 - (G) any other relevant information,are provided within a reasonable time to all employees;
 - (iii) arrangements for portability or the payment of benefits in the event of termination of employment or winding-up of a plan referred to in paragraph (a) shall have been approved by the Superintendent;

- (2) The limitations in accordance with which payments by the administrator under section 34(1)(b) and (c) of the Law must be made are that-
- (a) the retirement savings arrangement or the deferred life annuity to which the payment is to be made must be provided by an institution that is approved by the Superintendent;
 - (b) the arrangements for payment must be approved by the Superintendent; and
 - (c) in the event that the plan from which the transfer is to be made is a defined benefit pension plan that is not fully funded, the administrator may reduce the amount to be transferred within the time limit prescribed in subregulation (1) to 70% of the commuted value, and in such event the balance, together with the investment earnings attributable to that balance, shall be transferred on the date that the fund becomes fully funded or 5 years from the termination of the member's employment, whichever date shall be the earlier, and in any event the administrator may transfer all or part of the balance before the period of 5 years has expired.

(3) The date after which benefits under a pension plan shall have accrued in order for section 34 of the Law to apply in accordance with section 34(11) of the Law is the date 183 days after the date on which section 34 of the Law comes into force.

12. (1) The retirement saving arrangements prescribed for the purpose of section 34(1)(b) of the Law are-

Retirement savings
arrangements

- (a) an individual retirement account with the member's approved provider; or
 - (b) a retirement savings arrangement approved by the Superintendent.
- (2) An individual retirement account for the purposes of subregulation (1)(a) shall set out-
- (a) that no money transferred, including all investment earnings, shall be withdrawn except-
 - (i) to transfer the money to the pension fund of a registered pension plan;
 - (ii) to transfer the money to another individual retirement account that meets the requirements of this regulation;
 - (iii) to purchase an immediate or deferred life annuity provided by a person authorised under the Laws of the Islands to sell

- (b) secondly, to make inflation adjustments to the existing benefits in accordance with section 44 of the Law and with subregulation (3); and
- (c) thirdly, in reducing the contribution rate equally of both the employee and the employer.

(3) The inflation adjustments that are provided shall be made-

- (a) by indexing the benefits in accordance with a formula based upon increases in the annual Consumer Price Index of the Islands;
- (b) by providing an annual percentage increase in the amount of the benefits or an annual increase of a specified amount; or
- (c) by a combination of the methods described in paragraphs (a) and (b).

(4) For the purpose of subregulation (3), the employer may select the method of providing the inflation adjustments.

Filing of annual
information return

10. (1) An administrator shall file the annual information return required under section 16 of the Law not later than 3 months after the end of the financial year of the plan in the case of a plan that provides defined benefits, and not later than 6 months after the end of the financial year of the plan in the case of any other plan.

(2) The filing fee for an annual information return for a pension plan is \$5 for each of the members of the plan.

(3) Subject to subregulation (4), the minimum filing fee for an annual information return is \$250 and the maximum filing fee is \$ 2500.

(4) The filing fee for an annual information return that is filed after the expiry of the period specified in subregulation (1) shall be increased by 50%, and the amount of the increase shall not, either directly or indirectly, be charged to the pension fund.

(5) The annual information return shall be in a form prescribed by the Superintendent.

Transfer

11. (1) The period of time within which a former member may exercise his entitlement to direct the transfer of the commuted value of his deferred benefit under section 34(5) of the Law is 90 days from the termination of his employment.

- (iv) benefits shall either be payable in the form of a pension or valued and transferred to another plan; and
- (v) benefits may not, under the plan, be able to be commuted and paid in the form of a lump sum cash settlement.
- (d) In this section “international pension plan” means a pension plan which provides pensions for the employees of an employer, or a group of affiliated employers, in more than one country.”.

7. Section 8 of the principal Law is amended-

Amendment of section 8
- administrator

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

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

- (a) an employer;
- (b) a pension committee at least one-half of which shall be representatives of members of the pension plan and a majority of which shall hold Caymanian status or be permanent residents of the Islands;
- (c) an approved provider where that provider provides all of the benefits under the pension plan or a representative or agent of that provider;
- (d) a board of trustees appointed pursuant to the pension plan, at least one-half of which shall be representative of members of the pension plan and a majority shall hold Caymanian status or be permanent residents of the Islands;
- (e) a board, agency or other person made responsible by this Law or any other Law for the administration of the pension; or
- (f) a trust company licensed in accordance with the Banks and Trust Companies Law (1995 Revision) .”;

- (b) by inserting after subsection (2) the following subsection-

“(2a) An administrator shall ensure that the administration, custodianship and investment of the pension plan and fund are undertaken by qualified and experienced persons or bodies.”;

- (c) in subsection (3) by repealing “a” where it appears after “administer” and substituting “the”;
- (d) by inserting after subsection (3) the following subsection-
“(3a) An administrator, subject to any approval of the Superintendent to different arrangements given under section 6(2a) , shall be based or represented in the Islands.”; and
- (e) by repealing subsection (4).

Amendment of section 10 - contents of pension plan

8. Section 10 of the principal Law is amended in subsection (2) by repealing “board of trustees appointed to administer the pension plan” and substituting “trustees”.

Amendment of section 11 - accrual of pension benefits

9. Section 11 of the principal Law is amended in subsection (1) by inserting after “pension plan where” the words “apart from additional voluntary contributions,”.

Amendment of section 12 - registration of amendment

10. Section 12 of the principal Law is amended-

- (a) by repealing subsection (1) and substituting the following subsection-
“(1) An administrator shall not amend a plan without-
 - (a) the recorded approval and votes of two-thirds of the members and the former members of the plan affected by the proposed amendment either present or voting by proxy, which votes shall be recorded in the minutes of the meeting at which such votes were taken, or voting in a written ballot of those members affected by the proposed amendment; and
 - (b) the approval of the employer.”;
- (b) in subsection (2) by inserting after “A meeting” the words “or ballot process”; and
- (c) by inserting the following subsection after subsection (8)-
“(9) An amendment which purports to convert a defined benefit pension plan to a defined contribution pension plan, or vice versa, shall be void and of no effect unless made with the written consent of the employer.”.

Amendment of section 13 - reduction of benefits

11. Section 13 of the principal Law is amended by repealing paragraph (c) and substituting-

(4) self employed persons may contribute to a defined contribution pension plan or an individual retirement account established or continued after the commencement of the Law at the rate of-

- (i) 2% of their earnings up to the year’s maximum pensionable earnings during the first year after the date of commencement of the Law;
- (ii) 4% of their earnings up to the year’s maximum pensionable earnings during the second year after the date of commencement of the Law;
- (iii) 6% of their earnings up to the year’s maximum pensionable earnings during the third year after the date of commencement of the Law; and
- (iv) 8% of their earnings up to the year’s maximum pensionable earnings during the fourth year after the date of commencement of the Law,

and thereafter shall contribute at a rate of 10% of their earnings; and

(5) self-employed persons may contribute to a defined benefit pension plan established or continued after the commencement of the Law at a rate of-

- (a) 20% of the full contribution rate in the first year after the date of commencement of the Law;
- (b) 40% of the full contribution rate in the second year after the date of commencement of the Law;
- (c) 60% of the full contribution rate in the third year after the date of commencement of the Law; and
- (d) 80% of the full contribution rate in the fourth year after the date of commencement of the Law,

and thereafter shall contribute at the full required contribution rate arising from the actuarial assessment.

9. (1) An administrator shall only use the ongoing surplus after an actuarial assessment under a defined benefit pension plan in accordance with subregulation (2).

Distribution of surplus

(2) The surplus shall be used-

- (a) firstly, to maintain an adequate security margin in the plan in accordance with guidelines to be issued from time to time by the Superintendent;

- (i) 3% of the employee's earnings up to the year's maximum pensionable earnings of the employee during the first year after the date of commencement of the Law;
 - (ii) 4% of the employee's earnings up to the year's maximum pensionable earnings of the employee during the second year after the date of commencement of the Law; and
 - (iii) 5% of the employee's earnings up to the year's maximum pensionable earnings of the employee during the third year after the date of commencement of the Law;
- (2) employees in a defined benefit pension plan-
- (a) younger than 41 years of age may contribute to the plan at a minimum rate of-
 - (i) 20% of the employee's contribution rate prescribed by the plan during the first year after the date of commencement of the Law;
 - (ii) 40% of the employee's contribution rate prescribed by the plan during the second year after the date of commencement of the Law;
 - (iii) 60% of the employee's contribution rate prescribed by the plan during the third year after the date of commencement of the Law;
 - (iv) 80% of the employee's contribution rate prescribed by the plan during the fourth year after the date of commencement of the Law; and
 - (v) 100% of the employee's contribution rate prescribed by the plan during the fifth year after the date of commencement of the Law and thereafter; or
 - (b) 41 and younger than 46 years of age may contribute to the plan at a minimum rate of-
 - (i) 50% of the employee's contribution rate prescribed by the plan during the first year after the date of commencement of the Law;
 - (ii) 75% of the employee's contribution rate prescribed by the plan during the second year after the date of commencement of the Law; and
 - (iii) 100% of the employee's contribution rate prescribed by the plan during the third year after the date of commencement of the Law and thereafter;

(3) the reduced contribution rates specified in subregulation (1) shall be determined by the employer after consultation with his employees;

- “(c) the amount, the commuted value or the actuarial present value of an ancillary benefit for which a member or former member of the pension plan is eligible.”.
12. Section 16 of the principal Law is amended in subsection (4) by inserting after “appointed by the Superintendent” the words “of any action taken under subsection (3)”.
13. Section 17 of the principal Law is amended-
- (a) in subsection (7) by repealing paragraph (a) and substituting-
“(a) pension benefits or ancillary benefits or a refund of contributions under the plan to which the administrator is entitled as a member, former member or claimant under the plan;”; and
 - (b) in subsection (9) by repealing “shall” and substituting “may”.
14. Section 21 of the principal Law is amended-
- (a) in subsection (1)
 - (i) by repealing “defined benefit”; and
 - (ii) by repealing “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”; and
 - (b) in subsection (4) by inserting after “where” the words “the administrator has been exempted from obtaining the approval of the members of a plan under section 12(7) or where”.
15. Section 22 of the principal Law is amended in subsection (1) by inserting “for which the member is eligible.” at the end of paragraph (c).
16. Section 25 of the principal Law is amended-
- (a) by inserting after “(2)” the words “and (2A)”;
 - (b) by repealing subsection (2) and substituting the following subsection-
“(2) Until 1st January, 1999, employers are not required to have pension plans or to contribute to pension plans for the benefit of employees who do not have Caymanian status, or who are not permanent residents, within the meaning of the Immigration Law (1997 Revision).”; and
 - (c) by inserting after subsection (2) the following subsection-

“(2A) After 1st January, 1999, employers are not required to provide pension plans, or to contribute to pension plans, for the benefit of employees who do not have Caymanian status, or who are not permanent residents, within the meaning of the Immigration Law (1997 Revision) and who, in either case-

- (a) have been working in the Islands for a continuous period of 9 months or less; or
- (b) are employed to do housework in private residences.”; and
- (d) by repealing subsection (3) and substituting the following subsection-

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

Amendment of section 26 - normal retirement date

17. Section 26 of the principal Law is amended in subsection (2) by repealing the words “unless the pension plan specifies a later retirement date”.

