CAYMAN ISLANDS

NATIONAL PENSIONS (AMENDMENT) BILL, 2020

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A BILL FOR A LAW TO AMEND THE NATIONAL PENSIONS LAW (2012 REVISION) TO PROVIDE FOR THE TEMPORARY SUSPENSION OF PENSION CONTRIBUTIONS; TO ENABLE SPECIFIED MEMBERS OF A PENSION PLAN TO WITHDRAW A SINGLE LUMP SUM AMOUNT FROM THEIR ACCOUNT IN THE PENSION PLAN; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Employment and Border Control

Memorandum of

OBJECTS AND REASONS

This Bill seeks to amend the National Pensions Law (2012 Revision) ("the principal Law") to provide for the temporary suspension of the requirement to pay pension contributions and to allow specified members of a pension plan to withdraw a single lump sum amount from their respective account in the pension plan. The Bill also would provide for incidental and connected purposes.

Clause 1 provides for the short title, commencement and expiry of the legislation.

Clause 2 seeks to repeal Part IA of the principal Law and substitute a new Part IA which comprises new sections 5A to 5C. The provisions of the new Part IA provide for a "pension holiday period" which is a period during which the requirement to pay pension contributions is temporarily suspended.

The new section 5B(1) seeks to provide that a member of a pension plan who is an employee and the member's employer are not required to contribute to the pension fund of a pension plan on behalf of the member during the pension holiday period.

The new section 5B(2) seeks to suspend the requirement to pay pension contributions in relation to self-employed persons during the pension holiday period.

The new section 5C seeks to provide that the principal Law and all regulations made under the Law are to be construed with such changes as may be necessary for the purpose of giving effect to the new Part IA. However, the new section 5C(2) stipulates that all arrears due and payable prior to the coming into force of the National Pensions (Amendment) Law, 2020 ("this Law") would continue to accrue in accordance with section 50 of the principal Law during the pension holiday period. The new section 5C(3) provides that notwithstanding any other provision of Part IA, sections 25(1), (2), (3), (5) and (6) of the principal Law shall continue to apply during the pension holiday period as if those provisions were not amended by this Law.

Clause 3 seeks to amend section 47 of the principal Law to allow a member to access the member's additional voluntary contributions, upon providing the administrator with evidence of the member's unemployment.

Clause 4 seeks to amend section 52D of the principal Law to defer the payment of the additional one per cent contributions due pursuant to sections 52B and 52C of the principal Law for the duration of the pension holiday period. The provision also seeks to extend the timeframe for the full repayment of a withdrawal made under sections 52B or 52C by the length of the pension holiday period.

Clause 5 seeks to provide for the insertion in the principal Law of a new Part VIIB which seeks to enable a member to withdraw pension funds from the member's account in a pension plan. The new Part VIIB would apply to a member who is presently in the jurisdiction or a member who has departed the jurisdiction between the period commencing on the 1st February, 2020 and the date of expiry of section 5 of this Law.

The new section 52I(2) provides the stipulations for the withdrawal of pension funds under the new Part VIIB.

In the case of a defined contribution pension plan, where a member's balance in the member's account does not exceed ten thousand dollars, the member may withdraw up to one hundred per cent of the balance. Where a member's balance in the member's account exceeds ten thousand dollars, the member may withdraw ten thousand dollars and up to twenty-five per cent of the remaining balance of the amount which exceeds ten thousand dollars.

Similarly, in the case of a defined benefit pension plan, where the commuted value of a member's accrued benefits does not exceed ten thousand dollars, the member may withdraw up to one hundred per cent of the commuted value. Where the commuted value of a member's accrued benefits exceeds ten thousand dollars, the member may withdraw ten thousand dollars and up to twenty-five per cent of the remaining commuted value which exceeds ten thousand dollars.

In both cases, the withdrawal is a single lump sum payment.

The new section 52I(3) provides that a member who has claimed benefits under normal or early pension entitlement shall not be entitled under the new Part VIIB to withdraw from the member's account in a pension plan. Similarly, a person who is a public servant as defined by section 2 of the Public Authorities Law (2020 Revision) with pension contributions under the principal Law which were paid by a statutory authority or a government company as defined by section 2 of the Public Authorities Law (2020 Revision) shall also not be entitled to apply for a withdrawal under the new Part VIIB.

A member referred to in the new section 52I(3) who is not entitled to apply for a withdrawal under the new Part VIIB and who nonetheless applies for such withdrawal commits an offence under the new section 52I(4).

The new sections 52I(5) and 52I(6) provide for the application and accompanying documents that the applicant must submit to administrator in order to apply for a withdrawal under the new Part VIIB.

The new section 52(I)(7) creates an offence where an applicant knowingly or wilfully provides false or misleading information in the application.

The new section 52(I)(8) requires an administrator to notify the applicant of receipt of the application and thereafter to inform the applicant of the administrator's decision to approve or refuse the application.

The new section 52I(9) requires an administrator, upon being satisfied that the applicant qualifies to withdraw the amount applied for, to approve the applicant's application and issue the disbursement within forty-five days of receipt of the application.

