

**CAYMAN ISLANDS**



**National Pensions Law**

# **NATIONAL PENSIONS (GENERAL) REGULATIONS**

**(2018 Revision)**

**Supplement No. 5 published with Extraordinary Gazette No. 24 of 23rd March, 2018.**

## PUBLISHING DETAILS

---

Revised under the authority of the Law Revision Law (1999 Revision).

The National Pensions (General) Regulations, 1998 originally made under the principal Law, as amended, as part of the Schedule thereto, and which came into force on the 1st June, 1998.

Consolidated with -

The National Pensions (General) (Amendment) Regulations, 2010 made the 25th day of May, 2010; and

The National Pensions (General) (Amendment) Regulations, 2017 made the 27th day of March, 2017

Consolidated and revised this 28th day of February, 2018.

*Note (not forming part of the Law): This revision replaces the 2011 Revision which should now be discarded.*



**CAYMAN ISLANDS****National Pensions Law**

# **NATIONAL PENSIONS (GENERAL) REGULATIONS**

**(2018 Revision)**

**Arrangement of Regulations**

| Regulation | Page |
|------------|------|
|------------|------|

**PART I - Introductory**

|                                       |   |
|---------------------------------------|---|
| 1. Citation .....                     | 5 |
| 2. Definitions .....                  | 5 |
| 3. Choice of pension plan .....       | 6 |
| 4. Plan financial year end .....      | 7 |
| 5. Pensionable earnings maximum ..... | 7 |

**PART II - Registration and Administration**

|                                                         |    |
|---------------------------------------------------------|----|
| 6. Application for registration, etc. ....              | 7  |
| 7. Meeting respecting amendment to a pension plan ..... | 8  |
| 8. Registration of amendment to a pension plan .....    | 8  |
| 9. Filing of annual information return .....            | 9  |
| 10. Pre-requisite for advisory committee .....          | 9  |
| 10A. Administrator training .....                       | 9  |
| 10B. Annual general meeting .....                       | 10 |
| 10C. Publication of expense ratio .....                 | 11 |
| 10D. Collection of delinquent contributions .....       | 11 |

**PART III - Disclosure of Information**

|                                                                |    |
|----------------------------------------------------------------|----|
| 11. Disclosure of information under section 20(1) .....        | 11 |
| 12. Notice of explanation of amendment to a pension plan ..... | 12 |



|     |                                                              |    |
|-----|--------------------------------------------------------------|----|
| 13. | Notice of explanation and amendment under section 21(1)..... | 12 |
| 14. | Explanation of amendment provided with annual statement..... | 13 |
| 15. | Contents of annual statement .....                           | 13 |
| 16. | Documents or information available under section 23 .....    | 14 |

#### **PART IV - Benefits**

|      |                                                        |    |
|------|--------------------------------------------------------|----|
| 17.  | Reciprocal transfer agreement-fifty per cent rule..... | 16 |
| 17A. | Access to voluntary contributions.....                 | 16 |
| 18.  | Transfer .....                                         | 16 |
| 19.  | Retirement savings arrangements .....                  | 17 |
| 20.  | Insurance contract .....                               | 18 |
| 21.  | Filing of reciprocal transfer agreements .....         | 19 |
| 22.  | Transfers - defined benefit plans.....                 | 19 |
| 23.  | Statement after death of member or former member ..... | 20 |
| 24.  | Statement under section 43(5).....                     | 21 |
| 25.  | Accrual during spousal relationship.....               | 21 |
| 26.  | Marriage breakdown .....                               | 21 |
| 27.  | Contents of termination statement, etc.....            | 23 |
| 28.  | Plan conversions .....                                 | 24 |

#### **PART V - Contributions**

|     |                                        |    |
|-----|----------------------------------------|----|
| 29. | Contributions under pension plan ..... | 25 |
| 30. | Graduated scale of contributions ..... | 26 |
| 31. | Interest .....                         | 28 |

#### **PART VI - Locking-in**

|     |              |    |
|-----|--------------|----|
| 32. | Refunds..... | 29 |
|-----|--------------|----|

#### **PART VII - Termination and Winding-up**

|      |                                                          |    |
|------|----------------------------------------------------------|----|
| 33.  | Notice of proposal to wind up pension plan.....          | 29 |
| 33A. | Fee on notice of proposal to terminate and wind up ..... | 30 |
| 34.  | Preparation of winding up report, etc. ....              | 30 |
| 35.  | Notice of entitlements .....                             | 31 |
| 36.  | Insufficiency after winding up .....                     | 33 |
| 37.  | Filing of documents after winding up.....                | 33 |

#### **PART VIII - Surplus**

|     |                               |    |
|-----|-------------------------------|----|
| 38. | Distribution of surplus ..... | 33 |
|-----|-------------------------------|----|

#### **PART IX - Sales, Transfers and New Plans**

|     |                                     |    |
|-----|-------------------------------------|----|
| 39. | Successor employer .....            | 34 |
| 40. | Adoption of a new pension plan..... | 35 |



## CAYMAN ISLANDS



## National Pensions Law

# NATIONAL PENSIONS (GENERAL) REGULATIONS

(2018 Revision)

## PART I - Introductory

### Citation

1. These regulations may be cited as the National Pensions (General) Regulations (2018 Revision).

### Definitions

2. In these regulations —

“**joint and survivor annuity**” means an annuity payable during the joint lives of the person entitled to the annuity and the person’s spouse and thereafter during the life of the survivor of them;

“**on-going surplus**” means a surplus arising from periodic funding excesses during the ongoing life of a defined benefit pension plan as determined by an actuarial assessment;

“**section**” means a section of the *National Pensions Law (2012 Revision)*.

“**surplus**” means a surplus arising on the winding up of a defined benefit pension plan as determined by an actuarial assessment.