Amendment of section 27 - deferred pension for past service

18. Section 27 of the principal Law is amended-

- (a) in subsection (1) by inserting after “in subsection (2) is” the words “subject to section 6(2a) and (2b),”; and
- (b) in subsection (4) by inserting after “additional voluntary contributions” the words “payable under plans that are not registered in accordance with the provisions of section 6(2a)”.

Amendment of section 28 - deferred pension

19. Section 28 of the principal Law is amended in subsection (1) by inserting after “a pension plan” the words “brought into existence after the commencement of this Law”.

Amendment of section 29 - termination by member

20. Section 29 of the principal Law is amended-

- (a) in subsection (1) by repealing “60” and substituting “24”; and
- (b) by repealing subsection (4).

Amendment of section 30 - minimum benefit

21. Section 30 of the principal Law is amended-

- (a) in subsection (1)-
 - (i) by inserting after “shall” where it first appears the words “subject to subsection (4),”; and
 - (ii) by repealing “40” and substituting “42”; and
- (b) by inserting after subsection (3) the following subsection-

(2) The payments referred to in subregulation (1) shall be made by the employer or the person who is required to make contributions on behalf of the employer within the following time limits-

- (a) all sums received by the employer from an employee, including money withheld by payroll deduction or otherwise from the employee, as the employee’s contribution to the pension plan, within 15 days after the last day of the month in which the sum was received or deducted;
- (b) employer contributions, within 15 days after the last day of the month in which such contribution was due; and
- (c) all special payments, in accordance with the time limits set out in the funding schedule submitted under section 45(3) of the Law.

(3) A self-employed person shall make contributions to a pension fund or an individual retirement account in accordance with section 46(2) of the Law at least every month and the amount of the contribution shall be based on his earnings over the period since he last made a contribution.

8. For the purposes of section 46(9) of the law-

Graduated scale of contributions

(1) employees in a defined contribution pension plan-

- (a) younger than 41 years of age may contribute to the pension plan at a minimum rate of-
 - (i) 1% of the employee’s earnings up to the year’s maximum pensionable earnings of the employee during the first year after the date of commencement of the Law;
 - (ii) 2% of the employee’s earnings up to the year’s maximum pensionable earnings of the employee during the second year after the date of commencement of the Law;
 - (iii) 3% of the employee’s earnings up to the year’s maximum pensionable earnings of the employee during the third year after the date of commencement of the Law;
 - (iv) 4% of the employee’s earnings up to the year’s maximum pensionable earnings of the employee during the fourth year after the date of commencement of the Law; and
 - (v) 5% of the employee’s earnings up to the year’s maximum pensionable earnings of the employee during the fifth year after the date of commencement of the Law; or
- (b) 41 and younger than 46 years of age may contribute to the pension plan at a rate of-

notice to the members and former members of the decision reached at the meeting.

- (5) At any meeting-
 - (a) one half of the number of persons eligible to vote in person or by proxy shall constitute a quorum;
 - (b) approval of any motion shall be on the basis of the members present in person or by proxy at the meeting called for that purpose; and
 - (c) if a proposed amendment, if implemented, would only affect members, former members or claimants, only members of such affected categories shall be entitled to vote on such proposed amendments.

(6) Subject to the provisions of this regulation and of section 12 of the Law, the administrator shall regulate the proceedings of any meeting respecting the amendment of a pension plan.

Registration of amendment to a pension plan

6. (1) The application fee for the registration of an amendment to a pension plan under section 12(3) of the Law shall be \$500.

(2) The fee for registration of a notice of an amendment to a pension plan under section 21(1)(c) of the Law shall be \$25.

(3) The application form for the registration of an amendment to a pension plan shall be in such form as shall be prescribed by the Superintendent from time to time.

Contributions under pension plan

7. (1) An employer, or any person required to make contributions under a plan on behalf of an employer, shall make payments to the pension fund or to the approved provider of amounts that are not less than the sum of-

- (a) all contributions received from employees, including money withheld by payroll deduction or otherwise from an employee, as the employee's contribution to the pension plan;
- (b) all contributions required to pay the normal cost of the pension plan and any going concern, winding up and solvency unfunded liabilities; and
- (c) all special payments required under a funding schedule submitted under section 45(3) of the Law.

“(4) The minimum annual pension entitlement referred to in subsection (1) shall, in the case of an employee who makes reduced contributions in accordance with section 46(9), be reduced in accordance with guidelines to be issued from time to time by the Superintendent.”.

22. Section 31 of the principal Law is amended-

Amendment of section 31 - value of deferred pension

- (a) in subsection (1)-
 - (i) by repealing the words “or the actuarial present value” wherever they appear; and
 - (ii) by repealing “contribution” and substituting “contributions and the interest thereon”;
- (b) in subsection (3) by repealing “or the actuarial present value”;
- (c) in subsection (4)(a) by repealing “or the actuarial present value”;
- (d) in subsection (4)(b) by repealing “or the actuarial present value of the member’s contributory benefit”;
- (e) in subsection (5) by repealing “or the actuarial present value on the date of termination”;
- (f) in subsection (6) by repealing “of the actuarial present value on the date of termination”;
- (g) in subsection (7) by repealing paragraph (c); and
- (h) by repealing subsection (9) and substituting the following subsection-

“(9) Where a defined benefit accrued by a member of a pension plan is at any time converted in whole or in part into a defined contribution benefit, the value of the defined benefits that are converted shall be the actuarial present value of those benefits at the time of conversion, and subsections (5) and (6) shall apply as if the member had terminated his employment at the time of conversion, and as if the term “actuarial present value” were substituted for the term “commuted value” in those subsections.”.

23. Section 32 of the principal Law is amended by inserting after “A pension plan may” the word “only”.

Amendment of section 32 - ancillary benefits

24. Section 34 of the principal Law is amended-

Amendment of section 34 - transfer

- (a) in subsection (1) by inserting after “value of the deferred benefit” the words “or the balance in the member’s defined contribution account”; and

Amendment of section 36 - joint and survivor pension benefits	(b) by repealing subsections (3) and (4).
	25. Section 36 of the principal Law is amended-
	<div><div><div>(a) in the marginal note by inserting after “joint” the word “and”;</div><div>(b) in subsection (1) by inserting at the end the words “and the pension payable to the spouse on the death of the member shall be of an amount equivalent to 100% of the pension paid to the member.”; and</div><div>(c) by inserting the following subsections at the end-</div></div><div><div>“(5) Where a former member dies leaving a surviving spouse and dependent children, the spouse shall receive and hold one-half of the spouse’s pension to be used for their maintenance, benefit and education until such time as the children attain the age of 23 or cease their full-time education, whichever shall be the earlier.</div><div>“(6) In a case where there is need, in the interests of the children, the Director of Social Services shall have power to apply to the Court for an order appointing a trustee to receive up to one-half of the pension payable to the surviving spouse and to apply it for the benefit of the children in accordance with subsection (5).”.</div></div></div>
Amendment of section 38 - remarriage of spouse	26. Section 38 of the principal Law is amended by repealing “widow or widower” and substituting “surviving spouse”.
Amendment of section 39 - pre-retirement death benefit	<div>27. Section 39 of the principal Law is amended-</div> <div><div><div>(a) in subsection (1) by inserting after “equal to the” the word “commuted”;</div><div>(b) by repealing subsection (2) and substituting the following subsection-</div></div><div><div>“(2) The surviving spouse may elect that either-</div><div><div><div>(a) the pension in respect of the deferred benefit described in subsection (1) shall be paid to the spouse-</div><div><div>(i) no earlier than 10 years before the spouse attains the age of 60; or</div><div>(ii) no later than the spouse’s normal retirement age under the plan; or</div></div></div></div></div></div>

“on-going surplus” means a surplus arising from periodic funding excesses during the ongoing life of a defined benefit pension plan as determined by an actuarial assessment; and
“surplus” means a surplus arising on the winding up of a defined benefit pension plan as determined by an actuarial assessment.
3. (1) The application fee for registration of a pension plan is \$5 for each of the members of the pension plan.
(2) The minimum application fee for registration of a pension plan is \$250.
(3) The application form for registration of a pension plan shall be in such form as shall be prescribed by the Superintendent from time to time.
4. An administrator who is required to give notice of a proposed amendment under section 21(1) of the Law shall certify in writing to the Superintendent within 30 days after the date on which the last of the notices were sent, details of the classes of persons who were sent notices, the date the last notice was sent, and that the notice was provided as required.
5. (1) Where an administrator is of the opinion that a pension plan should be amended and that the proposed amendment should be voted upon at a meeting to be held in accordance with section 12(1) of the Law, he shall convene a meeting in respect of such amendment to be held between 30 and 60 days of the despatch of the notice referred to in regulation 4 to the members and former members who would be affected by the proposed amendments.
(2) Where an administrator has decided to convene a meeting, the notice referred to in regulation 4 shall specify the date, time and place of the meeting as determined by the administrator.
(3) The administrator shall appoint a suitable person to act as secretary at the meeting, or at any other meeting that is required in connection with the amendment, and the minutes of any meeting shall be kept by the secretary and shall be confirmed, where necessary, as early as possible at any subsequent meeting of the members and former members.
(4) Where the members and former members vote on the amendment at one meeting, the secretary shall, within 7 days of the date of the meeting, send a

Application for registration etc.

Notice of explanation of amendment to a pension plan

Meeting respecting amendment to a pension plan

- 16. Notice of entitlements.
- 17. Preparation of winding up report, etc.
- 18. Insufficiency after winding up.
- 19. Filing of documents after winding up.
- 20. Disclosure of information under section 20(1) of the Law.
- 21. Notice of explanation and amendment under section 21(1) of the Law.
- 22. Explanation of amendment provided with annual statement.
- 23. Contents of annual statement.
- 24. Statement after death of member or former member.
- 25. Contents of termination statement, etc.
- 26. Documents or information available under section 23 of the Law.
- 27. Statement under section 42(5) of the Law.
- 28. Successor employer.
- 29. Adoption of new pension plan.
- 30. Choice of pension plan.
- 31. Plan financial year end.
- 32. Accrual during spousal relationship.
- 33. Filing of reciprocal transfer agreements.
- 34. Reciprocal transfer agreement - 50% rule.
- 35. Pre-requisite for advisory committee.
- 36. Pensionable earnings maximum.
- 37. Transfers - defined benefit plans.
- 38. Plan conversions.
- 39. Interest.
- 40. Marriage breakdown.

