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Cayman Pension Update (30 April 2020)
National Pensions (Amendment) Law, 2020 Now In Effect – Important Updates and FAQs

Following our review of the National Pensions (Amendment) Bill 2020 (Cayman Pension Update 23 April), the National Pensions (Amendment) Law, 2020 (**Law**) was passed by the Legislative Assembly but contains two important changes from the original Bill:

(i) The temporary suspension of pension contributions (the pension holiday period) which applies to both employers and employees, continues to commence retroactively from 1 April 2020, but will now continue through to 30 September 2020 and not 30 November 2020; and,

(ii) The remaining provisions of the Law concerning the emergency withdrawal of pensions will now expire on 31 October 2020.

However, these dates may be extended by an Order made by Cabinet.

Withdrawals from private pensions by Public Servants
We previously took the view that section 52I(3)(b) meant that Public Servants could not make any withdrawal from any private pension plan which they may hold. Section 52I(3)(b) is open to a number of interpretations and our view was in part driven by the Premier's comments during the COVID-19 press briefings, in which he stated that the amendments to the pension law (then a bill not law) would not benefit public servants as a matter of policy because public servants remained fully employed and their pension contributions were continuing.

However, during the COVID-19 briefing on 27 April 2020, the Premier in answering a direct question from a member of the press, stated that public servants could make withdrawals from a private pension plan provided that contributions to that plan did not come from a statutory authority or a government company, as defined in section 2 of the Public Authorities Law (2020 Revision).

Frequently Asked Questions and Answers
Since our pension update on 23 April 2020, we have received a number of enquiries from both employers and employees. To provide further guidance, we present the following 'Q & A' briefing:

Suspension of pension contributions
[Q]: *In circumstances where employees are still receiving full pay and benefits, can the employer continue to deduct employee's contributions from salary as in the normal way?*

[A]: The short answer is 'No' unless there is a specific term in the employees' contract of employment to the contrary (and that would be unusual). The newly inserted sections of 5A & B create a 'pension holiday period' which commences retroactively from 1 April 2020 to 30 September 2020 and during this period, neither the employer nor the employee is *required* to make contributions into a pension plan.

Therefore, an employer cannot insist that an employee contributes to the pension scheme or vice versa. There is no prohibition on either party making voluntary pension contributions into a pension plan *but* where one party does so, there is no legal obligation on the other to make a similar voluntary contribution. It is simply a matter of choice on both the employer and employee.

[Q]: *The pension holiday took effect from 1 April 2020 but I have already had pension contributions deducted from my weekly pay, what do I need to do?*

[A]: Due to the retrospective provision in the Law, this is likely to have occurred in respect of those employees who are paid more frequently than monthly intervals. The employer will be obliged to return any pension deducted in respect of work undertaken after 1 April 2020 in the employee's next pay.

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Pension withdrawals

[Q]: *As the employer, should we advise our employees whether or not they should make a withdrawal from their pensions?*

[A]: Eligible members of a private pension scheme may make a withdrawal in accordance with the new temporary provision of Part VII B of the National Pensions Law (2012 Revision).

Although employers may have concerns about this measure, the option of withdrawal is a matter of choice for the employee. In our opinion, employers should refrain from providing financial advice to their staff. If, an employer were to provide such advice to its employees - and, for example, at some time in the future pension values were to fall - the employee may have a claim against the employer for 'negligent advice' and seek to recover any pension losses which may have been sustained as a result of not making the withdrawal.

[Q]: *May I withdraw from multiple private pension plans that I hold?*

[A]: The new legislation is not specific on the point and is open to interpretation. However, it appears to suggest that the formula as set out in sections 52I (2)(a) and (b) (as the case may be) would apply to each private pension a person may hold.

By way of example:
An individual has four private pensions with different providers with a commuted value of CI$100,000 in each plan.

It would therefore appear he could apply to <u>each</u> pension administrator to withdraw up to CI$10,000 + 25% of the balance: CI$10,000 + (25% of CI$90,000) = CI$32,500

It would seem that such a person could withdraw a total of CI$130,000 from his four pension plans.

[Q]: *When and how can I apply to withdraw from my pension?*

[A]: The emergency withdrawal of pensions does not come into effect until <u>1 May 2020</u>. Many members have already tried to contact their pension providers and have even sent emails applying for withdrawals.

The new Part VIIB sets out an application procedure. This includes completing a prescribed application form which the Director is in the process of drafting. Once completed (presumably by 1 May 2020), applicants will be required to complete and submit the application form to relevant pension administrators together with a notarised copy of government issued identification.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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