**Choice of pension plan**

3. (1) An employer shall notify each of the employer's employees of the employer's intention to provide a pension plan in accordance with the Law and shall, in such notice, include —
- (a) the name or names of the proposed pension plan providers;
  - (b) the reasons for choosing the proposed pension plan provider;
  - (c) the types of investments that may be purchased and the reasons for the choice of such investments;
  - (cc) the investment return and expense ratios of the proposed pension plans;
  - (d) the minimum level of contributions that are proposed to be made by the employees provided that such level of contributions are in accordance with the Law; and
  - (e) such other information as is necessary to assist the employee in considering the plan.
- (1A) In the notification under subregulation (1) the employer shall provide the names of at least two proposed pension plan providers.
- (2) Subject to section 4, an employer shall not establish, select or continue on the coming into effect with a pension plan without filing with the Director a certificate that all employees have been given full details of the options available to them and have been polled in accordance with this regulation and that a majority of those who voted (with, in the event of a tie, and with the written consent of the Director, the casting vote of the employer) were in favour of the plan.
- (2A) The certificate required to be filed with the Director under subregulation (2) shall be in the form specified by the Director and shall include the name and signature of each employee who participated.
- (3) The polling procedure may be either —
- (a) a meeting of members at which a vote is taken and at which a member may vote in person or by proxy;
  - (b) a voting form sent to all members by registered post with a minimum time limit of fourteen days from the date it was sent for its return; or
  - (c) a survey sent to members in electronic form.
- (4) Employees shall be entitled to be provided by the employer with details of the outcome of the poll.
- (5) Where a simple majority of employees employed by one employer is dissatisfied with —
- (a) the investment return of the pension plan;
  - (b) expense ratios and fee structure of the pension plan;



- (c) customer service provided by the pension plan; or
  - (d) for any other reason,
- the employees may, in writing, notify the employer of the employees' dissatisfaction.
- (6) The employees under subregulation (5) shall make the notification of the employees' dissatisfaction to the employer in writing and shall include in the notification the reasons for the employees' dissatisfaction which may be one or more of the reasons set out in subregulation (5).
  - (7) The employer shall, within thirty days of the date of receipt of the notification under subregulation (5), provide the employees with the names of at least two proposed pension plan providers together with the information required to be provided under subregulation 3(1) and from which, in accordance with the polling procedure provided in subregulation (3), the employees shall select a pension plan.
  - (8) The employees making the notification under subregulation (5) may submit to the employer the names of proposed pension plan providers to be considered during the polling procedure provided in subregulation (3).
  - (9) Pursuant to subregulation (7) the employer may include the name of one proposed pension plan provider which the employer may previously have submitted to the employees.
  - (10) When a pension plan is selected pursuant to subregulation (7) the employer shall, subject to subregulation (2), establish, select or continue on the coming into effect with the pension plan.

### **Plan financial year end**

- 4. Unless otherwise stated in the pension plan documents, the financial year of a pension plan shall end on the 30th June in every year.

### **Pensionable earnings maximum**

- 5. The prescribed maximum amount for the purpose of the definition of "pensionable earnings" in section 3 is eighty-seven thousand dollars or such other amount as may be prescribed by the Cabinet by Order containing the amount and the period for which that amount applies.

## **PART II - Registration and Administration**

### **Application for registration, etc.**

- 6. (1) The application fee for registration of a pension plan is twenty dollars for each of the members of the pension plan.



- (2) The minimum application fee for registration of a pension plan is two hundred and fifty dollars.
- (3) The application form for registration of a pension plan shall be in such form as shall be prescribed by the Director from time to time.

### **Meeting respecting amendment to a pension plan**

- 7. (1) Where an administrator is of the opinion that a pension plan should be amended and that the proposed amendment should be voted upon at a meeting to be held in accordance with section 12(1), the administrator shall convene a meeting in respect of such amendment to be held between thirty and sixty days of the despatch of the notice referred to in regulation 12 to the members and former members who would be affected by the proposed amendments.
- (2) Where an administrator has decided to convene a meeting, the notice referred to in regulation 12 shall specify the date, time and place of the meeting as determined by the administrator.
- (3) The administrator shall appoint a suitable person to act as secretary at the meeting, or at any other meeting that is required in connection with the amendment, and the minutes of any meeting shall be kept by the secretary and shall be confirmed, where necessary, as early as possible at any subsequent meeting of the members and former members.
- (4) Where the members and former members vote on the amendment at one meeting, the secretary shall, within seven days of the date of the meeting, send a notice to the members and former members of the decision reached at the meeting.
- (5) At any meeting —
  - (a) fifty per cent of the number of persons eligible to vote in person or by proxy shall constitute a quorum;
  - (b) approval of any motion shall be on the basis of the members present in person or by proxy at the meeting called for that purpose; and
  - (c) if a proposed amendment, if implemented, would only affect members, former members or claimants, only members of such affected categories shall be entitled to vote on such proposed amendments.
- (6) Subject to this regulation and section 12, the administrator shall regulate the proceedings of any meeting respecting the amendment of a pension plan.

### **Registration of amendment to a pension plan**

- 8. (1) The application fee for the registration of an amendment to a pension plan under section 12(3) shall be one thousand five hundred dollars.
- (2) The fee for registration of a notice of an amendment to a pension plan under paragraph (c) of section 21(1) shall be twenty-five dollars.



- (3) The application form for the registration of an amendment to a pension plan shall be in such form as shall be prescribed by the Director, from time to time.

### **Filing of annual information return**

- 9.** (1) Repealed by regulation 7(a) of the National Pensions (General) (Amendment) Regulations, 2017.
- (2) The filing fee for an annual information return for a pension plan is twenty dollars for each of the members of the plan.
- (3) Subject to subregulation (4), the minimum filing fee for an annual information return is two hundred and fifty dollars.
- (4) The filing fee for an annual information return that is filed after the expiry of the period specified in section 16(4)(b) shall be increased by fifty per cent, and the amount of the increase shall not, either directly or indirectly, be charged to the pension fund.
- (5) The annual information return shall be in a form prescribed by the Director.

### **Pre-requisite for advisory committee**

- 10.** (1) The administrator shall annually notify all members and former members of their right under section 19 to establish an advisory committee.
- (2) Upon a request from at least five per cent of the sum of the numbers of members and former members for the establishment of an advisory committee, the administrator shall conduct a poll of all of the members and former members as to whether they wish to establish an advisory committee.
- (3) The poll shall be conducted by the sending of a voting paper by the administrator by registered post to each member and former member with a time limit for its return.
- (4) If the majority of those members and former members who return their voting papers within the required time limit choose to establish an advisory committee, the administrator shall facilitate the initial election of the members of the advisory committee and thereafter shall facilitate further such elections every three years.
- (5) The reasonable expenses of the polling and election procedures may be borne by the plan.

### **Administrator training**

- 10A.** The evidence provided by an administrator pursuant to the requirement of section 16(4)(f) shall, to the satisfaction of the Director, demonstrate that the administrator has, in relation to the pension plan being administered by the administrator, knowledge and an understanding of —
  - (a) official documentation relating to the pension plan;



- (b) the statement of investment policy in relation to the pension plan;
- (c) the rules or policies relating to the pension plan;
- (d) the Law and any other laws relevant to the administration of the pension plan;
- (e) the fiduciary duty of an administrator in the capacity as such; and
- (f) the skills and qualifications required for the efficient management and administration of the pension plan and investment in relation to a pension plan.