THE NATIONAL PENSIONS (GENERAL) REGULATIONS, 1998

- Citation
1. These Regulations may be cited as the National Pensions (General) Regulations, 1998.
- Interpretation
2. In these Regulations-
- “Law” means the National Pensions Law, 1996;
- “joint and survivor annuity” means an annuity payable during the joint lives of the person entitled to the annuity and his spouse and thereafter during the life of the survivor of them;

- (b) the commuted value of the defined benefit shall be paid by the administrator to one of the vehicles or for one of the purposes specified in section 34(1).”; and
- (c) in subsection (5)-
- (i) by repealing “Subject to a court order providing for the maintenance of a spouse,”;
- (ii) by inserting “and” at the end of paragraph (a);
- (iii) by repealing “or” at the end of paragraph (b); and
- (iv) by repealing paragraph (c).
28. After section 41 of the principal Law, the following section is inserted-
- “Cash out of small benefits
- 41A. Notwithstanding any provision of this Law to the contrary, if the commuted value of the pension benefit on termination is less than \$5,000 or such other sum as may be prescribed, the administrator may distribute such benefit to the former member, or, if the member is deceased, to his spouse, dependent child or designated beneficiary, as appropriate, in a single lump sum cash payment payable on the date of termination.”.
- Insertion of new section - cash out of small benefits
29. Section 42 of the principal Law is amended-
- (a) in subsection (1) by inserting after “respecting such divorce or separation” the words “may provide for the transfer to a member’s spouse of a portion of the commuted value of a member’s pension benefits but”; and
- (b) in subsection (2)-
- (i) by repealing “mentioned in subsection (1)”; and
- (ii) by inserting after “conjugal period” the words “or of the value of the defined contribution account added during the conjugal period”.
- Amendment of section 42 - payment on breakdown of marriage
30. Section 46 of the principal Law is amended-
- (a) in subsection (1) by inserting at the beginning “Subject to section 25(2)”; and
- (b) by repealing subsection (2) and inserting the following subsection-
- “(2) A self-employed person shall contribute to a pension plan or an individual retirement account every year during his employment a sum equivalent to 10% of his earnings for that year. The Governor in Council may make regulations respecting
- Amendment of section 46 - contribution rate

- the pension plans and individual retirement accounts of self-employed persons.”;
- (c) by repealing subsection (3) and substituting the following subsection-
- “(3) (a) A member shall not be required, without his express consent, to contribute to a defined contribution pension plan more than 5% of his earnings.
- (b) An employer may not contribute to a defined contribution plan less than 5% of the member’s earnings.
- (c) Where an employer contributes to a defined contribution plan more than 5% of the member’s earnings the member shall only, subject to subsection (9)(a), be required to contribute such an amount as shall, when added to the employer’s contribution, equal 10% of the member’s earnings.
- (d) For a defined benefit pension plan the member shall not be required, without his express consent, to contribute more than the amount stipulated in the actuarial report up to a maximum of 5% of his earnings in any one year, and the employer shall contribute an amount equal to the amount contributed by the member in accordance with the actuarial report, except in cases where a shortfall exists where the employer shall compensate for this underfunding.”;
- (d) by repealing subsection (8); and
- (e) by repealing subsection (9) and substituting the following subsection-
- “(9) (a) A pension plan, or an individual retirement account in the case of a self-employed person, established prior to, on or immediately after the commencement of this Law may-
- (i) allow employees 40 years of age or younger to pay reduced contributions for a period of 4 years after the commencement of this Law;
- (ii) allow employees between ages 41 and 45 to pay reduced contributions for 2 years after the commencement of this Law; and

- (a) in subsection (1) by inserting at the end “and for carrying the provisions of this Law into effect”;
- (b) in subsection (2) by inserting after paragraph (p) the following paragraph-
- “(pa)prescribing the manner of division and transfer of pension benefits by court orders under section 42;”; and
- (c) in subsection (5) by inserting at the end “or to a statutory authority, corporation wholly owned by the government, or corporation, the majority of the shares of which are owned by the government.”.

46. The regulations set out in the Schedule shall come into force on 1 June, 1998 and shall take effect as though they had been made by the Governor in Council under section 94 of the principal Law and affirmed by Resolution of the Legislative Assembly, and may be amended, added to, or revoked by regulations made by the Governor in Council and affirmed under section 94 of the principal Law.

Regulations

SCHEDULE

Section 46

REGULATIONS

PART I

THE NATIONAL PENSIONS (GENERAL) REGULATIONS, 1998

ARRANGEMENT OF REGULATIONS

1. Citation.
2. Interpretation.
3. Application for registration etc.
4. Notice of explanation of amendment to a pension plan.
5. Meeting respecting amendment to a pension plan.
6. Registration of amendment to a pension plan.
7. Contributions under pension plan.
8. Graduated scale of contributions.
9. Distribution of surplus.
10. Filing of annual information return.
11. Transfer.
12. Retirement savings arrangements.
13. Insurance contract.
14. Refunds.
15. Notice of proposal to wind up pension plan.

Amendment of section 66 - continuing pension plan

40. Section 66 of the principal Law is amended-

- (a) by inserting “(1)” at the beginning; and
- (b) by inserting at the end the following subsection-

“(2) Notwithstanding subsection (1), on the winding up of a defined benefit plan where a surplus existed prior to the commencement of this Law, the provisions of this section do not apply to the extent of the amount of that surplus.”.

Amendment of section 68 - adoption of a new pension plan

41. Section 68 of the principal Law is amended-

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

“(1) Where a pension plan is established or utilised by an employer to be a successor to an existing pension plan, the rights of members under section 62(2) shall not arise and the assets and liabilities of the existing plan shall be transferred to the new plan.”;

- (b) in subsection (2) by repealing “deemed to be benefits and rights under” and substituting “carried forward and included in”;
- (c) in subsection (3) by inserting “plan” after “pension”; and
- (d) in subsection (5) by repealing “or that does not meet the prescribed requirements and qualifications”.

Amendment of section 78 - Superintendent

42. Section 78 of the principal Law is amended by repealing subsection (2).

Repeal and substitution of section 82 - Liability of members and employees of the Board and Superintendent

43. Section 82 of the principal Law is amended by repealing the marginal note and the section and substituting the following-

Liability 82. Neither the Superintendent nor a member of the Board or of the staff of the Board shall be personally liable for anything done in good faith in the execution or intended execution of a duty or authority under this Law or the regulations or for alleged neglect or default in execution in good faith of such a duty or authority.

Amendment of section 87 - obstruction

44. Section 87 of the principal Law is amended in subsection (3) by inserting “order” after “inspection”.

Amendment of section 94 - regulations

45. Section 94 of the principal Law is amended-

- (iii) allow self-employed persons to pay reduced contributions for 4 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) A member may, with the agreement of the employer (in the case of an employed person) continue in membership of a pension plan after normal retirement age and, in such event, the employee’s contributions will continue to be payable at the rate or rates prescribed by the plan.
- (d) Members may make additional voluntary contributions at any time prior to retirement.
- (e) An employer may, subject to the obligation to compensate for underfunding contained in subsection (3), during the period that any employee is contributing at a rate less than the rate prescribed by the plan, contribute to a pension fund on behalf of that employee an amount equal to that contributed by the employee.”.

Amendment of section 52 - refunds

31. (1) Section 52 of the principal Law is amended in subsection (1)-

- (a) by inserting after “contributions made” the words “by that member or on that member’s behalf”;
- (b) by repealing “interest” and substituting “investment earnings”;
- (c) by inserting after “such contributions” the words “or otherwise to receive a payment or transfer from the plan”.

(2) Section 52 of the principal Law is amended in subsection (2)-

- (a) in paragraph(a)-
 - (i) by inserting after “termination of his employment” the words “in the case of a defined contribution pension plan”;
 - (ii) by repealing “member’s contributions” and substituting “contributions made by or on behalf of a member”;
 - (iii) by repealing “prescribed interest” and substituting “investment earnings”; and

- (iv) by inserting at the end the words “and in the case of a defined benefit plan, to receive a lump sum payment of the commuted value of his accrued pension benefits”;
 - (b) in paragraph (b)-
 - (i) by repealing “2 years” and substituting “6 months”; and
 - (ii) by repealing “for a period less than 3 months in a calendar year” and substituting “for a continuous period less than 3 months.”; and
 - (c) by repealing paragraph (c) and inserting the following paragraph-
 “(c) An administrator shall, on making a payment or transfer under section 34 or this section, make such a deduction from that payment or transfer in respect of actual and ascertainable administrative expenses incurred in making the transfer or payment as is-
 - (i) provided for in the plan to be made in respect of all such transfers and withdrawals; and
 - (ii) approved by the Superintendent,
 and the Superintendent shall not approve a provision in a plan that purports to enable different levels of deduction to be made in respect of different classes of member.”.
- Amendment of section 54 - void transactions
32. Section 54 of the principal Law is amended in subsection (2) by inserting “legal separation or decree of nullity” at the end.
- Amendment of section 55 - exemption from execution, seizure or attachment
33. Section 55 of the principal Law is amended in subsection (4)-
- (a) by inserting after “do not apply” the words “subject to section 42,”; and
 - (b) by repealing “respecting maintenance of a spouse in the Cayman Islands to a maximum of one-half of the money payable” and substituting “made upon a divorce or separation for maintenance or other payments respecting divorce or separation”.
- Amendment of section 56 - commutation or surrender
34. Section 56 of the principal Law is repealed and the following section is substituted-
- “56. Except as provided by or under this Law-
- (a) 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; and

- (b) a transaction that purports to commute or surrender such a pension, benefit, annuity or prescribed retirement savings arrangement is void and of no effect.”.
35. Section 57 of the principal Law is amended-
- Amendment of section 57 - winding up
- (a) in subsection (2) by inserting after paragraph (c) the following paragraph-
 “(ca) each participating employer.”; and
 - (b) in subsection (7) by repealing “benefits” in paragraph (a) and substituting “plans”.
36. Section 61 of the principal Law is amended by repealing subsection (2) and substituting the following subsection-
- Amendment of section 61 - notice of entitlements
- “(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.”.
37. Section 62 of the principal Law is amended in subsection (2) by repealing the words “and, for this purpose, section 34(3) does not apply”.
- Amendment of section 62 - determination of entitlement
38. Section 63 of the principal Law is amended-
- Amendment of section 63 - combination of age and years of employment
- (a) by repealing the marginal note and substituting “Accrual of pensions during notice of termination”;
 - (b) by repealing subsections (1), (2) and (7); and
 - (c) in subsection (4) by repealing “fund” and substituting “plan”.
39. Section 64 of the principal Law is amended-
- Amendment of section 64 - liability of employer on termination
- (a) in subsection (1) by inserting after “employer” the words “or each participating employer”; and
 - (b) in subsection (3) by repealing “contributions payable by the employer” and substituting “both contributions payable by the employer and employees” contributions deducted from the payroll but not credited to the pension fund”.