Under the new section 52I(10), an administrator may reject an application where the administrator is not satisfied that the applicant qualifies for a withdrawal under Part VIIB or that all the requirements under new section 52I have been met.

The new section 52I(11) stipulates that where the administrator refuses an application, the administrator must so notify the applicant and also provide reasons for the refusal to the applicant within fourteen days of the notification.

Under the new section 52I(12), an applicant aggrieved by a decision of an administrator under the new Part VIIB may refer the decision to the Director for consideration.

The new section 52I(13) requires an administrator to give effect to the decision of the Director made under subsection (12).

The new section 52I(14) creates an offence for non-compliance by an administrator with subsections (9), (11), or (13).

The new section 52I(15) requires an administrator to provide to the Director a monthly report in a format approved by the Director. The report must provide a list of all applications made under the new Part VIIB. In respect of each application, the report must specify the following particulars —

(a) the decision;

(b) where the application was approved, the amount of each withdrawal;

(c) where the application was refused, the reason for the refusal; and

(d) any other information which the Director may reasonably require.

The new section 52I(16) creates an offence where the administrator does not comply with the administrator's obligation under subsection (15) to provide the Director with the report and its required particulars.

The new section 52I(17) provides for a defence to a prosecution for contravention of a provision in the new Part VIIB where a person took all reasonable steps to comply with the requirements of the respective provision.

Clause 6 seeks to amend section 95 of the principal Law by inserting in subsection (2) a new paragraph (y) which would enable the Cabinet to make regulations to provide for matters which are necessary and expedient to give effect to the provisions of this Law. The provision also seeks to amend subsection (6) of section 95 to exempt regulations made by the Cabinet under the section 95(2)(y) from being subject to affirmative resolution.

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Arrangement of Clauses

Clause Page

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ENACTED by the Legislature of the Cayman Islands.

Short title and duration

1. (1) This Law may be cited as the National Pensions (Amendment) Law, 2020.

(2) This Law shall come into force as follows —

(a) sections 1 and 2 shall be deemed to have come into force on 1st April, 2020; and

(b) sections 3, 4, 5 and 6 shall come into force on 1st May, 2020.

(3) This Law shall expire on 30th November, 2020 or upon such later date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

(4) Upon the expiration of this Law, the *National Pensions Law (2012 Revision)* shall have effect as though it had not been amended by this Law.

Repeal and substitution of Part IA of the National Pensions Law (2012 Revision) - suspension of pension contributions

2. The *National Pensions Law (2012 Revision)* (in this Law referred to as the "principal Law") is amended by repealing Part IA and substituting the following Part —

"PART IA - Suspension of pension contributions

Definitions in Part IA

5A. In this Part, **"pension holiday period"** means the period commencing on 1st April, 2020 and ending on the date of the expiry of section 2 of the *National Pensions (Amendment) Law, 2020*.

Suspension of pension contributions

5B. (1) Notwithstanding any other provision of this Law to the contrary, a member who is an employee and the member's employer are not required to contribute to the pension fund of a pension plan on behalf of the member during the pension holiday period.

(2) Notwithstanding any other provision of this Law to the contrary, where a self-employed person holds an individual retirement account, the self-employed person is not required to contribute to the account during the pension holiday period.

Construction of the principal Law

5C. (1) Subject to subsections (2) and (3), the principal Law and the regulations made under the Law shall be construed with such changes as may be necessary for the purpose of giving effect to the amendments under this Part.

(2) Notwithstanding any other provision under this Part, all arrears due and payable prior to the pension holiday period shall continue to accrue in accordance with section 50 during the pension holiday period.

(3) Notwithstanding any other provision under this Part, sections 25(1), (2), (3), (5) and (6) shall continue to apply during the pension holiday period as if the *National Pensions (Amendment) Law, 2020* is not in force.".

Amendment of section 47 – contribution rate

3. The principal Law is amended in section 47(10), by repealing paragraph (b) and substituting the following paragraph —

"(b) for unemployment, where the member provides the administrator with evidence of the member's unemployment;".

Amendment of section 52D - additional contributions

4. The principal Law is amended in section 52D, by inserting after subsection (4) the following subsection —

"(5) Notwithstanding the requirement to make additional contributions to a pension plan in accordance with subsection (1), where a member makes a withdrawal from the member's account in a pension plan pursuant to section 52B or 52C, the following applies —

(a) the member shall not be required to contribute an additional amount of one per cent of the member's earnings to the pension plan during the pension holiday period referred to in section 5A; and

(b) the date of expiry referred to in subsection (1)(a) shall be extended by the length of the pension holiday period referred to in section 5A.".

Insertion of Part VIIB – emergency withdrawal of pension funds

5. The principal Law is amended by inserting after Part VIIA the following Part —

"PART VIIB – Emergency withdrawal of pension funds

Emergency withdrawal of pension funds

52I (1) Notwithstanding any other provision of this Law to the contrary, a member who —

(a) is presently in the Islands; or

(b) has departed the jurisdiction between the period commencing on 1st February, 2020 and ending on the date of the expiry of section 5 of the *National Pensions (Amendment) Law, 2020*,

may withdraw from the member's account in a pension plan subject to the provisions of this Part.