### **Annual general meeting**

**10B.(1)** An administrator shall within six months of the date of the end of the financial year of the pension plan, hold an annual general meeting pursuant to section 16(4)(h) and ensure that a report or explanation is presented or discussion held, as applicable, in respect of the following matters —

- (a) the audited financial statements;
- (b) the expense ratio;
- (c) the investment return;
- (d) the formation of advisory committees;
- (e) breaches of the Law reported by the auditor or unreported; and
- (f) any change in respect of the administrator including a change to the membership of the board of trustees.

(2) The administrator shall —

- (a) ensure that the questions of the members are facilitated at the annual general meeting;
- (b) notify, electronically or via any other media, each member, former member and any person entitled to payment from the pension plan of the date on and the time and place at which the annual general meeting will be held;
- (c) prepare the record of attendance and minutes of the annual general meeting;
- (d) forward to members and former members the record of attendance and minutes of the annual general meeting, before or together with the statement due to be forwarded by the administrator following the annual general meeting to which the record of attendance and minutes of the annual general meeting pertain; and
- (e) forward to the Director, on the date provided in the Law, in relation to the annual general meeting —
  - (i) the agenda;



- (ii) the attendance record;
- (iii) the minutes; and
- (iv) copies of any documents distributed or presentations given.

### **Publication of expense ratio**

**10C.** The administrator shall publish the expense ratio and investment return of the pension plan, calculated in the manner prescribed under the National Pensions (Pension Fund Investments) Regulations (1998 Revision).

### **Collection of delinquent contributions**

- 10D.**(1) An administrator shall maintain a record of any effort made by the administrator to collect a delinquent contribution pursuant to section 48(4) and shall forward this record to the Director in the time and manner specified by the Director if the Director makes a written request for the record.
- (2) In order to satisfy the requirements of section 48(4) the administrator may take such action as the administrator considers necessary including —
- (a) making contact with the member or the member's employer; and
  - (b) negotiating payment of the delinquent contribution under terms approved by the Director,
- in a manner that would facilitate the maintenance of a record pursuant to subregulation (1).

## **PART III - Disclosure of Information**

### **Disclosure of information under section 20(1)**

- 11.** (1) Repealed by regulation 10(a) of the National Pensions (General) (Amendment) Regulation, 2017.
- (2) The information to be provided under paragraph (d) of section 20(1) is —
- (a) the name of the plan;
  - (b) the type of plan;
  - (c) a brief explanation of the working of the plan;
  - (d) the name and address of the administrator of the plan;
  - (e) the member's required contributions;
  - (f) details of the provisions governing members' additional voluntary contributions;
  - (g) the employer's contributions;
  - (h) the member's rights on retirement, termination, and death before retirement;

- (i) the member's rights on termination of the member's employment;
  - (j) details of provisions made by the plan in relation to death before and after retirement;
  - (k) details of spousal entitlements under the plan;
  - (l) the name and address of the investment manager or managers;
  - (m) details of the process for the selection of investment managers;
  - (n) whether or not an advisory committee exists;
  - (o) members' options in respect of investments;
  - (p) details of when earnings from investments are credited to member accounts;
  - (q) the rights of members to inspect plan documents, actuarial reports, and other documents filed in accordance with the Law or regulations made thereunder;
  - (r) the name, address, and telephone number of the person to whom enquiries and complaints are to be addressed; and
  - (s) the address of the Director.
- (3) The following information shall be provided to a person upon becoming a member of a pension plan —
- (a) the expense ratio published directly before the date that the person becomes a member; and
  - (b) the investment return of the pension fund as calculated in the audited financial statements of the pension fund as prescribed in the National Pensions (Pension Fund Investments) Regulations (*1998 Revision*).

### **Notice of explanation of amendment to a pension plan**

- 12.** An administrator who is required to give notice of a proposed amendment under section 21(1) shall certify in writing to the Director within thirty days after the date on which the last of the notices were sent, details of the classes of persons who were sent notices, the date the last notice was sent, and that the notice was provided as required.

### **Notice of explanation and amendment under section 21(1)**

- 13.** The administrator shall deliver the notice required under section 21(1), and an explanation of the amendment, within sixty days after registration, to each member, former member or other person who is or will be affected by an amendment that is registered.



**Explanation of amendment provided with annual statement**

- 14.** Where an amendment is registered and the Director has dispensed with the notice required under section 21(1), the administrator may provide a notice and an explanation of the amendment to members with the next statement required under section 22 if that is due to be given within the period referred to in regulation 13.

**Contents of annual statement**

- 15.** (1) A statement required under section 22 shall contain, as recorded in the records of the administrator, at least —
- (a) the name of the plan and its registration number;
  - (b) the member's name and date of birth;
  - (c) the period covered by the statement;
  - (d) the date on which the member joined the pension plan, and, except for multi-employer pension plans, the date on which the member was employed by the employer;
  - (e) the member's normal retirement date under the pension plan;
  - (f) where applicable, the earliest date the member will be eligible to receive an unreduced pension;
  - (g) where applicable, the name of the person recorded as the member's spouse and children;
  - (h) any person designated by the member as a beneficiary for the purposes of the pre-retirement benefit under the Law;
  - (i) a description of any benefits provided on the death of a member and the name of any person designated as beneficiary;
  - (j) the amount of required contributions, if any, made to the pension fund by a member during the period covered by the statement;
  - (k) the accumulated amount of required contributions, if any, made to the pension fund by the member, including interest credited to such contributions, to the end of the period covered by the statement;
  - (l) the amount of any additional voluntary contributions made by the member to the pension fund during the period covered by the statement;
  - (m) the accumulated amount of any additional voluntary contributions made to the pension fund, including interest credited to such contributions, to the end of the period covered by the statement;
  - (n) in the case of a plan providing defined contribution benefits —
    - (i) the amount of employer contributions allocated to the member during the period covered by the statement;

- (ii) the accumulated amount of employer contributions, including interest credited to such contributions, allocated to the member, to the end of the period covered by the statement;
    - (iii) the date on which each payment is received by the administrator; and
    - (iv) the amount received as payment of the contribution and the contribution period for which payment is made for each employer and employee;
  - (o) in the case of a defined benefit pension plan —
    - (i) the member's years of employment for the purpose of the calculation of pension benefits, determined as of the end of the period covered by the statement;
    - (ii) the annual amount of pension benefit payable at normal retirement date accrued at the end of the period covered by the statement;
    - (iii) where salary is a factor in determining a pension benefit, the salary level utilised for the purpose of determining the benefit;
    - (iv) the date on which each payment is received by the administrator; and
    - (v) the amount received as payment of the contribution and the contribution period for which payment is made for each employer and employee;
  - (p) where applicable, a statement that special payments are being made to liquidate any liability;
  - (q) a statement setting out the treatment of any surplus in a continuing plan and on winding up;
  - (r) the funding ratio, on a "going concern" and a "winding up" basis, of the pension plan; and
  - (s) an explanation of any amendments affecting the member made to the pension plan during the period covered by the statement, if an explanation has not been provided under section 21(1).
- (2) The administrator shall provide a semi-annual statement required under section 22 within three months after the end of the second and fourth quarters of the financial year of the pension plan.