- (e) the member's normal retirement date under the pension plan;
- (f) where applicable, the earliest date the member will be eligible to receive an unreduced pension;
- (g) where applicable, the name of the person recorded as the member's spouse and children;
- (h) any person designated by the member as a beneficiary for the purposes of the pre-retirement benefit under the Law;
- (i) a description of any benefits provided on the death of a member and the name of any person designated as beneficiary;
- (j) the amount of required contributions, if any, made to the pension fund by a member during the period covered by the statement;
- (k) the accumulated amount of required contributions, if any, made to the pension fund by the member, including interest credited to such contributions, to the end of the period covered by the statement;
- (l) the amount of any additional voluntary contributions made by the member to the pension fund during the period covered by the statement;
- (m) the accumulated amount of any additional voluntary contributions made by the member to the pension fund, including interest credited to such contributions, to the end of the period covered by the statement;
- (n) in the case of a plan providing defined contribution benefits-
 - (i) the amount of employer contributions allocated to the member during the period covered by the statement; and
 - (ii) the accumulated amount of employer contributions, including interest credited to such contributions, allocated to the member, to the end of the period covered by the statement;
- (o) in the case of a defined benefit pension plan-
 - (i) the member's years of employment for the purpose of the calculation of pension benefits, determined as of the end of the period covered by the statement;
 - (ii) the annual amount of pension benefit payable at normal retirement date accrued at the end of the period covered by the statement; and
 - (iii) where salary is a factor in determining a pension benefit, the salary level utilised for the purpose of determining the benefit;
- (p) where applicable, a statement that special payments are being made to liquidate any liability;

- (q) a statement setting out the treatment of any surplus in a continuing plan and on winding up;
- (r) the funding ratio, on a “going concern” and a “winding up” basis, of the pension plan; and
- (s) an explanation of any amendments affecting the member made to the pension plan during the period covered by the statement, if an explanation has not been provided under section 21(1) of the Law.

(2) The administrator shall provide an annual statement required under section 22 of the Law within 3 months after the financial year end of the plan.

Statement after death of member or former member

24. (1) The administrator shall, within 30 days after receipt of notice of the date of death of a member or former member who is not receiving payments from the pension fund where the death results in the spouse, beneficiary or estate of the member or former member becoming entitled to a benefit, provide the spouse, beneficiary or legal representative with a statement that sets out-

- (a) the name of the pension plan and its registration number;
- (b) the amount and method of payment of the benefit;
- (c) the amount, if any payable under section 31(6) of the Law;
- (d) where applicable, the basis for the indexation of a pension;
- (e) where applicable, the amount of the pension resulting from additional voluntary contributions; and
- (f) the options available to the spouse of the deceased member pursuant to section 39(2) of the Law.

(2) For the purposes of section 39(1) or (2) of the Law, a spouse shall make an election within 90 days after receipt of the notice referred to in subregulation (1) and a spouse who fails to make an election within this period shall receive a pension at the normal retirement age of the spouse under the terms of the plan.

(3) The administrator shall comply with an election under subregulation (2) within 60 days after receipt of the direction from the spouse.

Contents of termination statement, etc.

25. (1) At least 60 days prior to a member’s normal retirement date or the date at which a member of a pension plan has indicated that he intends to retire, the administrator of the plan shall advise the member of any options respecting payment of the pension available to the member under the pension plan, the Law or the regulations and the time period in which the options may be exercised.

date not more than 5 years after the valuation date of the preceding report or, in the case of the first report, not more than 5 years after the date of the first registration of the plan.

Inflation Protection

8. Notwithstanding any other provisions of a defined benefit or defined contribution plan or a retirement savings arrangement or life annuity purchased pursuant to section 34(1)(b) or (c) of the Law, lifetime benefits payable shall be increased by a minimum of 2% annually, and the payments shall be actuarially adjusted so that the commuted value of the lifetime benefits with the annual increases is equal to the commuted value of the lifetime benefits otherwise payable under the plan, account or annuity.

Transfers -commuted value

9. (1) The commuted value of a pension benefit determined under a defined benefit provision shall-

- (a) be determined in a manner that complies with the Canadian Institute of Actuaries Recommendations for the Computation of Transfer Values from Registered Pension Plans, or a corresponding British or American equivalent that may be approved for the purpose by the Governor in Council after consultation with the Superintendent; and
- (b) be determined as at the date of termination of membership, death, retirement, or termination of a pension plan.

(2) The commuted value of a pension benefit determined under a defined contribution provision shall be the value of the accumulated contributions, with interest, made to the pension fund by or in respect of the member or former member.

(3) If, at the date of determination of the commuted value, the former member has an unconditional entitlement to optional forms of a pension benefit or to optional commencement dates, the option that has the greatest value shall be used to determine the commuted value.

Passed by the Legislative Assembly the 9th day of April, 1998.

MABRY S KIRKCONNELL
Speaker.

GEORGETTE MYRIE
Clerk of the Legislative Assembly.

(2) An administrator who does not receive adequate advance notice of the intended retirement necessary to comply with subregulation (1) shall provide the information referred to in subregulation (1) within 30 days following receipt by the administrator of a completed application required for commencement of the pension.

(3) An administrator shall provide the retiring member with a statement under this regulation setting out-

- (a) the name of the pension plan and its registration number;
- (b) the member's name and date of birth;
- (c) the date on which the member joined the pension plan and the years of employment credited under the plan for the purposes of calculating the pension benefit;
- (d) where applicable, the name of the person recorded in the records of the administrator as the member's spouse;
- (e) the date pension benefits commence payment;
- (f) the amount of the pension to which the member is or will be entitled according to the records of the administrator and based on elections by the member;
- (g) any increase or reduction in the pension resulting from early or postponed retirement;
- (h) the amount of the pension benefit purchased with the additional voluntary contributions made by the member;
- (i) the amount of the pension benefit purchased with contributions resulting from a transfer made on behalf of the member from another pension fund;
- (j) any indexation provisions applicable to the pension or deferred pension;
- (k) any benefit payable in the event of the member's death and the name of the person designated as the beneficiary of that benefit; and
- (l) any other refunds under the plan to which the member is entitled.

(4) The administrator shall provide the statement referred to in subregulation (3) within 30 days after the member's retirement or, where the administrator has not received notification prior to the retirement, within 30 days after the administrator's receipt of a completed application required for commencement of the pension.

26. The following documents and information are prescribed for the purpose of section 23 of the Law-

Documents or
information available
under section 23 of the
Law

- (a) the provisions of the current pension plan including any amendments to the plan;
 - (b) any documents that relate to the pension plan that are required to be filed under the Law;
 - (c) the provisions of any previous pension plan including amendments thereto where the current pension plan is a successor to a previous version of the plan;
 - (d) the applicable provisions of any document that sets out the employer's responsibility with respect to the pension plan;
 - (e) a document that delegates the administration of the pension plan or pension fund;
 - (f) copies of any information returns that are filed in respect of the pension plan;
 - (g) copies of any financial statement or report under these Regulations that are filed in respect of the pension plan;
 - (h) copies of any correspondence in respect of the pension plan between the National Pensions Board or the Superintendent and the administrator within 5 years preceding the date of the request, except personal information that relates to a member or former member without the consent of that member or former member;
 - (i) copies of those parts of an agreement that concern the purchase or sale of a business or the assets of a business and that relate to the pension plan; and
 - (j) copies of any financial statement or audited financial statement for a pension plan that is filed.
- (2) The fee for a copy of any document referred to in subregulation (1) that is obtained from the administrator is 50 cents per page.
- (3) The minimum fee payable upon request for a copy of a document referred to in subregulation (1) is \$5.
- (4) The minimum fee payable upon request for certified copy of a document referred to in subregulation (1) is \$10.
- (5) The administrator shall comply with a written request under section 23 of the Law within 30 days after receipt of the request.
- (6) A person making a request under section 23 of the Law is only entitled to have access to those parts of the pension plan that are applicable to that person.

5. (1) Where an amendment to a defined benefit plan reduces or increases contributions or creates or increases a going concern unfunded liability or solvency deficiency, the administrator shall file a report containing amendments to any of the information contained in the immediately preceding report prepared in accordance with section 16(2)(c) of the Law or this regulation that is affected by the amendment. Amendment
- (2) The administrator shall file the report required under subregulation (1) within 6 months following the date the amendment is required to be registered under section 12(3) of the Law.
6. (1) An actuary preparing a report under these regulations shall use assumptions appropriate for the plan and methods consistent with sound principles established by precedent or by common usage within the actuarial profession and with the requirements of the Law and these Regulations. Assumptions and methods
- (2) The Superintendent may issue guidelines setting out acceptable actuarial methods and assumptions for reports required under the Law and these regulations and they shall be adopted so far as possible by administrators, their agents and actuaries, who shall in their reports, identify any departure from such assumptions.
7. (1) The information which shall accompany an application for registration of a defined contribution plan shall include a report certified by an actuary setting out- Information to accompany application for registration
- (a) a summary of the plan provisions;
 - (b) market value broken down between members' required and members' voluntary contribution accounts;
 - (c) market value of assets by categories as set out in regulation 3(1) of the National Pensions (Pension Fund Investments) Regulations, 1998, broken down between each of members' required and members' voluntary contribution accounts;
 - (d) demographics of plan members broken down on the basis of age, sex and length of service of plan members, sufficient to assess the appropriateness of the investment of the assets; and
 - (e) the opinion of the actuary as to the appropriateness of asset mix to plan membership on a plan basis, on the assumption that pension income is, or will be, the principal income of the members and former members on retirement.
- (2) A report specified in section 16(2)(c) of the Law shall contain the information specified in subregulation (1) and shall be prepared with a valuation

- (c) the estimated aggregate employee contributions to the pension plan during the year following the valuation date of the report and the subsequent years up to the valuation date of the next report;
 - (d) the present value of future special payments remaining to be paid after the valuation date;
 - (e) the actuarial gain or actuarial loss in the plan, and-
 - (i) where there is an actuarial loss, the special payments that will amortise any increase in a going concern unfunded liability resulting from the loss over a term not exceeding 5 years; or
 - (ii) where there is an actuarial gain, the special payments that will amortise any decrease in a going concern unfunded liability resulting from the gain over a term not exceeding 5 years;
 - (f) the going concern liability as at the valuation date; and
 - (g) the book value and market value of plan assets as at the valuation date.
- (7) A report prepared in accordance with section 16(2)(c) of the Law shall also set out, on the basis of a solvency valuation-
- (a) whether there is a solvency deficiency;
 - (b) if there is a solvency deficiency, the amount of the solvency deficiency and the special payments required to amortise over a term not exceeding 5 years;
 - (c) the solvency liabilities;
 - (d) the solvency assets;
 - (e) whether the transfer ratio is less than one; and
 - (f) if the transfer ratio is less than one, the transfer ratio.
- (8) A report prepared in accordance with section 16(2)(c) of the Law shall also include-
- (a) a summary of the plan provisions;
 - (b) a description of the actuarial methods and assumptions used for the going concern and solvency valuations;
 - (c) a summary of the member census data; and
 - (d) a calculation of the employer's required annual contribution as specified in regulation 3(3).
- (9) The administrator shall file a report prepared in accordance with section 16(2)(c) of the Law within 6 months of the valuation date.

