CAYMAN ISLANDS



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A BILL FOR A LAW TO AMEND THE NATIONAL PENSIONS LAW (2010 REVISION) TO PROVIDE A MECHANISM WHEREBY AN AMOUNT MAY BE WITHDRAWN FROM AN ACCOUNT IN A PENSION PLAN AS A DEPOSIT FOR THE PURCHASE OR CONSTRUCTION OF A DWELLING UNIT OR THE PURCHASE OF RESIDENTIAL LAND OR TO PAY OFF AN EXISTING MORTGAGE ON RESIDENTIAL LAND IN THE CAYMAN ISLANDS; AND TO PROVIDE FOR INCIDENTAL AND CONNECTED MATTERS

THE NATIONAL PENSIONS (AMENDMENT) BILL, 2011

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the National Pensions Law (2010 Revision).

Clause 1 of the Bill provides the short title.

Clause 2 provides for the insertion of Part VIIA (sections 52A, 52B, 52C, 52D, 52E, 52F and 52G) in the National Pensions Law (2010 Revision).

Part VIIA provides for the withdrawal of pension funds in an amount not exceeding thirty-five thousand dollars by a person who is a Caymanian and does not currently own a dwelling unit as a deposit to purchase an existing dwelling unit or construct a new dwelling unit or purchase residential land in the Islands or as an amount to pay off an existing mortgage on a dwelling unit in the Islands. The administrator is under a duty, within forty-five days of the application being submitted, to issue the deposit or amount if satisfied that the applicant is entitled to withdraw the deposit or amount applied for or if not satisfied, to refuse the application and to give reasons for the refusal to the applicant.

Provision is made in Part VIIA for payment back to the pension plan where, before attaining the normal retirement age, the person sells the dwelling unit or residential land acquired. Provision is also made for additional contributions to be made by a person who makes a withdrawal from his account in a pension plan; for the making of a false or misleading declaration or the supply of false or misleading information in an application to be a criminal offence; and for a restriction to be entered by the Registrar of Lands with respect to a dwelling unit or residential land that is the subject of a withdrawal.

Clause 3 provides for the insertion of a schedule containing the form for the declaration by a non-current home owner and a person who has an existing mortgage.

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ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the National Pensions (Amendment) Law, 2011.

Insertion of Part VIIA in the National Pensions Law (2010 Revision) - withdrawal of pension funds to purchase or construct dwelling unit, purchase residential land or pay off an existing mortgage in the Islands

2. The National Pensions Law (2010 Revision) is amended by inserting after Part VII the following Part -

"**PART VIIA - Withdrawal of pension funds to purchase or construct dwelling unit, purchase residential land or pay off an existing mortgage in the Islands**

Definitions in Part VIIA

52A. In this Part -

"building society" means a society incorporated under the

(2010 Revision) Building Societies Law (2010 Revision);

(2010 Revision) "Caymanian" has the meaning assigned to that expression under the Immigration Law (2010 Revision);

(2009 Revision) "Class A bank" means a bank holding an "A" licence under the Banks and Trust Companies Law (2009 Revision);

(2001 Revision) "credit union" has the meaning assigned to that expression under the Cooperative Societies Law (2001 Revision);

"deposit" means all monies required by a financial institution as a condition for a person to obtain a loan (which shall include any legal fees and stamp duty) the proceeds of which will be used to purchase an existing dwelling unit, construct a new dwelling unit, or purchase residential land in the Islands;

"dwelling unit" means two or more rooms used or intended for the domestic use of one or more individuals living as a single housekeeping unit, with exclusive cooking, eating, living, sleeping and sanitary facilities;

"financial institution" means a building society, credit union or Class A bank carrying on business in the Islands;

"non-current home owner" means a person who does not currently own a dwelling unit in the Islands;

"residential land" means any lot, plot, tract, area, piece or parcel of land including any building used exclusively or intended to be used as a dwelling unit; and

"room" means a compartment within a building enclosed by -

(a) a floor;
(b) a ceiling; and
(c) walls or partitions.

