BAF CAYMAN PENSION PLAN

NEW YEAR CHANGES TO PENSIONS

December 31, 2016 will mark not only the eve of a new year but also the commencement of The National Pensions (Amendment) Law 2016 (the "Law"). The Law will amend various sections of the principal law, The National Pensions Law (2012 Revision).

The provisions of the Law come into effect at various times and a few provisions will only come into force on a date yet to be announced by Cabinet.

This advisory highlights the major changes that relate primarily to Employers and Employees.

CHANGES AS OF 1 JANUARY 2017

1. The year's maximum pensionable earnings will increase to CI$87,000 requiring some Employees to contribute more towards their pension each year.
2. All Employees between the ages of 18 and 65 must be members of a pension plan.
3. Persons who will attain age 60 in the next 12 years (i.e. between 1 January 2017 and 31 December 2029) can choose age 60 as their age of pension entitlement rather than having to wait until age 65 in order to apply for pension benefits.
4. A new definition, the "Normal age of pension entitlement" has been introduced with effect from 31 December 2016. It refers to persons who have attained the age of 65 and to persons who will attain age 60 in the next 12 years and have elected age 60 as their age of pension entitlement.
5. This is not a mandatory retirement age. It is the age at which a member can start to receive pension benefits.
6. This definition will replace the commonly used term "normal retirement age".
7. The normal pension entitlement date will be reduced to 3 months after the attainment of age 65.
8. Early retirement eligibility will increase from age 50 to age 55.

CHANGES AS OF 9 JANUARY 2017

9. There will be changes to the pension withdrawal schedule and allowances for Retirement Savings Arrangements.
10. There will be a minimum and maximum annual withdrawal amount that a pensioner can make based on the pensioner's age and account balance. The current withdrawal maximum of CI$12,000, which has been in effect for the past 18 years will cease. The minimum annual withdrawal for all pensioners will be CI$12,480. This figure will be adjusted for inflation going forward.
11. Pensioners who have larger amounts in their account will be able to withdraw an increasing amount on a yearly basis above the CI$12,480 threshold as well as have the option to withdraw a lump sum amount after age 90.

CHANGES AS OF 1 FEBRUARY 2017

12. Employers, for any purpose, will be able to apply to the Director for verification of their compliance with the Law. If the Director is satisfied of their compliance, a verification will be issued upon payment of prescribed fee.
13. An Employer will be deemed compliant with the Law if all pension contributions, interest and fees have been paid and the Director has no knowledge that the Employer has contravened any provisions of the Law.
14. Fines will be increased up to CI$10,000 for Administrators of pension plans and Employers who fail to comply with requests for information from the Director of Labour & Pensions. The late or non-payment of pension contributions will be handled by a new and extensive procedure that has been created under the Law.
15. The fine for the administration of an unregistered pension plan will increase up to CI$10,000 and/or one year imprisonment.
16. Comprehensive provisions protecting Employees from victimisation by Employers will be introduced. Victimisation will include dismissal, suspension, denial of promotion, demotion, redundancy, intimidation, reduction of earnings and/or benefits and discrimination by the Employer or other Employees.
17. An Employee that reasonably believes that an Employer has failed to comply with the Law can make a written disclosure to the Director or an authorised officer.
18. Where an Employee believes that he has been victimised as a result of a disclosure, he may file a complaint with the Labour Tribunal. It is unknown what types of awards the tribunal will make in cases where there is a finding of victimisation.

CHANGES AS OF 1 MARCH 2017

19. The definition of “employee” will be amended to expressly exclude Caymanians (as defined in the Immigration Law 2015 Revision) who are under age 23 and pursuing full-time education. These persons and their Employers will be exempt from having to contribute to a pension plan.
20. The definition of “household domestic” found in the Labour Law (2011 Revision) will be added to the definitions in the Law. This will have the effect of excluding from the Law not only maids but also care givers (of adults or children) and gardeners who work in a private home and not for themselves or a company.
21. Employers must keep proper payroll accounts, books and records for all sums paid to a pension plan. These records must give a true and fair view of the state of affairs of the Employer’s pension plan transactions.
22. The records must include the names of Employees; current employment contract information; employment date and duration; full-time and part-time status; rate of pay; gross and net pay; bonuses; resignations and terminations; name of pension plan; all deductions from earnings for pension contributions; all contributions made on behalf of Employees; evidence of pension plan payments; contribution period and dates of payment and any pension plan interest payments.
23. Records must be kept for a minimum of 5 years. Failure to maintain these records is an offence and the Employer will be liable on summary conviction to a fine of up to CI$10,000.
24. Employers must provide their Employees with information about their pension plan and obtain a written acknowledgement of receipt signed by the Employees. Failure to comply is an offence and the Employer will be liable on summary conviction to a fine of up to CI$10,000.
25. Pension contributions must not be co-mingled with other payments that Employers are required to make such as health insurance.