(2) Where a member wishes to withdraw from the member's account in a pension plan under this Part, the following shall apply —

(a) in the case of a defined contribution pension plan, where the balance in the member's account in the pension plan —

(i) does not exceed ten thousand dollars, the member may withdraw up to one hundred per cent of the balance; or

(ii) exceeds ten thousand dollars, a member may withdraw —

(A) ten thousand dollars; and

(B) up to twenty-five per cent of the remaining balance of the amount which exceeds ten thousand dollars; or

(b) in the case of a defined benefit pension plan, where the commuted value of the member's accrued benefits —

(i) does not exceed ten thousand dollars, the member may withdraw up to one hundred per cent of the commuted value; or

(ii) exceeds ten thousand dollars, the member may withdraw —

(A) ten thousand dollars; and

(B) up to twenty-five per cent of the remaining commuted value which exceeds ten thousand dollars; and

(c) the withdrawal shall be a single lump sum payment.

(3) A member who —

(a) has claimed benefits under normal or early pension entitlement; or

(b) is a public servant as defined by section 2 of the *Public Authorities Law (2020 Revision)* with pension contributions under this Law which were paid by a statutory authority or a government company as defined by section 2 of the *Public Authorities Law (2020 Revision)*,

is not entitled to apply and shall not apply to withdraw an amount from the member's account in a pension plan in accordance with this Part.

(4) A member referred to under subsection (3) who applies for a withdrawal under this Part commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

(5) A member who wishes to withdraw an amount from the member's account in a pension plan under this Part (referred to in this section as "the applicant") shall apply for such withdrawal to the relevant administrator in accordance with subsection (6).

(6) An applicant shall submit to the administrator an application, in the form approved by the Director, which shall be accompanied by —

(a) Government-issued photo identification of the applicant; or

(b) a copy of Government-issued photo identification of the applicant which shall be —

(i) notarized; or

(ii) certified by a Justice of the Peace; and

(c) any other document as may be reasonably required by the Director.

(7) A person who knowingly or wilfully provides false or misleading information in an application made under this Part commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

(8) The administrator shall —

(a) within seven days of receiving the application under this Part, notify the applicant of the administrator's receipt of the application; and

(b) within fourteen days of notifying the applicant of the administrator's receipt of the application, notify the applicant of the administrator's decision to approve or refuse the application.

(9) Where the administrator is satisfied that the applicant qualifies under this Part to withdraw the amount applied for, the administrator shall —

(a) approve the application;

(b) within forty-five days of receipt of the application, issue the amount in the form of a cheque or by direct deposit payable to the financial institution instructed by the applicant; and

(c) notify the applicant that the cheque has been prepared or the amount has been deposited, as the case may be.

(10) An administrator may refuse an application under this Part where the administrator is not satisfied that —

(a) the applicant qualifies to make a withdrawal under this Part; or

(b) all the other requirements under this Part have been met by the applicant.

(11) Where the administrator refuses the application, the administrator shall, within fourteen days of having notified the applicant of receipt of the application in accordance with subsection (8), notify the applicant of the refusal and provide reasons in writing for the refusal to the applicant.

(12) An applicant aggrieved by a decision of an administrator under this Part may refer the decision to the Director and, upon any such referral, the Director may —

(a) decide to confirm, vary or rescind the decision; or

(b) substitute the Director's decision for that of the administrator, and the Director shall, by notice in writing, inform the applicant and the administrator of the Director's decision.

(13) The administrator shall give effect to the decision of the Director made under subsection (12).

(14) An administrator who does not comply with subsections (9), (11) or (13) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

(15) An administrator shall provide to the Director a monthly report, in a format approved by the Director, which shall contain the following information —

(a) a list of all applications made under this Part; and

(b) in respect of each application, the following particulars —

(i) the decision;

(ii) where the application was approved, the amount of each withdrawal;

(iii) where the application was refused, the reason for the refusal; and

(iv) any other information that the Director may reasonably require.

(16) An administrator who contravenes subsection (15) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of one year, or to both.

(17) It shall be a defence to a prosecution for a contravention of any provision in this Part that a person took all reasonable steps to comply with the respective provision.".

Amendment of section 95 - Regulations

6. The principal Law is amended in section 95 as follows —

(a) in subsection (2), as follows —

(i) in paragraph (w), by deleting the word "and";

(ii) in paragraph (x), by deleting the full stop and substituting the words "; and"; and

(iii) by inserting after paragraph (x) the following paragraph —

"(y) providing for all matters necessary and expedient to give effect to the provisions of the *National Pensions (Amendment) Law, 2020*."; and

(b) in subsection (6), by inserting after the word “Law” the words “, except Regulations made under subsection (2)(y),”.

Passed by the Legislative Assembly the day of , 2020.

Speaker

Clerk of the Legislative Assembly