### **Documents or information available under section 23**

**16.** The following documents and information are prescribed for the purpose of section 23 —

- (a) the provisions of the current pension plan including any amendments to the plan;



- (b) any documents that relate to the pension plan that are required to be filed under the Law;
  - (c) the provisions of any previous pension plan including amendments thereto where the current pension plan is a successor to a previous version of the plan;
  - (d) the applicable provisions of any document that sets out the employer's responsibility with respect to the pension plan;
  - (e) a document that delegates the administration of the pension plan or pension fund;
  - (f) copies of any information returns that are filed in respect of the pension plan;
  - (g) copies of any financial statement or report under these Regulations that are filed in respect of the pension plan;
  - (gg) copies of the statement of investment policy for the pension plan;
  - (h) copies of any correspondence in respect of the pension plan between the National Pensions Board, Director or the Superintendent and the administrator within five years preceding the date of the request, except personal information that relates to a member or former member without the consent of that member or former member;
  - (i) copies of those parts of an agreement that concern the purchase or sale of a business or the assets of a business and that relate to the pension plan; and
  - (j) copies of any financial statement or audited financial statement for a pension plan that is filed.
- (2) The fee for a copy of any document referred to in subregulation (1) that is obtained from the administrator is fifty cents per page.
- (3) The minimum fee payable upon request for a copy of a document referred to in subregulation (1) is five dollars.
- (4) The minimum fee payable upon request for certified copy of a document referred to in subregulation (1) is ten dollars.
- (5) The administrator shall comply with a written request under section 23 within thirty days after receipt of the request.
- (6) A person making a request under section 23 is only entitled to have access to those parts of the pension plan that are applicable to that person.

## PART IV - Benefits

### Reciprocal transfer agreement-fifty per cent rule

- 17.** Benefits arising from the transfer of money or credits from one pension plan to another plan are prescribed for the purposes of paragraph (d) of section 31(7).

### Access to voluntary contributions

- 17A.** Access to a member's additional voluntary contributions pursuant to section 47(10) is limited to four times in any calendar year.

### Transfer

- 18.** (1) Repealed by regulation 14(a) of the National Pensions (General) (Amendment) Regulation, 2017.
- (2) The limitations, in accordance with which payments by the administrator under paragraphs (a)(ii) and (iii) of section 34(1) must be made, are that —
- (a) the retirement savings arrangement or the deferred life annuity to which the payment is to be made must be provided by an institution that is approved by the Director;
  - (b) the arrangements for payment must be approved by the Director; and
  - (c) in the event that the plan from which the transfer is to be made is a defined benefit pension plan that is not fully funded, the administrator may reduce the amount to be transferred within the time limit prescribed in subregulation (1) to seventy per cent of the commuted value, and in such event the balance, together with the investment earnings attributable to that balance, shall be transferred on the date that the fund becomes fully funded or five years from the termination of the member's employment, whichever date shall be the earlier, and in any event the administrator may transfer all or part of the balance before the period of five years has expired.
- (3) The date after which benefits under a pension plan shall have accrued in order for section 34 to apply in accordance with section 34(14) is the date one hundred and eighty-three days after the date on which section 34 comes into force.
- (4) An administrator shall —
- (a) provide a pension plan to which funds are to be transferred —
    - (i) an account of the mandatory and voluntary contributions to the pension plan made by the employee;
    - (ii) an account of the mandatory and voluntary contributions made to the pension plan by the employer; and



- (iii) an account of any additional contributions paid to the pension plan, from which a transfer is to be made, pursuant to section 52D of the Law; and
  - (b) provide the pension plan to which funds are to be transferred an attestation as to the accuracy of the information provided by the administrator under paragraph (a).
- (5) A transfer of funds from the Public Service Pensions Board to a pension plan to which the Law applies is not considered for the purpose of these regulations to be additional voluntary contributions.

### **Retirement savings arrangements**

- 19.** (1) The retirement saving arrangements prescribed for the purpose of paragraph (b) of section 34(1) are —
- (a) an individual retirement account with the member's approved provider; or
  - (b) a retirement savings arrangement approved by the Director.
- (2) An individual retirement account for the purposes of paragraph (a) of subregulation (1) shall set out —
- (a) that no money transferred, including all investment earnings, shall be withdrawn except —
    - (i) to transfer the money to the pension fund of a registered pension plan;
    - (ii) to transfer the money to another individual retirement account that meets the requirements of this regulation;
    - (iii) to purchase an immediate or deferred life annuity provided by a person authorised under the laws of the Islands to sell annuities under an insurance contract that meets the requirements of regulation 20, provided that the annuity does not commence on a date earlier than ten years prior to the normal pension entitlement date specified in section 26; or
    - (iv) subject to maxima to be prescribed from time to time by the Director;
  - (b) that no money transferred, including interest, may be assigned, charged, anticipated or given as security except as permitted by sections 55(2) and 56(4);
  - (c) that any transaction purporting to assign, charge, anticipate or give as security money transferred except as permitted under sections 55(2) and 56(4), is void;

- (d) that except as permitted in sections 40 and 53, no money transferred including interest, may be commuted or surrendered during the lifetime of the former member;
  - (e) that any transaction that contravenes paragraph (d) is void;
  - (f) that the transferee may not permit any subsequent transfer except —
    - (i) where the transfer is permitted under the Law and the regulations; and
    - (ii) the subsequent transferee agrees to administer the amount transferred as a pension or deferred pension in accordance with the Law and the regulations;
  - (g) that the transferee will advise in writing any subsequent transferee that the amount transferred must be administered as a pension or deferred pension under the Law and this regulation;
  - (h) that on the death of the holder of the registered retirement savings arrangement, the transferee will administer the money in accordance with section 39, which shall be applied to mean the balance of the money in the individual retirement account at the time of death;
  - (i) that larger periodic amounts will be paid to a member whose life expectancy is likely to be reduced because of a mental or physical disability; and
  - (j) the name of the beneficiary or beneficiaries.
- (3) An immediate or deferred life annuity that is purchased with funds from a prescribed saving arrangement shall not differentiate on the basis of sex of the beneficiary.