27. (1) An administrator provided with a certified copy of a court order under section 42(5) of the Law shall, where the member named in the order terminates employment, notify the person named in the order that the member has terminated employment and provide a copy of the statement given to the member and advise the person of the options available under section 34 of the Law. Statement under section 42(5) of the Law
- (2) The notice referred to in subregulation (1) shall be given within 30 days after the administrator receives notice of the member's termination of employment.
28. The terms and conditions in accordance with which a transfer of assets made under section 67(4) of the Law are that- Successor employer
- (a) in the case of a defined contribution pension plan, the full value of the defined contribution accounts of the employees who become employees of the successor employer shall be transferred;
 - (b) in the case of a defined benefit pension plan, the assets transferred shall be an amount equal to the solvency assets of the plan multiplied by the proportion that the solvency liabilities of the transferring members bears to the total solvency liabilities of the plan at the date of the transfer;
 - (c) a transfer report, approved by the Superintendent, prepared and certified in the case-
 - (i) of a defined benefit pension plan, by an actuary; or
 - (ii) of a defined contribution pension plan, by an independent accountant or auditor,shall be filed with the Superintendent;
 - (d) where the liabilities and related assets of the transferring members are transferred to a successor plan having existing members, the Superintendent shall not approve a transfer report until he is satisfied that the treatment of ongoing funding and surplus in both plans is equitable among all members concerned in the affected plans; and
 - (e) notice of the transfer shall be given to members and former members of the prior plan and to the members and former members, if any, of the successor plan, disclosing the funded ratios on a going concern and on a plan winding up basis of both the prior plan and the successor plan.
29. The terms and conditions to which transfers of assets under section 68 of the Law are subject are that- Adoption of a new pension plan

- (a) in the case of a defined contribution pension plan, the full value of the defined contribution accounts of the employees who become employees of the successor employer shall be transferred;
- (b) in the case of a defined benefit pension plan, the assets transferred shall be an amount equal to the aggregate of the accrued benefits of the transferring members valued, for each member, on the greater of-
 - (i) going concern basis, using the salary projections and other assumptions that were used in the most recently filed actuarial valuation report;
 - (ii) solvency basis, using the assumptions that were used in the most recently filed actuarial report,and if there are insufficient assets in the existing pension plan, the shortfall shall be paid by the employer to the successor pension plan on the date of transfer;
- (c) a transfer report, approved by the Superintendent, prepared and certified in the case-
 - (i) of a defined benefit pension plan, by an actuary; or
 - (ii) of a defined contribution pension plan, by an independent accountant or auditor,shall be filed with the Superintendent;
- (d) where the liabilities and related assets of the transferring members are transferred to a successor plan having existing members, the Superintendent shall not approve a transfer report until he is satisfied that the treatment of ongoing funding and surplus in both plans is equitable among all members concerned in the affected plans; and
- (e) notice of the transfer shall be given to members and former members of the existing plan and to the members and former members, if any, of the successor plan, disclosing the funded ratios on a going concern and on a plan winding up basis of both the existing plan and the successor plan.

Choice of pension plan

30. (1) An employer shall notify each of his employees of his intention to provide a pension plan in accordance with the Law and shall in such notice include-
- (a) the name or names of the proposed providers;
 - (b) the reasons for choosing the proposed provider;
 - (c) the types of investments that may be purchased and the reasons for the choice of such investments;

- (i) whether there is a solvency deficiency;
 - (ii) if there is a solvency deficiency, the amount of the solvency deficiency and the special payment required to amortise it over a term not exceeding 5 years;
 - (iii) whether the transfer ratio is less than one; and
 - (iv) if the transfer ratio is less than one, the transfer ratio; and
 - (c) a calculation of the employer's required annual contribution as specified in regulation 3(3).
- (2) For the purposes of the report specified in subregulation (1), the initial valuation date-
- (a) for a plan established after the effective date shall be the date of the establishment of the plan; and
 - (b) for a plan in existence at the effective date shall be the effective date.
- (3) A report specified in section 16(2)(c) of the Law shall contain the information specified in subregulation (1)(a) and (b) and shall be prepared with a valuation date not more than 3 years after the valuation date of the preceding report or, in the case of the first report, not more than 3 years after the date of the first registration of the plan.
- (4) Where a report prepared in accordance with section 16(2)(c) of the Law indicates solvency concerns, the next report in respect of the plan shall be prepared and certified with a valuation date within one year from the date of the first-mentioned report or by such earlier date as the Superintendent may specify.
- (5) A report relating to a defined benefit plan prepared under section 16(2)(c) of the Law shall indicate solvency concerns where-
- (a) the ratio of the solvency assets to the solvency liabilities is less than 0.8; or
 - (b) the solvency liabilities exceed the solvency assets by more than \$500,000 and the ratio of the solvency assets to the solvency liabilities is less than 0.9.
- (6) Each report under this section shall set out, on the basis of a going concern valuation-
- (a) the normal cost in the year following the valuation date of the report and the rule for computing the cost in subsequent years up to the valuation date of the next report;
 - (b) an estimate of the normal cost in the subsequent years up to the valuation date of the next report;

subregulation (1)(a) is less than the amount determined in subregulation (1)(b); but
(c) shall in no case be less than zero.

E = aggregate annual member earnings as at the date of the valuation, provided that in calculating the aggregate annual member earnings, no earnings of any individual member in excess of his year's maximum pensionable earnings shall be taken into account.

(5) An initial surplus in a defined benefit plan in existence on the effective date, established under the going concern valuation at the effective date, may be used to offset employer contributions until the earlier of-

- (a) the date at which the sum of the offsets is equal to the initial surplus at the effective date;
- (b) the plan is no longer in surplus on a going concern basis; or
- (c) the plan has a solvency deficiency,

all of which shall be established by an actuarial report prepared in compliance with regulation 4.

Defined benefit plan - reports

4. (1) The information which shall accompany an application for registration of a defined benefit plan shall include a report certified by an actuary that sets out-

- (a) on the basis of a going concern valuation with respect to the defined benefits-
 - (i) the normal cost, in the first year during which the plan is registered and the rule for computing the normal cost in subsequent years up to the date of the next report;
 - (ii) an estimate of the normal cost, in the subsequent years up to the date of the next report;
 - (iii) the estimated aggregate employee contributions to the pension plan during each year up to the date of the succeeding report;
 - (iv) the initial unfunded past service liability or initial surplus under the pension plan as at the date of the establishment of the plan; and
 - (v) where there is an initial unfunded past service liability, the special payments required to amortise the initial past service unfunded actuarial liability over a term not exceeding five years;
- (b) on the basis of a solvency valuation-

- (d) the minimum level of contributions that are proposed to be made by the employees provided that such level of contributions are in accordance with the Law; and
- (e) such other information as is necessary to assist the employee in considering the plan.

(2) Subject to section 4 of the Law, an employer shall not establish, select or continue on the coming into effect of the Law with a pension plan without filing with the Superintendent a certificate that all employees have been given full details of the options available to them and have been polled in accordance with this regulation and that a majority of those who voted (with, in the event of a tie, and with the written consent of the Superintendent, the casting vote of the employer) were in favour of the plan.

- (3) The polling procedure may be either-
 - (a) a meeting of members at which a vote is taken; or
 - (b) a voting form sent to all members by registered post with a minimum time limit of 14 days from the date it was sent for its return.

(4) Employees shall be entitled to be provided by the employer with details of the outcome of the poll.

31. Unless otherwise stated in the pension plan documents, the financial year of a pension plan shall end on 30 June in every year.

Plan financial year end

32. For the purposes of section 42(2) of the Law, the pension benefits accrued during the period a member had a spouse shall be determined as if the member terminated employment at the valuation date in accordance with the terms of the plan at that date and without consideration of future benefits, salary or changes to the plan.

Accrual during spousal relationship

33. The administrator of a pension plan shall submit for filing a certified copy of any reciprocal transfer agreement entered into on or after 24 June, 1996 within 60 days of the execution of the agreement.

Filing of reciprocal transfer agreements

34. Benefits arising from the transfer of money or credits from one pension plan to another plan are prescribed for the purposes of section 31(7)(d) of the Law.

Reciprocal transfer agreement - 50% rule

35. (1) The administrator shall every 2 years notify all members and former members of their right under section 19 of the Law to establish an advisory committee.

Pre-requisite for advisory committee

(2) Upon a request from at least 5% of the sum of the numbers of members and former members for the establishment of an advisory committee, the administrator shall conduct a poll of all of the members and former members as to whether they wish to establish an advisory committee.

(3) The poll shall be conducted by the sending of a voting paper by the administrator by registered post to each member and former member with a time limit for its return.

(4) If the majority of those members and former members who return their voting papers within the required time limit choose to establish an advisory committee, the administrator shall facilitate the initial election of the members of the advisory committee and thereafter shall facilitate further such elections every 3 years.

(5) The reasonable expenses of the polling and election procedures maybe borne by the plan.

Pensionable earnings maximum

36. The prescribed maximum amount for the purpose of the definition of “pensionable earnings” in section 3 of the Law is \$60,000.

Transfers - defined benefit plans

37. (1) Where a member or a spouse of a member is entitled to transfer the commuted value of his or her accrued pension benefits under a defined benefit plan pursuant to sections 34, 39 or 42 of the Law, and where the plan has a transfer ratio that is equal to or greater than 1.00, the administrator of the plan may transfer the whole of the commuted value of a pension benefit.

(2) Where the administrator of a defined benefit plan has reason to believe that the transfer ratio of the plan may have been reduced to a value of less than 0.9 since the last valuation, the administrator shall not permit any transfers without having a new transfer ratio determined by an actuary.

(3) Where the commuted value is calculated on a basis more generous than the prescribed minimum basis, the actuary shall confirm that the transfer will not impair the transfer ratio of the plan.

(4) Notwithstanding subregulation (2), where a pension plan has a transfer ratio that is less than 1.00, the administrator may transfer an amount equal to the commuted value of the pension benefit to be transferred, including interest calculated at the rate credited to member contributions under regulation 39, multiplied by the transfer ratio, and the balance, including interest, shall be transferred by the administrator within 5 years of the date of the initial transfer

(b) the annual amount required, as defined in regulation 4(7)(b), to amortise any solvency deficiency as at the valuation date over an amortisation period not exceeding 5 years.

