

## Cayman Islands: New Pension Holiday Legislation

The National Pensions (Amendment) Law, 2010 (the “**Amendment**”) came into force on 26 April 2010. It makes amendments to the National Pensions Law (2000 Revision) (the “**Law**”) to introduce a temporary suspension of compulsory pension contributions, or a “pension holiday”, for a fixed period provided that both the employer and the employee agree in writing.

The Amendment is different from the Bill published on 29 March 2010 (the “**Bill**”) in one important respect: whereas the Bill had proposed removing the requirement for pension plans to be maintained for the benefit of non-Caymanian employees altogether, the Amendment provides that the period of the temporary pension holiday is longer in the case of non-Caymanians. In further contrast to the Bill, the Amendment does not provide that the period of the pension holiday may be extended by order made by the Governor in Cabinet (so if the period is to be extended a further amendment must be enacted).

The Amendment is temporary. Upon the expiration of the pension holiday period, the Law shall again operate as though the changes under the Amendment had not been enacted. Further, notwithstanding any pension holiday, employers are still required to establish a pension plan for their employees pursuant to the Law, and employees are still required to be members of a pension plan.

### Summary of the Amendment

- The “**pension holiday period**” is defined as a period of one year (from 26 April 2010) in the case of Caymanian employees, and a period of two years in the case of non-Caymanian employees.
- Where an employer and his employee are certified as approved persons, then neither the employer nor the employee is required to contribute to the pension fund of a pension plan on behalf of the employee in relation to any portion of the pension holiday period.

- Where a self-employed person holds an individual retirement account and is certified as an approved person, the self-employed person is not required to contribute to the account in relation to any portion of the pension holiday period.
- Applications to become approved persons are made to the administrator of the pension plan. Employers and employees must submit to the administrator an agreement signed by both of them, that neither shall contribute to the pension fund on behalf of the employee in relation to any portion of the pension holiday period. If the administrator approves the application, he issues a certificate to the applicant.
- An employer or self-employed person who is seeking to become an approved person must be up to date with all pension contributions, or arrangements must be in place for the payment of any arrears.
- If the administrator refuses to certify a person as an approved person, the person affected may refer the decision to the Superintendent of Pensions.

### Caymanian

For the purposes of the Amendment, "Caymanian" has the meaning assigned to it by the Immigration Law (2009 Revision). Those who possess Caymanian status as at 1 January 2004; as of right; by grant of the Caymanian Status and Permanent Residency Board; by entitlement; or by grant of the Governor as ratified by the Legislative Assembly, are Caymanian for the purposes of the Amendment.

### Offences

The Amendment brings into force a number of new offences, in respect of which a person if summarily convicted is liable to a fine of ten thousand dollars. These are:

- Where an employer who is not approved, during a pension holiday period fails, without reasonable cause, to make pension contributions for an employee.
- Where an approved employer withholds money from an employee for the purpose of making pension contributions but fails to make the contributions to the plan.
- Where a self-employed person who is not approved holds an individual retirement account and fails to contribute to that account all money due to be paid by him to that account in relation to any portion of the holiday period.

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