Withdrawal of amount from pension account as a deposit

52B. (1) Notwithstanding sections 55 and 56, but subject to the remaining provisions of this section, a person who is a Caymanian and non-current home owner may withdraw

from his account in a pension plan an amount not exceeding thirty-five thousand dollars as a deposit.

(2) Notwithstanding subsection (1), a person who is a non-current home owner but who owns land in the Islands shall not be entitled to withdraw an amount from his account in a pension plan as a deposit to purchase other land in the Islands.

(3) A person who wishes to withdraw an amount as a deposit pursuant to subsection (1) shall, subject to subsection (4), make an application to the relevant administrator in the form prescribed in the Schedule.

Schedule

(4) An application under subsection (3) shall be accompanied by -

(a) evidence that the person is a Caymanian;
(b) a declaration in the form prescribed in Part B of the Schedule that the person is a non-current home owner; and
(c) a copy of a letter issued by a financial institution addressed to the person making the application (whether or not solely to that person), showing approval in principle of a loan to purchase an existing dwelling unit, construct a new dwelling unit or purchase residential land in the Islands and the deposit required.

(5) For the avoidance of doubt, two or more persons who are Caymanians and non-current home owners approved in principle by a financial institution may, in accordance with this section, withdraw the amount of the deposit required from their respective accounts in a pension plan up to the maximum of thirty-five thousand dollars each towards a single loan from a financial institution for the purchase of an existing dwelling unit, construction of a new dwelling unit or purchase of residential land in the Islands.

(6) Where an application is made under subsection (3), the administrator -

(a) shall, within forty-five days of the application being submitted, issue the deposit in the form of a cheque payable to the relevant financial institution and deliver it to the applicant if satisfied that the applicant is entitled under subsection (1) to withdraw the amount applied for; or

(b) may, if not satisfied that all the requirements under subsection (4) have been correctly provided by the applicant, refuse the application and shall, within seven days of the application being submitted, give reasons for the refusal to the applicant, by letter in writing.

(7) An administrator who contravenes subsection (6) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both; and if the offence is a continuing one to a fine of one thousand dollars for every day or part of a day during which the offence has continued.

(8) An administrator shall provide to the Superintendent monthly -

(a) a list of all persons who have withdrawn amounts as deposits from their respective accounts in a pension plan under this section, stating the amount of each deposit;

(b) a list of all persons who applied for amounts as deposits under this section;

(c) a copy of each letter to persons stating the reason for refusal under subsection (6)(b); and

(d) in the form approved by the Superintendent, a report with respect to each person who has withdrawn an amount as a deposit from his account in a pension plan under this section.

(9) An administrator who contravenes subsection (8) commits an offence and is liable on summary

conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

(10) Where before attaining the normal retirement age, a person sells the dwelling unit purchased or constructed or the residential land purchased through the use of a deposit under this section, the person shall upon completion of the sale return the original amount of deposit or ten per cent of the fair market value of the dwelling unit or residential land, whichever is greater, back to his pension plan account.

(11) A person who contravenes subsection (10) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

Withdrawal of amount from pension account to pay off an existing mortgage

52C. (1) Notwithstanding sections 55 and 56 but subject to the remaining provisions of this section, a person who is a Caymanian may withdraw from his account in a pension plan an amount not exceeding thirty-five thousand dollars required to pay off an existing mortgage on a dwelling unit in the Islands so that the dwelling unit is free from any encumbrance.

(2) A person who wishes to withdraw an amount required to pay off an existing mortgage pursuant to subsection (1) shall, subject to subsection (3), make an application to the relevant administrator in the form prescribed in the Schedule.

Schedule

(3) An application under subsection (2) shall be accompanied by -

(a) evidence that the person is a Caymanian;
(b) evidence that the applicant has legal title to the dwelling unit; and
(c) a copy of a letter issued by the financial institution holding the mortgage, addressed to the person making the application (whether or not solely to that person), showing approval in principle for paying off the existing mortgage and the

amount to be paid off.