(2) The amount required to fund a defined benefit plan on a going concern basis is equal to the sum of the following elements of the going concern valuation for the year-

- (a) the normal cost;
- (b) the special payment, if any, required to amortise the initial unfunded past service liability on a going concern basis as defined in regulation 4(1)(a)(v); and
- (c) special payments required to amortise the actuarial losses as determined in accordance with regulation 4(6)(e)(i),

less any special payments required to amortise the actuarial gains as determined in accordance with regulation 4(6)(e)(ii).

(3) The employer’s required annual contribution shall be equal to the total annual contribution determined in subregulation (1), less the expected member contributions based on the member contribution rate determined in subregulation (4) and expected annual member earnings, but shall not be less than zero.

(4) The member contribution rate shall be determined at each valuation and shall be equal to the lesser of-

- (a) the maximum required member contribution rate permitted by the Law; or
- (b) the percentage rate determined in accordance with the following formula:

percentage rate = (½C)÷E, where-

C = (a) the amount determined in subregulation (1)(a), less the amount determined in subregulation (2)(b), if the amount determined in subregulation (1)(a) is greater than, or equal to, the amount determined in subregulation (1)(b); or
(b) the amount determined in subregulation (1)(b), less the amount required to amortise any initial solvency deficiency as determined in regulation 4(1)(b)(ii), if the amount determined in

“special payment” means a payment or one of a series of payments determined for the purpose of liquidating a going concern unfunded liability or solvency deficiency in accordance with regulation 3;

“surplus” in respect of an ongoing pension plan means the excess of the assets of the plan over the liabilities of the pension plan where-

- (a) the assets of the plan are calculated on the basis of the market value of the investments held by the fund plus any cash balances and accrued or receivable items; and
- (b) the liabilities of the plan are calculated to be the greater of the going concern liabilities and the solvency liabilities;

“surplus” in respect of a pension plan that is or is being wound up means the excess of the assets of the plan over the solvency liabilities where the assets of the plan are calculated on the basis of the market value of the investments held by the fund plus any cash balances and accrued or receivable items;

“transfer ratio” means the fraction obtained by dividing the solvency assets of a pension plan by the liabilities of the plan calculated on a plan termination basis at the latest valuation date; and

“valuation date” means the date at which an actuarial report that is filed with the Superintendent is prepared.

(2) In calculating solvency assets or a transfer ratio, where there is no market value for an investment of a pension plan and the investment is issued or guaranteed by a government, the book value shall be used instead of market value.

(3) For the purposes of this Regulation, a going concern unfunded liability, a past service unfunded liability, a solvency deficiency, and a transfer ratio each arises on the valuation date of the report in which it is determined, and a report is a report of an actuary that is filed with the Superintendent.

3. (1) The total annual contribution to be made to a defined benefit plan each year by the combination of employer and member contributions is equal to the greater of-

- (a) the amount required to fund the plan on a going concern basis as defined in subregulation (2); or

and any transfer subsequent to the initial transfer shall be in accordance with subregulation (5).

(5) Notwithstanding subregulation (4), where a plan has a transfer ratio that is less than 1.00, the administrator may transfer the whole of the commuted value of a pension benefit if-

- (a) he is satisfied that an amount equal to the solvency deficiency for the individual transfer has been remitted to the pension fund; or
- (b) the solvency deficiency for the individual transfer is less than 5% of the year’s maximum pensionable earnings for that year and the aggregate of transfer deficiencies for all transfers made since the last review date does not exceed 5% of the market value of the assets of the plan at the time of transfer.

(6) Any amounts transferred under a reciprocal transfer agreement that has been filed with the Superintendent are subject to subregulations (2), (3), (4), and (5).

(7) For the purpose of determining a commuted value for purposes of dividing pension assets on marriage breakdown, the value of any pension benefit payable to a spouse of a member shall be based on the age of the spouse of the member at the date of termination, and no allowance shall be made for the possibility of the member acquiring a different spouse after the date of termination.

- (8) An administrator of a defined benefit plan shall not make payment-
 - (a) under section 34(1)(b) of the Law, unless the retirement savings arrangement meets the requirements of regulation 12(2).
 - (b) under section 34(1)(c) of the Law, unless the contract to purchase the deferred life annuity meets the requirements of regulation 13, and payments under the deferred life annuity shall not commence before the earliest date that the member may retire under the plan.

(9) Payment under section 34(1) of the Law shall be made within 180 days of the date of termination.

38. (1) Where benefits that have been accrued under a defined benefit plan, whether accrued before or after the effective date, are converted to a defined contribution account-

Plan conversions

- (a) the conversion must be at the option of the individual member, and agreed to by the employer;
- (b) the accrued benefits that are converted must be fully vested;
- (c) the accrued benefits that are converted must be fully funded;
- (d) the accrued benefits converted must be valued for the purposes of the conversion on the greater of-
 - (i) going concern basis, using the salary projections and other assumptions that were used in the most recently filed actuarial valuation report; or
 - (ii) solvency basis, using the assumptions that were used in the most recently filed actuarial report;
- (e) notwithstanding paragraph (d)(i) and (ii), the converted value of benefits accrued after the effective date may not be less than two times the member's required contributions plus interest thereon, as specified in regulation 39(4) or (5);
- (f) a pro rata share of the surplus must be added to the member's defined contribution account;
- (g) surplus, for the purposes of paragraph (f), is surplus-
 - (i) on a going concern basis if the amount in subparagraph (d)(i) is higher than the amount in subparagraph (d)(ii); and
 - (ii) on a solvency basis in any other case;
- (h) paragraph (f) does not apply with respect to surplus that is attributable to the plan in existence before the effective date; and
- (i) the right to convert shall be offered to all active members with accrued defined benefits under a plan.

(2) Notwithstanding subregulation (1)(i), where the conversion is of accrued benefits under a plan that was in existence at the effective date, the conversions may take effect on an individual member basis from the date the accrued benefits that are being converted become fully vested in the individual member under the terms of the plan and section 27 of the Law.

Interest

39. (1) Contributions made by or on behalf of members and former members of a defined contribution plan, and additional voluntary contributions to either a defined benefit plan or a defined contribution plan, shall be credited, not less frequently than annually, with such rate of return as can reasonably be attributed to the operation of the pension fund or that part of the pension fund to which the contributions are made.

(2) Notwithstanding subregulation (1), contributions to a pension fund may be credited with a guaranteed rate of return.

"book value", in relation to an asset, means the cost of acquisition to the person acquiring the asset, including all direct ancillary costs associated with the acquisition;

"effective date" means the date which these Regulations come into effect;

"going concern assets" means the value of the assets of a pension plan, including income due and accrued, determined on the basis of a going concern valuation;

"going concern liabilities" means the liabilities of a pension plan, including amounts due and unpaid, determined on the basis of a going concern valuation;

"going concern unfunded liability" means the excess of going concern liabilities over going concern assets;

"going concern valuation" means a valuation of the going concern assets and going concern liabilities of a pension plan prepared on the basis of a continuing pension plan as required by the Law and these Regulations;

"initial surplus" means the surplus in a pension plan, determined on an ongoing basis, that is in existence on the effective date;

"initial unfunded past service liability" means the excess of going concern liabilities over going concern assets on the date of the establishment of a pension plan or, in the case of a plan in existence at the effective date, the effective date;

"Law" means the National Pensions Law, 1996;

"market value" in respect of an asset means the price that would be obtained in the purchase or sale of the asset in an open market under conditions requisite to a fair transaction between parties;

"solvency assets" means the market value of investments held by a pension plan plus any cash balances of the plan and accrued or receivable income items of the plan, except for employer and member contributions, less any amounts payable by the plan;

"solvency deficiency" means the deficiency determined by a solvency valuation performed in accordance with regulation 4(1)(b) or (7);

"solvency liabilities" means the liabilities of the plan calculated on a plan termination basis;

THE NATIONAL PENSIONS (ACTUARIAL AND FUND
MANAGEMENT) REGULATIONS, 1998

- Citation 1. These Regulations may be cited as the National Pensions (Actuarial and Fund Management) Regulations, 1998.
- Interpretation 2. (1) In these Regulations, unless the context otherwise requires-
- “actuarial gain” means the sum, if positive, at the valuation date of a going concern valuation, of-
- (a) the gain or loss to a pension plan during the period since the last review date of the increase or decrease in the value of the assets of a pension plan, less the liabilities of the plan during the period since the last valuation date, determined in a going concern valuation of the plan resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based;
 - (b) the amount by which the going concern liabilities increase or decrease as a result of an amendment to the plan; and
 - (c) the amount by which the going concern liabilities increase or decrease or the going concern assets increase or decrease as a result of a change in actuarial methods or assumptions upon which the current going concern valuation is based;
- “actuarial loss” means the sum, if negative, at the valuation date of a going concern valuation, of-
- (a) the gain or loss to a pension plan, during the period since the last review date, of the increase or decrease in the value of the assets of a pension plan less the liabilities of the plan, during the period since the last valuation date determined in a going concern valuation of the plan resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based;
 - (b) the amount by which the going concern liabilities increase or decrease as a result of an amendment to the plan; and
 - (c) the amount by which the going concern liabilities increase or decrease or the going concern assets increase or decrease as a result of a change in actuarial methods or assumptions upon which the current going concern valuation is based;

- (3) The rate of return described in subregulation (1) may take into account the reasonable expenses of the operation of the pension fund or that part of the pension fund to which the contributions are made.
- (4) Member contributions to a defined benefit plan, other than contributions referred to in subregulation (1), shall be credited not less frequently than annually with interest calculated at a rate that is not less than-
- (a) a rate calculated on the basis of the yields of 5-year personal fixed term bank deposit rates as determined from time to time from the Canadian Socio-Economic Information Management (CANSIM) series B14045, as determined over a reasonable period, so that the averaging period does not exceed twelve months; or
 - (b) the United States federal mid-term rate issued monthly by the United States Internal Revenue Service that is applicable to the first month of the plan year, or from month to month, as the administrator shall determine.
- (5) Notwithstanding subregulation (4), a pension plan may provide that interest shall be credited not less frequently than annually, with such rate of return as can reasonably be attributed to the operation of the pension fund or that part of the pension fund to which the contributions are made.
- (6) Interest shall begin to accrue on the contributions of members and former members to a pension plan not later than the first day of the month following the month in which the contributions were required to be paid into the pension fund, starting with contributions made or required to be made after the effective date.
- (7) If a person is required to be paid a commuted value or a lump sum from a pension plan, the amount owing to him shall accumulate interest, at a rate not less than the rate of interest that was used in determining the commuted value, from the date on which the commuted value or lump sum was required to be paid to the beginning of the month of payment.
40. (1) Where a part of a pension benefit under a pension plan of a member is required to be transferred or paid to the member’s spouse under a court order under section 42 of the Law, a certified copy of the court order shall be delivered to the administrator before the administrator may effect a transfer or payment.