### **Insurance contract**

- 20.** An insurance contract under which a deferred or immediate life annuity will be provided under paragraph (c) of section 34(1) resulting from the transfer of the commuted value of a pension benefit or as the result of a purchase from a retirement savings arrangement shall set out that —
- (a) no money transferred, including interest, will be assigned, charged anticipated, or given as security except as permitted by the Law;
  - (b) any transaction purporting to assign, charge, anticipate, or give as security the money transferred except as permitted by the Law, is void;
  - (c) in the case of the unexpired period of a guaranteed annuity, the annuitant may commute a benefit provided under the annuity only for the purpose of transferring it into an individual retirement account except as permitted under sections 40 and 53;
  - (d) a transaction that contravenes paragraph (c) is void;



- (e) where the annuitant has a spouse at the time payments commence, the annuity shall be in the form of a joint and survivor annuity;
- (f) the amount of the life annuity will be determined on a basis that does not take into account the sex of the annuitant;
- (g) on the death of the annuitant before the payment of the annuity, the financial institution providing the annuity will administer the annuity in accordance with section 39; and
- (h) that larger periodic payments will be paid to a member whose life expectancy is likely to be reduced because of a mental or physical disability.

### **Filing of reciprocal transfer agreements**

- 21.** The administrator of a pension plan shall submit for filing a certified copy of any reciprocal transfer agreement entered into on or after the 24th June, 1996 within sixty days of the execution of the agreement.

### **Transfers - defined benefit plans**

- 22.** (1) Where a member or a spouse of a member is entitled to transfer the commuted value of member's or member's spouse's accrued pension benefits under a defined benefit plan pursuant to section 34, 39 or 43, and where the plan has a transfer ratio that is equal to or greater than 1.00, the administrator of the plan may transfer the whole of the commuted value of a pension benefit.
- (2) Where the administrator of a defined benefit plan has reason to believe that the transfer ratio of the plan may have been reduced to a value of less than 0.9 since the last valuation, the administrator shall not permit any transfers without having a new transfer ratio determined by an actuary.
- (3) Where the commuted value is calculated on a basis more generous than the prescribed minimum basis, the actuary shall confirm that the transfer will not impair the transfer ratio of the plan.
- (4) Notwithstanding subregulation (2), where a pension plan has a transfer ratio that is less than 1.00, the administrator may transfer an amount equal to the commuted value of the pension benefit to be transferred, including interest calculated at the rate credited to member contributions under regulation 31, multiplied by the transfer ratio, and the balance, including interest, shall be transferred by the administrator within five years of the date of the initial transfer and any transfer subsequent to the initial transfer shall be in accordance with subregulation (5).
- (5) Notwithstanding subregulation (4), where a plan has a transfer ratio that is less than 1.00, the administrator may transfer the whole of the commuted value of a pension benefit if —

- (a) the administrator is satisfied that an amount equal to the solvency deficiency for the individual transfer has been remitted to the pension fund; or
  - (b) the solvency deficiency for the individual transfer is less than five per cent of the year's maximum pensionable earnings for that year and the aggregate of transfer deficiencies for all transfers made since the last review date does not exceed five per cent of the market value of the assets of the plan at the time of transfer.
- (6) Any amounts transferred under a reciprocal transfer agreement that has been filed with the Director are subject to subregulations (2), (3), (4) and (5).
- (7) For the purpose of determining a commuted value for purposes of dividing pension assets on marriage breakdown, the value of any pension benefit payable to a spouse of a member shall be based on the age of the spouse of the member at the date of termination, and no allowance shall be made for the possibility of the member acquiring a different spouse after the date of termination.
- (8) An administrator of a defined benefit plan shall not make payment —
- (a) under paragraph (b) of section 34(1), unless the retirement savings arrangement meets the requirements of regulation 19(2).
  - (b) under paragraph (c) of section 34(1), unless the contract to purchase the deferred life annuity meets the requirements of regulation 20, and payments under the deferred life annuity shall not commence before the earliest date that the member may retire under the plan.
- (9) Payment under section 34(1) shall be made within one hundred and eighty days of the date of termination.

### **Statement after death of member or former member**

- 23.** (1) The administrator shall, within thirty days after receipt of notice of the date of death of a member or former member who is not receiving payments from the pension fund where the death results in the spouse, beneficiary or estate of the member or former member becoming entitled to a benefit, provide the spouse, beneficiary or legal representative with a statement that sets out —
- (a) the name of the pension plan and its registration number;
  - (b) the amount and method of payment of the benefit;
  - (c) the amount, if any payable under section 31(6);
  - (d) where applicable, the basis for the indexation of a pension;
  - (e) where applicable, the amount of the pension resulting from additional voluntary contributions; and



- (f) the options available to the spouse of the deceased member pursuant to section 39(2).
- (2) For the purposes of section 39(1) or (2), a spouse shall make an election within one hundred and eighty days after receipt of the notice referred to in subregulation (1) and a spouse who fails to make an election within this period shall receive a pension at the normal age of pension entitlement of the spouse under the terms of the plan.
- (3) The administrator shall comply with an election under subregulation (2) within sixty days after receipt of the direction from the spouse.

**Statement under section 43(5)**

- 24.** (1) An administrator provided with a certified copy of a court order under section 43(5) shall, where the member named in the order terminates employment, notify the person named in the order that the member has terminated employment and provide a copy of the statement given to the member and advise the person of the options available under section 34.
- (2) The notice referred to in subregulation (1) shall be given within thirty days after the administrator receives notice of the member's termination of employment.

**Accrual during spousal relationship**

- 25.** For the purposes of section 43(2), the pension benefits accrued during the period a member had a spouse shall be determined as if the member terminated employment at the valuation date in accordance with the terms of the plan at that date and without consideration of future benefits, salary or changes to the plan.

**Marriage breakdown**

- 26.** (1) Where a part of a pension benefit under a pension plan of a member is required to be transferred or paid to the member's spouse under a court order under section 43, a certified copy of the court order shall be delivered to the administrator before the administrator may effect a transfer or payment.
- (2) An administrator shall not, without the consent of all of the parties to the proceedings giving rise to the order, transfer a part of a pension benefit in accordance with a court order until all appeals have been finally determined, or the time for appealing has expired.
- (3) Upon the transfer of a part of a pension benefit to a member's spouse in accordance with a court order under section 43, the spouse shall, subject to this regulation, be deemed for the purpose of this regulation to be a member of the plan.