(4) For the avoidance of doubt, two or more persons who are Caymanians approved in principle by a financial institution may, in accordance with this section, withdraw the amount required from their respective accounts in a pension plan up to the maximum of thirty-five thousand dollars each towards paying off an existing mortgage.

(5) Where an application is made under subsection (2), the administrator -

(a) shall, within forty-five days of the application being submitted, issue the amount required to pay off the existing mortgage in the form of a cheque payable to the relevant financial institution and deliver it to the applicant if satisfied that the applicant is entitled under subsection (1) to withdraw the amount applied for; or

(b) may, if not satisfied that all the requirements under subsection (3) have been correctly provided by the applicant, refuse the application and shall, within seven days of the application being submitted, give reasons for the refusal to the applicant, by letter in writing.

(6) An administrator who contravenes subsection (5) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both; and if the offence is a continuing one to a fine of one thousand dollars for every day or part of a day during which the offence has continued.

(7) An administrator shall provide to the Superintendent monthly -

(a) a list of all persons who have withdrawn amounts from their respective accounts in a pension plan under this section, stating each amount withdrawn;

(b) a list of all persons who applied for a

withdrawal under this section;

(c) a copy of each letter to persons stating the reason for refusal under subsection (5)(b); and

(d) in the form approved by the Superintendent, a report with respect to each person who has withdrawn an amount from his account in a pension plan under this section.

(8) An administrator who contravenes subsection (7) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

(9) Where, before attaining the normal retirement age, a person sells the dwelling unit acquired through the use of an amount withdrawn pursuant to this section, the person shall upon completion of the sale return the amount withdrawn or ten per cent of the fair market value of the dwelling unit, whichever is greater, back to his pension plan account.

(10) A person who contravenes subsection (9) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

(11) In this section "encumbrance" has the meaning assigned to that expression under section 2 of the Registration (Land) Law (1996 Revision).

1996 Revision)

Additional contributions

52D. (1) Notwithstanding section 47 or any other Law in force in the Islands to the contrary, where a person makes a withdrawal from his account in a pension plan pursuant to section 52B or 52C, the person shall, in addition to the amount that the person is required to contribute to a pension plan pursuant to section 47, contribute an additional amount of one per cent of his earnings to the pension plan from the month immediately following the date of issuance of the cheque pursuant to section 52B(6)(a) or 52C(5)(a) -

(a) until the expiry of ten years from the date

of issuance of the cheque pursuant to section 52B(6)(a) or 52C(5)(a);

(b) until the total additional contributions equal the actual amount withdrawn; or

(c) until the person attains the normal retirement age,

whichever is earlier.

(2) Notwithstanding subsection (1), an employer shall not be required to make any additional contributions to a pension plan on the basis of additional contributions made by a person pursuant to that subsection.

(3) Where a person is required to make additional contributions under subsection (1), the person shall -

(a) if he is an employee, inform his employer in writing of the requirement and the employer shall deduct such additional contributions from the employee's earnings and pay the same into the employee's account in the pension plan; or

(b) if he is self-employed deduct such additional contributions from his earnings and pay the same into his account in the pension plan.

(4) A person who contravenes subsection (1) or (3) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years, or to both.

Total amount withdrawn from more than one pension plan not to exceed thirty-five thousand dollars

52E. (1) Where a person contributes or has contributed to more than one pension plan under this Law, that person shall not withdraw more than a total of thirty-five thousand dollars in the aggregate from his accounts in the pension plans under section 52B or 52C.

(2) A person who contravenes subsection (1) 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.

False or misleading declaration or information

52F. (1) A person shall not shall not knowingly or wilfully make a false or misleading declaration or supply false or misleading information in an application made under section 52B or 52C.

(2) A person who contravenes subsection (1) 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.

Restriction

52G. (1) Where a withdrawal is made pursuant to section 52B or 52C, the Superintendent shall make an application to the Registrar of Lands for a restriction to be entered with respect to the dwelling unit or residential land that is the subject of the withdrawal and the Registrar of Lands shall enter the restriction in accordance with the Registered Land Law (2004 Revision).