Marriage breakdown

- (2) An administrator shall not, without the consent of all of the parties to the proceedings giving rise to the order, transfer a part of a pension benefit in

accordance with a court order until all appeals have been finally determined, or the time for appealing has expired.

(3) Upon the transfer of a part of a pension benefit to a member’s spouse in accordance with a court order under section 42 of the Law, the spouse shall, subject to the provisions of this regulation, be deemed to be a member of the plan who has terminated his employment.

(4) Subject to any agreement in writing between the member and his spouse to the contrary, a court order shall divide and transfer a pension which is in payment by-

- (a) calculating the aggregate commuted values of the remainder of the member’s pension and of the spouse’s survivor’s benefit;
- (b) dividing the total into shares to be specified by the court after taking into account the proportion of the period of accrual of contributions during the conjugal period of the member and his spouse; and
- (c) actuarially re-calculating, in accordance with the amount of each share-
 - (i) the balance of the pension that is to continue to be payable to the member; and
 - (ii) the single life annuity that is to be payable to the spouse as from a commencement date that is to be determined by the court.

(5) Subject to any agreement in writing between the member and his spouse to the contrary, where a court order under section 42 of the Law provides for the transfer to a member’s spouse of a portion of a pension benefit which is not in payment from a defined contribution account under a defined contribution pension plan, the portions of the pension benefits of the member and the member’s spouse shall be determined as follows-

- (a) the commuted value of the pension benefit accumulated in the member’s defined contribution account during the conjugal period shall be determined and divided between the member and the spouse in proportions to be specified in the order;
- (b) the spouse shall be entitled to a single life annuity, payable from his normal retirement date or from such other date as the court may specify, based on the value of the spouse’s share of the commuted value of the pension benefit ascertained in accordance with paragraph (a) and actuarially adjusted as at the date the annuity begins to be payable to the spouse; and

15. Where a pension fund owns investments in a company and, as a result of arrangements for the reorganisation or liquidation of the company, or for the amalgamation of the company with another company, the investments are to be exchanged for bonds, debentures or other evidences of indebtedness, or shares that result in the limitations set out in this Part being exceeded, the pension fund may accept and hold such bonds, debentures or other evidence of indebtedness or shares.

Acceptance of bonds, debentures etc. by the pension fund

SCHEDULE

Regulation 2

Stock Exchanges on which Securities must be Traded in order to be Traded Publicly for the Purposes of these Regulations

New York	Madrid	Frankfurt	Milan
American	Paris	Dublin	Singapore
NASDAQ	Stockholm	Vienna	Bangkok
Toronto	Copenhagen	Oslo	Sydney
London	Zurich	Helsinki	Auckland
Tokyo	Geneva	Brussels	Kuala Lumpur
Osaka	Amsterdam	Hong Kong	Cayman Islands

PART III

THE NATIONAL PENSIONS (ACTUARIAL AND FUND MANAGEMENT) REGULATIONS, 1998

ARRANGEMENT OF REGULATIONS

- 1. Citation.
- 2. Interpretation.
- 3. Defined benefit plan - funding.
- 4. Defined benefit plan - reports.
- 5. Amendment.
- 6. Assumptions and methods.
- 7. Information to accompany application for registration.
- 8. Inflation Protection.
- 9. Transfers - commuted value.

- (c) all fees and expenses incurred by the plan; and
- (d) unrealised gains and losses.

(6) The statement of changes in net assets referred to in subregulation (2) shall include a reconciliation between the market value of total investments at the beginning and end of the period, and shall disclose at least-

- (a) contributions from members and employers;
- (b) benefit payments; and
- (c) refunds and transfers, indicating their nature and amounts.

(7) An auditor of a pension fund shall report to the administrator immediately when, in the course of reporting on the financial statements, he becomes aware that there are circumstances that indicate that there has been, or may be, a contravention of the Law or these Regulations and the auditor shall immediately send a copy of his report to the Superintendent.

(8) A financial statement submitted for filing shall be approved by the administrator and the approval shall be evidenced by the manual or facsimile signature of-

- (a) the administrator;
- (b) where the administrator is a pension committee, board of trustees, agency or commission acting as the administrator, 2 members duly authorised to signify the approval; or
- (c) where the administrator is an approved provider or trust company, an officer of the its provider or trust company duly authorised to sign on its behalf.

Register of members 11. The administrator shall prepare and submit, together with the financial statement each year, a register of the members of the pension plan, and the register shall specify-

- (a) the name of each member;
- (b) the date of birth of each member;
- (c) the employer of each member; and
- (d) the value of the accrued benefit of each member.

Restriction on borrowing 12. An administrator shall not borrow on behalf of the pension fund.

Investments and loans in the name of the pension fund 13. All investments and loans of a pension fund shall be held in the name of, or for the account of, the fund.

No pledging, mortgaging etc. except as permitted by the Regulations 14. Unless otherwise permitted by these Regulations, an administrator shall not directly or indirectly pledge or mortgage the assets of the pension fund.

- (c) the member shall be entitled to a pension of the amount to which, were it not for the transfer of the spouse's portion, he would be entitled under the terms of the plan, less an amount, the commuted value of which is equal to the commuted value of the spouse's annuity payable under paragraph (b), actuarially adjusted as at the date the pension benefit begins to be payable to the member.

(6) Subject to any agreement in writing between the member and his spouse to the contrary, where a court order under section 42 of the Law provides for the transfer to a member's spouse of a portion of a pension benefit which is not in payment payable to a member under a defined benefit pension plan, the pension benefits of the member and the spouse shall be determined as follows-

- (a) the commuted value of the pension benefit accumulated during the conjugal period shall be determined and divided between the member and the spouse in proportions to be specified in the order;
- (b) the spouse shall be entitled to a single life annuity actuarially adjusted and payable from his normal retirement date, or such other date as may be specified in the order, based on the spouse's share of the commuted value of the pension benefit determined in accordance with paragraph (a); and
- (c) the member shall be entitled to the pension benefit to which, were it not for the payment to the spouse, he would be entitled under the terms of the plan, less an amount, the commuted value of which is equal to the commuted value of the single life annuity payable to the spouse under paragraph (b), actuarially adjusted as at the date the pension benefit begins to be payable to the member.

(7) The aggregate of-

- (a) the commuted value of the pension benefit paid to a member; and
- (b) the commuted value of the pension benefit paid to the spouse of a member,

under this regulation shall not be greater than the commuted value of the pension or pension benefit that would have been payable to the member had the marriage breakdown not occurred.

PART II

THE NATIONAL PENSIONS (PENSION FUND INVESTMENTS)
REGULATIONS, 1998

ARRANGEMENT OF REGULATIONS

- 1. Citation.
- 2. Interpretation.
- 3. Asset allocation.
- 4. Prohibited investments.
- 5. Review of asset allocation.
- 6. Investment in securities and loans.
- 7. Investment in companies, etc.
- 8. Investment in mutual or pooled funds.
- 9. Mortgages, etc.
- 10. Financial statements.
- 11. Register of members.
- 12. Restriction on borrowing.
- 13. Investments and loans in the name of the pension fund.
- 14. No pledging, mortgaging etc. except as permitted by the Regulations.
- 15. Acceptance of bonds, debentures etc. by the pension fund.

Schedule - Stock Exchanges on which Securities must be Traded in order to be Traded Publicly for the Purposes of these Regulations.

THE NATIONAL PENSIONS (PENSION FUND INVESTMENTS)
REGULATIONS, 1998

Citation 1. These Regulations may be cited as the National Pensions (Pension Fund Investments) Regulations, 1998.

Interpretation 2. (1) In these Regulations-

“affiliate” means a company that is an affiliate within the meaning of subregulation (2);

“book value” means the acquisition cost of an asset of a pension fund, including all direct costs associated with the acquisition, prior to any external financing;

(3) The statement of net assets referred to in subregulation (2) shall disclose at least-

- (a) the market value, book value and the percentage of a fund’s assets held in each category of investments referred to in regulation 3 at the end of the period to which the statement refers;
- (b) income accrued and not yet received;
- (c) payments due and payable by-
 - (i) the employer or employers; and
 - (ii) the members; and
- (d) amounts payable, indicating by whom the amounts are payable and their nature and amount.

(4) The financial statements shall disclose-

- (a) related party transactions;
- (b) for individual investments where either the book value or the market value exceeds 1% of the book value or market value of the pension fund, information with respect to each category of investments specified in regulation 3 that sets out-
 - (i) for insured contracts, the name of the insurance company and type of contract;
 - (ii) for mutual or pooled funds or segregated funds, the name of the operator of each fund, the name of each fund, the primary category of investments held in each fund and the market value of the investment in each fund; and
 - (iii) for term deposits and guaranteed investment certificates, the name of the entity where the funds are deposited and the aggregate market value or book value of the investment in each fund;
- (c) the expense ratio for the financial year;
- (d) the terms of any agreement related to payments for administrative assistance for or for investment advice in respect of the fund; and
- (e) the investment performance of the pension fund during the year calculated in accordance with the Performance Presentation Standards of the Association of Investment and Research.

(5) The statement of operations referred to in subregulation (2) shall include-

- (a) realised gains or losses;
- (b) investment income;

- companies rated by internationally recognised credit rating agencies at a grade of A or higher; and
- (e) all securities in which the pension fund has invested are traded publicly in markets with proper registration and custodian facilities.

Investment in companies, etc.

7. A pension fund shall not own more than 10% of any class of shares of a company, mutual fund, or unit trust.

Investment in mutual or pooled funds

8. The administrator of a pension fund shall not invest in closed end mutual or pooled funds which are not traded publicly.

Mortgages, etc.

9. (1) The funds of a pension plan shall not be loaned on the security of a mortgage or other security agreement on real estate or leaseholds where the amount paid for the mortgage or agreement, together with the amount of indebtedness under any mortgage or other security agreement on the real estate or leasehold ranking equally with or superior to the loan, exceeds 60% of the market value of the real estate therein at the time the advances were approved.

(2) The administrator may accept as payment or part payment a mortgage or other security agreement, and may advance funds secured by a mortgage or other security agreement that would otherwise contravene this section in order to protect an existing investment of the pension fund.

Financial statements

10. (1) The administrator shall file with the Superintendent audited financial statements for the pension fund and the pension plan at the plan's financial year end.

(2) The financial statements shall-

- (a) be filed within 6 months after each financial year end of the plan occurring on or after 1 December, 1998;
- (b) be comprised of a statement of net assets, statement of operations, and a statement of changes in net assets and shall be prepared on the accrual basis of accounting;
- (c) be prepared in accordance with generally accepted international accounting principles; and
- (d) identify-
 - (i) the name of the pension plan for which the statements have been prepared;
 - (ii) the registration number of the pension plan; and
 - (iii) the financial period for which the financial statements have been prepared.

