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Review of the Cayman Islands National Pensions (Amendment) Bill, 2016

Insights - 27/04/2016

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Introduction

The following is an overview of The National Pensions (Amendment) Bill, 2016 (the **Bill**) which proposes to amend The National Pensions Law (2012 Revision) (the **Law**). This overview focuses on the version of the Bill that was gazetted 4 April 2016, but readers should note that the Bill may be modified at the committee stage before it becomes law.

Background

The Law governs the private-sector pension regime; the public sector is governed by separate legislation.

For some time, the Cayman Islands Government has been on a path to overhaul the Law. In June 2015, the Government released an earlier version of the Bill for public consultation. Broadly, the Bill aims, amongst other things, to ensure that Cayman's workers have enough savings on which to retire comfortably and to improve compliance.

Headline changes

Changes to employers' mandatory-contribution obligations

To explain the proposed changes to the Law in respect of mandatory contributions, one should note the following aspects of the Law following the proposed amendments: with certain exceptions, every employee between the age of 18 years and the normal age of pension entitlement must be a member of a pension plan (see s.25(1)); and an employer must contribute to a pension plan not less than 5% of the employee's earnings up to the year's maximum pensionable earnings for that employee (see s. 47(3)(b)), while the employee must contribute the difference (if any) between 10% and the percentage contributed by the employer (see s. 47(3)(a),(c)).

The Bill proposes to change the Law in the following ways that will impact on an employer's mandatory-contribution obligations:

- First, the maximum amount of money that a person earns per year that is subject to mandatory contributions will increase from CI $60,000 to CI $87,000; this amount may be varied by Order, made by Cabinet – see definition of "year's maximum pensionable earnings" and s. 47(1),(3).
- Second, the retirement age has been increased from 60 to 65 years – see definition of "normal age of pension entitlement" and s. 25(1).
- Third, the Bill reduces from nine months to six months the period from which an employer is required to commence making pension contributions for a work-permit employee – see s.25(2)(a). Seemingly, it remains the case that an employer must make contributions on behalf of a Caymanian employee as soon as that employee commences employment; the 2015 version of the Bill had proposed to have a wait period of six months for all employees (i.e. Caymanians as well as expats) to ensure that Caymanians were not disadvantaged - by making it less attractive to employ them.

The Bill continues to exclude domestic workers from the operation of the Law – see new definition of "household domestic" and ss. 25(2)(b) & 87(10).

Change to encourage members' voluntary contributions

A new s.47(10) allows members to access their additional voluntary contributions (i.e. contributions above the 10% mandatory contributions) prior to attaining their "normal age of pension entitlement" (as defined) for the following purposes:

- for medical purposes where health insurance is inadequate;
- for temporary unemployment of up to six months;
- for housing purposes, including constructing or buying a house or paying a mortgage, but not for rent or similar purposes;
- for any educational purposes.

The Government believes this measure will boost pension contributions.

Changes to improve compliance

The Bill establishes the Department of Labour and Pensions and repeals the Office of the Superintendent of Pensions. This measure is designed to align the Law with the re-organisation of labour and pension services in the Islands. With the Department being given the power to administer fines, and with the introduction of a letter of compliance (this will be a mandatory requirement before a Trade and Business Licence is issued or renewed), the Government hopes that delinquent employers will take the steps to pay what they owe to pension plans on behalf of their employees.

There have been substantial increases in a range of fines and other penalties, including the penalties for an employer failing, without reasonable case, to make mandatory pension contributions – see s. 4(4). Penalties have been increased from CI $5,000 to CI $20,000, or imprisonment for a term of 2 years, or both, for a first offence; and the penalties have been staggered for second and third offences as follows: for a second offence, a fine of CI $50,000, or imprisonment for 3 years, or both; and, for a third offence, a fine of CI $100,000, or imprisonment for 5 years, or both.

The Bill expands the list of information to be provided to register a pension plan. It also expands the duties of an administrator of a pension plan, including increased disclosure to members.

Further, it introduces obligations of an employer to "cause to be kept" proper books and records in relation to pensionable employees. It also provides that interest is accrued on money that is due to be paid by the employer at the rate of five percent above the current prime rate in the Cayman Islands.

We would be happy to discuss the implications of this amendment Bill for your business. Please contact your usual Ogier attorney or one of the contacts listed here.

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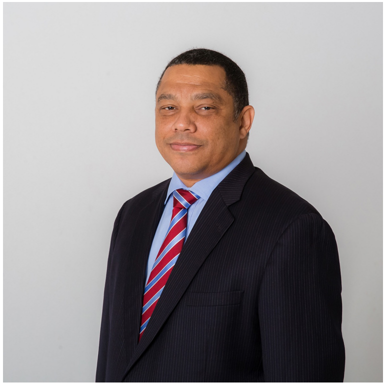

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