(2) In this section -

(2004 Revision)

"Registrar of Lands" means the person appointed as such pursuant to section 5 of the Registered Land Law (2004 Revision).".

Insertion of schedule in the National Pensions Law (2010 Revision) - form

3. The National Pensions Law (2010 Revision) is amended by inserting after section 95 the following schedule -

"**SCHEDULE**

FORM

(Sections 52B and 52C)

THE NATIONAL PENSIONS LAW (2010 REVISION)

APPLICATION FOR WITHDRAWAL OF DEPOSIT UNDER SECTION 52B OR AMOUNT TO PAY OFF AN EXISTING MORTGAGE UNDER SECTION 52C OF THE LAW

PART A - GENERAL		
A1	Name and address of	

	the Applicant			
A2	Name(s) and Address(es) of the Applicant's Employer(s)		1.	
			2.	
A3		Name(s)and Address(es) of the Administrator(s) of the Pension Plan(s) to which the Applicant is currently contributing	Name(s) and Address(es) of the Pension Plan(s) to which the Applicant is currently contributing and the Pension Plan Account Number(s)	Amount of contribution(s) currently being made
	1		Name and Address	$
			Account No. :	
	2		Name and Address	$
			Account No.:	
A4		Name(s) and Address(es) of the Administrator(s) of the Pension Plan(s) from	Name(s) and Address(es) of the Pension Plan(s) from which the Applicant is requesting withdrawal and the Pension Plan Account Number(s)	Amount of withdrawal(s) required from the Pension Plans(s) (*must not be more*

		which the Applicant is requesting withdrawal				*than $35,000 in total)*
	1		Name and Address			$
			Account No. :			
	2		Name and Address			$
			Account No.:			
	3		Name and Address			$
			Account No. :			
	4		Name and Address			$
			Account No.:			
A5	Type of withdrawal applied for *(Tick one).*		Deposit to purchase an existing dwelling unit ☐	Deposit to construct a new dwelling unit ☐	Deposit to purchase residential land ☐	Amount to pay off existing mortgage ☐

A6	Total amount of withdrawal required as deposit or to pay off existing mortgage	
A7	Block and Parcel Number of relevant property	
A8	This application is accompanied by the following documents: *(Tick as appropriate)* **1. Evidence that the Applicant is a Caymanian** ☐ *(State type of evidence)* **2. Evidence that the Applicant has legal title to the dwelling unit** ☐ (*In the case of withdrawal to pay off an existing mortgage on a dwelling unit only)* **3. Letter from financial institution addresses to the Applicant** ☐	
A9	***PART B - DECLARATION BY NON-CURRENT HOME OWNER** *(To be completed only by an applicant who is a non-current home owner for a deposit to purchase an existing dwelling unit, construct a new dwelling unit or purchase residential land.* *If paying off existing mortgage delete this Part and go to Part C.)* I, [**INSERT NAME AND ADDRESS]** hereby declare that I do not currently own a dwelling unit in the Cayman Islands. Dated this _____ day of _____ 2_____ _____ *(Name of Applicant)* Signed: _____	

A10	**PART C - GENERAL DECLARATION** I [**INSERT NAME AND ADDRESS]** hereby declare that this application is accordingly hereby made for the withdrawal of [*deposit / amount to pay off an existing mortgage] as specified above and it is certified that all particulars contained in this application and in the documents accompanying it or otherwise furnished in support hereof are true and correct. Any changes occurring before a decision is made regarding the granting or refusal of the withdrawal will be notified to the Administrator(s). Dated this _____ day of _____ 2_____ _____ *Name of Applicant)* Signed: _____
A11	**PART D –WITNESS** WITNESS: _____ Signature of witness to declaration[s] Name: Occupation: Address:
*Delete where not applicable.”.	

Passed by the Legislative Assembly the day of , 2011.

Speaker.

Clerk of the Legislative Assembly.