- (4) Subject to any agreement in writing between the member and the member's spouse to the contrary, a court order shall divide and transfer a pension which is in payment by —
- (a) calculating the aggregate commuted values of the remainder of the member's pension and of the spouse's survivor's benefit;
  - (b) dividing the total into shares to be specified by the court after taking into account the proportion of the period of accrual of contributions during the conjugal period of the member and the member's spouse; and
  - (c) actuarially re-calculating, in accordance with the amount of each share —
    - (i) the balance of the pension that is to continue to be payable to the member; and
    - (ii) the single life annuity that is to be payable to the spouse as from a commencement date that is to be determined by the court.
- (5) Subject to any agreement in writing between the member and the member's spouse to the contrary, where a court order under section 43 provides for the transfer to a member's spouse of a portion of a pension benefit which is not in payment from a defined contribution account under a defined contribution pension plan, the portions of the pension benefits of the member and the member's spouse shall be determined as follows —
- (a) the commuted value of the pension benefit accumulated in the member's defined contribution account during the conjugal period shall be determined and divided between the member and the spouse in proportions to be specified in the order;
  - (b) the spouse shall be entitled to a single life annuity, payable from the member's normal pension entitlement date under section 26 or from such other date as the court may specify, based on the value of the spouse's share of the commuted value of the pension benefit ascertained in accordance with paragraph (a) and actuarially adjusted as at the date the annuity begins to be payable to the spouse; and
  - (c) the member shall be entitled to a pension of the amount to which, were it not for the transfer of the spouse's portion, the member would be entitled under the terms of the plan, less an amount, the commuted value of which is equal to the commuted value of the spouse's annuity payable under paragraph (b), actuarially adjusted as at the date the pension benefit begins to be payable to the member.
- (6) Subject to any agreement in writing between the member and the member's spouse to the contrary, where a court order under section 43 provides for the transfer to a member's spouse of a portion of a pension benefit which is not in payment payable to a member under a defined benefit pension plan, the pension benefits of the member and the spouse shall be determined as follows —



- (a) the commuted value of the pension benefit accumulated during the conjugal period shall be determined and divided between the member and the spouse in proportions to be specified in the order;
  - (b) the spouse shall be entitled to a single life annuity actuarially adjusted and payable from the member's normal pension entitlement date under section 26, or such other date as may be specified in the order, based on the spouse's share of the commuted value of the pension benefit determined in accordance with paragraph (a); and
  - (c) the member shall be entitled to the pension benefit to which, were it not for the payment to the spouse, the member would be entitled under the terms of the plan, less an amount, the commuted value of which is equal to the commuted value of the single life annuity payable to the spouse under paragraph (b), actuarially adjusted as at the date the pension benefit begins to be payable to the member.
- (7) The aggregate of —
- (a) the commuted value of the pension benefit paid to a member; and
  - (b) the commuted value of the pension benefit paid to the spouse of a member,

under this regulation shall not be greater than the commuted value of the pension or pension benefit that would have been payable to the member had the marriage breakdown not occurred.

### **Contents of termination statement, etc.**

- 27.** (1) At least sixty days prior to a member's normal pension entitlement date under section 26 or the date at which a member of a pension plan has indicated that the member intends to retire, the administrator of the plan shall advise the member of any options respecting payment of the pension available to the member under the pension plan, the Law or the regulations and the time period in which the options may be exercised.
- (2) An administrator who does not receive adequate advance notice of the intended retirement necessary to comply with subregulation (1) shall provide the information referred to in subregulation (1) within thirty days following receipt by the administrator of a completed application required for commencement of the pension.
- (3) An administrator shall provide the retiring member with a statement under this regulation setting out —
- (a) the name of the pension plan and its registration number;
  - (b) the member's name and date of birth;

- (c) the date on which the member joined the pension plan and the years of employment credited under the plan for the purposes of calculating the pension benefit;
  - (d) where applicable, the name of the person recorded in the records of the administrator as the member's spouse;
  - (e) the date pension benefits commence payment;
  - (f) the amount of the pension to which the member is or will be entitled according to the records of the administrator and based on elections by the member;
  - (g) any increase or reduction in the pension resulting from early or postponed retirement;
  - (h) the amount of the pension benefit purchased with the additional voluntary contributions made by the member;
  - (i) the amount of the pension benefit purchased with contributions resulting from a transfer made on behalf of the member from another pension fund;
  - (j) any indexation provisions applicable to the pension or deferred pension;
  - (k) any benefit payable in the event of the member's death and the name of the person designated as the beneficiary of that benefit; and
  - (l) any other refunds under the plan to which the member is entitled.
- (4) The administrator shall provide the statement referred to in subregulation (3) within thirty days after the member's retirement or, where the administrator has not received notification prior to the retirement, within thirty days after the administrator's receipt of a completed application required for commencement of the pension.

### **Plan conversions**

- 28.** (1) Where benefits that have been accrued under a defined benefit plan, whether accrued before or after the effective date, are converted to a defined contribution account —
- (a) the conversion must be at the option of the individual member, and agreed to by the employer;
  - (b) the accrued benefits that are converted must be fully vested;
  - (c) the accrued benefits that are converted must be fully funded;
  - (d) the accrued benefits converted must be valued for the purposes of the conversion on the greater of —
    - (i) going concern basis, using the salary projections and other assumptions that were used in the most recently filed actuarial valuation report; or



- (ii) solvency basis, using the assumptions that were used in the most recently filed actuarial report;
  - (e) notwithstanding paragraph (d)(i) and (ii), the converted value of benefits accrued after the effective date may not be less than two times the member's required contributions plus interest thereon, as specified in regulation 31(4) or (5);
  - (f) a *pro rata* share of the surplus must be added to the member's defined contribution account;
  - (g) surplus, for the purposes of paragraph (f), is surplus —
    - (i) on a going concern basis if the amount in subparagraph (d)(i) is higher than the amount in subparagraph (d)(ii); and
    - (ii) on a solvency basis in any other case;
  - (h) paragraph (f) does not apply with respect to surplus that is attributable to the plan in existence before the effective date; and
  - (i) the right to convert shall be offered to all active members with accrued defined benefits under a plan.
- (2) Notwithstanding paragraph (i) of subregulation (1), where the conversion is of accrued benefits under a plan that was in existence at the effective date, the conversions may take effect on an individual member basis from the date the accrued benefits that are being converted become fully vested in the individual member under the terms of the plan and section 27 .