CHANGES AS OF 31 MARCH 2017

26. Personal liability for corporate directors and officers will be introduced. Where a company commits an offence under the Law, every director and officer concerned in the management of the company commits the offence.
27. The directors and officers will not be held liable if they are able to prove that the offence was committed without their consent or connivance or that they exercised reasonable diligence to prevent the commission of the offence.
28. The Director will be able to bring criminal proceedings for any offence committed under the Law provided the consent of the Director of Public Prosecutions is first obtained. The Director will also be able to appear in court to prosecute the offence. This gives the Director the ability to choose whether to bring a criminal or civil claim.
29. Subject to the pension plan, a member may access their additional voluntary contributions (“AVCs”) prior to age 65 but only for certain purposes.

30. AVCs can be accessed for (1) medical purposes not covered by the member's health insurance; (2) temporary unemployment for the first 6 months following the first 3 months after termination; (3) housing purposes including the construction of the member's dwelling house, purchase of residential land or the payment of the total balance owed on the member's mortgage; and (4) educational purposes of the member or a dependent child under the age of 23 pursuing full-time education.

CHANGES AS OF 31 DECEMBER 2017

31. An Employee who has terminated employment with a specific Employer and is entitled to a deferred benefit may ask the Administrator of the fund to transfer the commuted value of the benefit outside the Cayman Islands if the Employee ceases to reside in the islands and no contributions have been made to the plan for 2 or more years.

CHANGES AS OF 31 DECEMBER 2019

32. Refunds of contributions to pension plans will only be permissible where (1) the Director approves; (2) the pension plan permits refunds; (3) the member has attained age 65; and (4) the member provides evidence that the benefit cannot be transferred to another pension plan, saving arrangement or life annuity.

CHANGES TO TAKE EFFECT AT A LATER DATE

33. Upon application for membership to a pension plan Administrators must provide details of the returns and expense ratios of the fund in addition to the information normally provided.
34. Administrators of pension funds must issue written statements of the fund semi-annually. The statements can be issued electronically with the consent of the plan members.
35. Employers will not be required to contribute to a pension plan for Employees on work permits who are working in the islands for the first time for a continuous period of 6 months or less.
36. Pension contributions must be remitted on or before the 15th of the next month following the Employee's receipt of remuneration or expectation of remuneration. This will be known as the "Contribution Date Deadline".
37. If the contribution is not received by the Administrator on close of business on the Contribution Date Deadline the contributions will be classified as a "Delinquent Contribution".
38. The Administrator will then be required to take immediate action to collect the Delinquent Contribution (including accrued interest).
39. The Administrator must notify the Director and the affected Employees in writing and may also publish the name of the Employer in more than one publication if the Director instructs.
40. The additional expenses of the Administrator for the additional reporting will be borne by the Employer and not the pension plan or the Employees.

41. The Director can write a letter of demand giving the Employer 14 days to effect payment or demand the appearance of the Employer to explain the delinquency.
42. The Director can then order payment, commence legal proceedings or publish the Employer's breaches including their name, offence and the applicable penalty. Personal information of the Employees cannot be published.
43. Where the Director orders payment and the Employer fails to pay within the time specified by the Director, the Employer will be liable on summary conviction to a fine of up to CI$20,000 or 2 years imprisonment or both (in addition to the delinquent contributions, fees and expenses).
44. The Employer will be liable to pay interest to the pension fund from the Contribution Date Deadline up to the date of actual payment of contributions to the fund.
45. Interest is payable on all monies due in respect of the pension fund at the current prime rate plus 5% calculated on a daily basis. This is in addition to any other fees, fines and penalties specified by the Law or a court order.
46. The Director will be able to investigate the activities of Employers in respect of their contributions to pension plans and share any information obtained with other Government departments and agencies.