“derivative securities” means securities whose values, distributions or dividends depend, or are contingent, on the values or prices of other assets, commodities or securities, or on other variables;

“Eurobonds” means bonds that are offered outside the country of the borrower and outside the country in whose currency the bonds are denominated;

“expense ratio” means the total annualised expenses as a percentage of average net assets of a pension fund;

“investment grade” means a grade given to any security or other obligation by any two or more internationally recognised credit rating agencies to indicate that the security or other obligation is eligible for investment and that it has at least an adequate capacity to pay interest and repay principal;

“large capitalisation equity” means equity of a company which has equity market capitalisation equal to or more than that of the company which is ranked 470th in equity market capitalisation in the Standard & Poors 500 index from time to time;

“Law” means the National Pensions Law, 1996;

“market value” means the most probable price that would be obtained for property in an arm's length sale in an open market under conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and willingly;

“mutual or pooled fund” means a company or unit trust-

- (a) whose assets in investments which are excluded by regulation 4 do not exceed 10% of its total assets (except in the case of index funds); and
- (b) that issues equity interests, the purpose or effect of which is the pooling of investor funds with the aim of spreading risks and enabling investors in the mutual or pooled fund to receive profits or gains from the acquisition, holding, management or disposal of investments, but does not include-
 - (c) a person licensed under-
 - (i) the Banks and Trusts Companies Law (1995 Revision); or
 - (ii) the Insurance Law (1998 Revision); or
 - (d) a person registered under-
 - (i) the Building Societies Law (1997 Revision); or

- (ii) the Friendly Societies Law (Revised);

“prime rated” means a minimum short-term credit rating of A-3 (Standard & Poors) or Prime 3 (Moody’s) or an equivalent rating given to any short-term interest-bearing security;

“real estate company” means a company which holds a portfolio of properties and includes a mutual or pooled fund or a segregated fund the principal object of which is to provide investors with a means of investing in a portfolio of real estate or leaseholds;

“related person” means a related person within the meaning of subregulation (3);

“security” includes a share of any class or series of shares, a debt obligation of a company, a certificate evidencing such share or debt obligation and a warrant;

“segregated fund” means a fund established by a company that is authorised to operate a fund in which money from one or more contributors is accepted for investment, the assets of which fund are maintained by the company as separate and distinct from the general funds of the company;

“small to medium capitalisation equity” means equity of a company which has equity market capitalisation less than that of the company which is ranked 470th in equity market capitalisation in the Standard & Poors 500 Index from time to time;

“traded publicly” means traded on an exchange, specified in the Schedule, on which securities are traded if the prices at which they have been traded on that market are regularly published in a newspaper or business or financial publication of general or regular paid circulation;

“venture capital” means investment in a company or undertaking with unlisted securities or which recently has been formed, with a view to providing finance for the development or expansion of that company; and

“voting share” means any share of any class of shares of a company that carries voting rights under all circumstances and any share of any class of shares that carries voting rights by reason of the occurrence of any contingency that has occurred and is continuing.

- (2) For the purpose of these regulations-

- (i) the consent in writing of the Superintendent to the banking arrangements has been previously obtained;
- (ii) only money that is part of the assets of the pension fund is held in such accounts; and
- (iii) the accounts are audited annually by the pension fund’s auditor who shall deliver a copy of his report to the Superintendent.

- (3) An administrator shall not engage in short selling for a pension fund.

5. The asset allocation of a pension fund shall be reviewed by the administrator at least once each month to ensure that it is in compliance with these Regulations.

Review of asset allocation

6. (1) The aggregate amount of a pension fund that may be invested in the securities of or loaned to any single company, person, association or country shall be limited to 5% of the total market value of a pension fund’s assets at the time the investment or loan is made.

Investment in securities and loans

(2) Subregulation (1) does not relate to investments in United States Treasury securities.

(3) For the purpose of subregulation (1) “person” includes a related person or group of related persons.

- (4) An administrator shall ensure that-

- (a) all bonds, bills and commercial paper in which the fund has invested are of investment grade;
- (b) all bank certificates in which the pension fund has invested do not exceed-
 - (i) 1% of the issuing bank’s total shareholder equity; or
 - (ii) 5% of the issuing bank’s shareholder equity if the bank is the holder of an “A” licence issued under section 5(1) of the Banks and Trust Companies Law (1995 Revision) and if the approval in writing of the Superintendent has previously been obtained;
- (c) the companies in which the pension fund has invested have made an annual profit for at least 3 of 5 years immediately preceding the date of investment;
- (d) the guaranteed investment certificates in which the pension fund may have invested are issued by an insurance company or

(9) The guidelines referred to in subregulation (8) shall include minimum disclosure requirements with respect to an actual or perceived conflict of interest including the timing of the disclosure.

Prohibited investments

4. (1) An administrator shall not invest the assets of a pension fund in-

- (a) derivative securities;
- (b) securities purchased on margin;
- (c) venture capital;
- (d) limited partnerships;
- (e) shares in companies which are not traded publicly; or
- (f) real estate.

(2) The assets of a pension fund shall not be loaned to or, invested in the securities of-

- (a) the administrator of the pension plan;
- (b) an officer, employee or agent of the administrator;
- (c) a person responsible for holding or investing the pension fund or a custodian or investment manager of the fund or any officer or employee of that person, custodian or manager;
- (d) an employer, who contributes to the plan, an employee of the employer and, where the employer is a company, an officer or director of the employer;
- (e) the spouse or child of any person referred to in paragraphs (a) to (d);
- (f) where the employer is a company-
 - (i) any person who directly or indirectly holds more than 10% of the voting shares carrying more than 10% of the voting rights attached to all voting securities of the company or the spouse or child of that person; or
 - (ii) any person who directly or indirectly together with a spouse or child holds more than 10% of the voting shares carrying more than 10% of the voting rights attached to all securities of the company;
- (g) a company that is an affiliate of the employer; or
- (h) a company wholly owned or controlled directly or indirectly by a person referred to in subparagraphs (a) to (g),

except that an administrator of a pension fund in respect of which a bank that is the holder of an "A" licence issued under section 5(1) of the Banks and Trust Companies Law (1995 Revision) and which operates as a clearing bank in the Islands is an employer may invest the assets of the pension fund in deposit or current accounts at that bank or its affiliates on condition that-

- (a) a company shall be deemed to be affiliated with another company if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled or is legally or beneficially owned by the same person or group of persons;
- (b) the affiliate of every company shall be deemed to be affiliated with all companies with which the company is affiliated;
- (c) a company shall be deemed to be a subsidiary of another company if-
 - (i) it is controlled or legally or beneficially owned by-
 - (A) that other company;
 - (B) that other company and one or more companies each of which is controlled or legally or beneficially owned by that other company; or
 - (C) 2 or more companies each of which is controlled or legally or beneficially owned by that other company, or
 - (ii) it is a subsidiary, within the meaning of sub-subparagraph (i)(A), of a company that is that other company's subsidiary;
- (d) a company shall be deemed to be controlled by a person if-
 - (i) voting shares of the company that carry more than 50% of the votes for the election of directors are held, other than by way of security only, by or for the benefit of the person; and
 - (ii) the votes carried by the voting shares referred to in subparagraph (i) are sufficient, if exercised, to elect a majority of the board of directors of the company;
- (e) a company shall be deemed to be the holding company of all its subsidiaries; and
- (f) a person shall be deemed to own voting shares that are owned by another company controlled by that person.

(3) For the purposes of this regulation a person shall be deemed to be related to-

- (a) every company that the person controls and every affiliate of every such company;
- (b) every partner of the person who has a substantial beneficial interest in a partnership in which the person has a substantial beneficial interest; and

Asset allocation

- (c) every trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar capacity to a trustee.
3. (1) An administrator shall ensure that-
- (a) between 40 and 70% of the market value of the assets of the pension fund is invested in-
 - (i) large capitalisation equities which are traded publicly;
 - (ii) small to medium capitalisation equities which are traded publicly up to a maximum of 10% of the market value of the assets of the pension fund;
 - (iii) investment grade convertible debentures which are traded publicly; or
 - (iv) closed end or open end mutual or pooled funds which invest in equities or convertible debentures and either are listed on a stock exchange specified in the Schedule or are authorised as an undertaking for collective investments in transferable securities pursuant to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989;
 - (b) between 20 and 40% of the market value of the assets of the pension fund is invested in-
 - (i) bonds issued by the United States Treasury;
 - (ii) investment grade bonds;
 - (iii) investment grade corporate bonds;
 - (iv) investment grade Eurobonds;
 - (v) investment grade preference shares which are traded publicly;
 - (vi) fully secured first mortgages, the total value of which shall not exceed 10% of the market value of the assets of the pension fund; or
 - (vii) closed end or open end mutual or pooled funds which invest at least 90% of their assets in investment grade bonds, mortgages or preference shares; and
 - (c) 25% or less of the market value of assets of the pension fund is invested in-
 - (i) United States Treasury Bills;
 - (ii) investment grade treasury bills of foreign countries prescribed for the purpose by the Superintendent;
 - (iii) investment grade commercial paper;
 - (iv) investment grade money market funds;
 - (v) investment grade bank certificates of deposits; or

- (vi) fixed term deposits or cash held with a bank rated as investment grade or a clearing bank in the Islands.
- (2) In the allocation of the assets of a pension fund the administrator shall ensure that the selection of investments shall be made with consideration given to the overall context of the investment portfolio without undue risk of loss or impairment and with a reasonable expectation of fair return or appreciation given the nature of the investment.
- (3) In making a selection of investments the administrator shall take into account the demographic composition of the members of the pension plan from time to time and the difference between the amount of contributions made to a fund and the benefits that are paid out of that fund.
- (4) (a) At least 70% of the market value of the assets of a pension fund shall be denominated in the currency of the United States of America and no more than 20% of the market value of the assets shall be denominated in the currency of the Islands; and
 - (b) In the case of depository receipts, mutual funds and similar equity-related investment vehicles, the principal location of the underlying investments shall be considered by the administrator in determining proper currency allocation.
- (5) Subject to subregulation (8), a person engaged in selecting an investment for, or making a loan from, a pension fund shall not select an investment or make a loan except in a category or sub-category of investment or loan that is specifically permitted by these Regulations.
- (6) An administrator of a pension plan that was established before, and was in effect on, the date of commencement of the Law shall comply with these Regulations by 1 September, 1998.
- (7) Every investment that is made by a pension fund on or after the commencement of these Regulations shall be in accordance with these Regulations.
- (8) An administrator shall, in administering the investments of the pension fund, provide written guidelines of the policy to be followed where there is an actual or perceived conflict of interest on the part of the administrator or an agent officer or employee of the administrator.