## PART V - Contributions

### Contributions under pension plan

29. (1) An employer, or any person required to make contributions under a plan on behalf of an employer, shall make payments to the pension fund or to the approved provider of amounts that are not less than the sum of —
- (a) all contributions received from employees, including money withheld by payroll deduction or otherwise from an employee, as the employee's contribution to the pension plan;
  - (b) all contributions required to pay the normal cost of the pension plan and any going concern, winding up and solvency unfunded liabilities; and
  - (c) all special payments required under a funding schedule submitted under section 46(3) .
- (2) The payments referred to in subregulation (1) shall be made by the employer or the person who is required to make contributions on behalf of the employer within the following time limits —

- (a) all sums received by the employer from an employee, including money withheld by payroll deduction or otherwise from the employee, as the employee's contribution to the pension plan, within fifteen days after the last day of the month in which the sum was received or deducted;
  - (b) employer contributions, within fifteen days after the last day of the month in which such contribution was due; and
  - (c) all special payments, in accordance with the time limits set out in the funding schedule submitted under section 46(3) .
- (3) A self-employed person shall make contributions to a pension fund or an individual retirement account in accordance with section 47(2) at least every month and the amount of the contribution shall be based on the self-employed person's earnings over the period since the self-employed person's last made a contribution.

### **Graduated scale of contributions**

#### **30. For the purposes of section 47(9) —**

- (a) employees in a defined contribution pension plan —
  - (i) younger than forty-one years of age may contribute to the pension plan at a minimum rate of —
    - (A) one per cent of the employee's earnings up to the year's maximum pensionable earnings of the employee during the year beginning on the 1st June, 1998;
    - (B) two per cent of the employee's earnings up to the year's maximum pensionable earnings of the employee during the year beginning on the 1st June, 1999;
    - (C) three per cent of the employee's earnings up to the year's maximum pensionable earnings of the employee during the year beginning on the 1st June, 2000;
    - (D) four per cent of the employee's earnings up to the year's maximum pensionable earnings of the employee during the year beginning on the 1st June, 2001; and
    - (E) five per cent of the employee's earnings up to the year's maximum pensionable earnings of the employee during the year beginning on the 1st June, 2002; or
  - (ii) forty-one and younger than forty-six years of age may contribute to the pension plan at a rate of —
    - (A) three per cent of the employee's earnings up to the year's maximum pensionable earnings of the employee during the year beginning on the 1st June, 1998;



- (B) four per cent of the employee's earnings up to the year's maximum pensionable earnings of the employee during the year beginning on the 1st June, 1999; and
  - (C) five per cent of the employee's earnings up to the year's maximum pensionable earnings of the employee during the year beginning on the 1st June, 2000;
- (b) employees in a defined benefit pension plan —
  - (i) younger than forty-one years of age may contribute to the plan at a minimum rate of —
    - (A) twenty per cent of the employee's contribution rate prescribed by the plan during the year beginning on the 1st June, 1998;
    - (B) forty per cent of the employee's contribution rate prescribed by the plan during the year beginning on the 1st June, 1999;
    - (C) sixty per cent of the employee's contribution rate prescribed by the plan during the year beginning on the 1st June, 2000;
    - (D) eighty per cent of the employee's contribution rate prescribed by the plan during the year beginning on the 1st June, 2001; and
    - (E) one hundred per cent of the employee's contribution rate prescribed by the plan during the year beginning on the 1st June, 2002 and thereafter; or
  - (ii) forty one and younger than forty-six years of age may contribute to the plan at a minimum rate of —
    - (A) fifty per cent of the employee's contribution rate prescribed by the plan during the year beginning on the 1st June, 1998;
    - (B) seventy-five per cent of the employee's contribution rate prescribed by the plan during the year beginning on the 1st June, 1999; and
    - (C) one hundred per cent of the employee's contribution rate prescribed by the plan during the year beginning on the 1st June, 2000;
- (c) the reduced contribution rates specified in subregulation (1) shall be determined by the employer after consultation with the employer's employees;
- (d) self employed persons may contribute to a defined contribution pension plan or an individual retirement account established or continued after the commencement at the rate of —

- (i) two per cent of their earnings up to the year's maximum pensionable earnings during the year beginning on the 1st June, 1998;
- (ii) four per cent of their earnings up to the year's maximum pensionable earnings during the year beginning on the 1st June, 1999;
- (iii) six per cent of their earnings up to the year's maximum pensionable earnings during the year beginning on the 1st June, 2000; and
- (iv) eight per cent of their earnings up to the year's maximum pensionable earnings during the year beginning on the 1st June, 2001,

and thereafter shall contribute at a rate of ten per cent of their earnings; and

- (e) self-employed persons may contribute to a defined benefit pension plan established or continued after the 1st June 1998 at a rate of —
  - (i) twenty per cent of the full contribution rate in the year beginning on the 1st June, 1998;
  - (ii) forty per cent of the full contribution rate in the year beginning on the 1st June, 1999;
  - (iii) sixty per cent of the full contribution rate in the year beginning on the 1st June, 2000; and
  - (iv) eighty per cent of the full contribution rate in the year beginning on the 1st June, 2001,

and thereafter shall contribute at the full required contribution rate arising from the actuarial assessment.

## Interest

- 31.** (1) Contributions made by or on behalf of members and former members of a defined contribution plan, and additional voluntary contributions to either a defined benefit plan or a defined contribution plan, shall be credited, not less frequently than monthly, with such rate of return as can reasonably be attributed to the operation of the pension fund or that part of the pension fund to which the contributions are made.
- (2) Notwithstanding subregulation (1), contributions to a pension fund may be credited with a guaranteed rate of return.
- (3) The rate of return described in subregulation (1) may take into account the reasonable expenses of the operation of the pension fund or that part of the pension fund to which the contributions are made.



- (4) Member contributions to a defined benefit plan, other than contributions referred to in subregulation (1), shall be credited not less frequently than annually with interest calculated at a rate that is not less than —
  - (a) a rate calculated on the basis of the yields of five year personal fixed term bank deposit rates as determined from time to time from the Canadian Socio-Economic Information Management (CANSIM) series B14045, as determined over a reasonable period, so that the averaging period does not exceed twelve months; or
  - (b) the United States federal mid-term rate issued monthly by the United States Internal Revenue Service that is applicable to the first month of the plan year, or from month to month, as the administrator shall determine.
- (5) Notwithstanding subregulation (4), a pension plan may provide that interest shall be credited not less frequently than annually, with such rate of return as can reasonably be attributed to the operation of the pension fund or that part of the pension fund to which the contributions are made.
- (6) Interest shall begin to accrue on the contributions of members and former members to a pension plan not later than the first day of the month following the month in which the contributions were required to be paid into the pension fund, starting with contributions made or required to be made after the effective date.
- (7) If a person is required to be paid a commuted value or a lump sum from a pension plan, the amount owing to the person shall accumulate interest, at a rate not less than the rate of interest that was used in determining the commuted value, from the date on which the commuted value or lump sum was required to be paid to the beginning of the month of payment.

## **PART VI - Locking-in**

### **Refunds**

- 32.** The requirement to be met before contributions or interest thereon may be refunded to a member under section 53(3) are that either the contributions and additional voluntary contributions, or the benefits which the pension plan is liable to pay after the proposed refund of contributions, will remain fully funded.

## **PART VII - Termination and Winding-up**

### **Notice of proposal to wind up pension plan**

- 33.** A notice of proposal to wind up a pension plan required under section 58 shall include —



- (a) the name of the plan and its registration number;
- (b) the proposed date of winding up; and
- (c) notice that each member, former member or claimant entitled to a pension, deferred pension, any other benefit or a refund will be provided with an individual statement setting out entitlements and options under the plan.

### **Fee on notice of proposal to terminate and wind up**

**33A.** The fee due to be paid by the administrator upon giving notice of a proposal to terminate and wind up a pension plan pursuant to section 58(5) is one thousand dollars.

### **Preparation of winding up report, etc.**

- 34.** (1) A winding up report required to be filed under section 60 shall be prepared by —
- (a) an actuary; or
  - (b) where all pension benefits are defined contribution benefits or the pension plan is a fully insured plan established prior to the 1st June, 1998 and is underwritten by a contract or contracts with an approved provider and does not require any contributions to be made by employees, by an accountant or by a trust corporation responsible for administering the pension plan or fund.
- (2) If a pension plan is being wound up in whole or in part, the minimum commuted value for the purposes of section 63(2) of a pension, deferred pension or ancillary benefit shall be the amount required to purchase the benefit from an insurance company licensed to carry on business in the Islands on the date of termination of the plan.
- (3) The administrator shall file the winding up report within six months following the date of termination of the plan in whole or in part, or may apply to the Director for an extension, providing the Director with full details for the cause of the delay, and the Director may or may not approve such application.
- (4) In addition to the winding up report required under section 60, the administrator shall file all outstanding annual information returns required to be filed up to the date of termination of the pension plan within six months after the date of termination.
- (5) Payments of refunds of employee contributions with interest to persons not entitled to a pension, deferred pension or ancillary benefit are prescribed for the purposes of section 60(3).
- (6) The administrator of a pension plan that is terminated and that provides defined benefits may, after the winding up report required under section 60 has



been approved by the Director and, prior to the completion of any additional funding required under section 65, pay an amount equal to —

- (a) the accumulated value of any additional voluntary contributions;
  - (b) the accumulated value of required contributions made by a member or former member; and
  - (c) the value of any pension, deferred pension or ancillary benefits accrued as of the effective date of termination with respect to employment and remuneration until that date in accordance with the plan provisions, to the extent that such benefits have been funded and after appropriate adjustments for any payment made in accordance with paragraphs (a) and (b).
- (7) The money that the employer, or each participating employer, pays into the pension fund under section 65(1) shall be paid on or before the date of termination and until so paid in shall bear interest from that date of the notice of termination at the Islands prime rate from time to time plus five per cent.

### **Notice of entitlements**

- 35.** (1) In addition to entitlements under the plan and any options available, a notice provided to each member, former member or any other person entitled under section 62 shall include —
- (a) the name of the pension plan and its registration number;
  - (b) the member's name and date of birth;
  - (c) the date of the winding up of the plan;
  - (d) the date on which the member joined the pension plan, and, except in the case of multi-employer pension plans, the date the member was employed by the employer;
  - (e) the name of the member's spouse as indicated in the records of the administrator;
  - (f) the amount of required contributions made to the pension fund by a member since the date of the last annual statement required under section 22;
  - (g) the accumulated amount of required contributions made to the pension fund by the member, including interest credited to such contributions, to the date of winding up;
  - (h) the amount of additional voluntary contributions made by the member to the pension fund, since the date of the last annual statement required under section 22;
  - (i) the accumulated amount of additional voluntary contributions made by the member to the pension fund, including interest credited to such contributions, to the date of winding up;

- (j) any amount transferred since the date of the last annual statement required under section 22 from another pension plan on behalf of the member and the pension benefit under the plan attributable to that amount;
  - (k) in the case of a defined contribution pension plan —
    - (i) the amount of employer contributions allocated to the member since the date of the last annual statement required under section 22; and
    - (ii) the accumulated amount of employer contributions, including interest credited to such contributions, allocated to the member on the plan records, to the date of winding up;
  - (l) in the case of a defined benefit pension plan —
    - (i) the member's years of employment for the purpose of the calculation of pension benefits including any period credited under section 64(3); and
    - (ii) where salary is a factor in determining a pension benefit, the salary level utilised for the purpose of determining the benefit;
  - (m) the rate of interest credited to contributions required to be made by the member since the date of the last annual statement required under section 22;
  - (n) the time period in which any option must be exercised;
  - (o) if there are insufficient assets to pay all pension benefits, a description of any reductions made to the person's benefits;
  - (p) if there are surplus assets, a statement of the method of distribution and, if applicable, the formula for allocation of any surplus among the plan beneficiaries;
  - (q) notice where copies of the winding up report are available and information on how copies of the report may be obtained; and
  - (r) notice of the person the recipient of the statement may contact with respect to any questions arising out of the statement.
- (2) A recipient of a statement referred to in subregulation (1) who is entitled to elect an option shall forward the election to the administrator within sixty days after receipt of the statement.
- (3) Except where approval has been given by the Director, the administrator shall comply with an election made by a person on the winding up of a pension plan within thirty days after —
- (a) the receipt of the election; or



- (b) the receipt of the notice that the winding up report has been approved by the Director,
- whichever is the later.

### **Insufficiency after winding up**

- 36.** In the event that the money in a pension fund is not sufficient to pay all the pension benefits on the winding up of the pension plan in whole or in part —
- (a) the pension benefits and other benefits payable to members shall be reduced in proportion to the funded ratio of the plan on a plan termination basis after the expenses of the winding up are taken into account;
  - (b) where payments have been made to former members after the date of the termination or partial termination in amounts exceeding the amounts payable under paragraph (a), amounts not exceeding ten per cent of the payment shall be withheld from each future payment to such former members until the overpayment has been fully set off; and
  - (c) if additional funding is made to the plan after the date of the termination or partial termination in order to make up the deficiency, the amount of pension benefits and other benefits shall be adjusted accordingly.

### **Filing of documents after winding up**

- 37.** (1) The administrator shall file, within six months after the date of termination of the plan, for the period from the end of the most recent financial year to the effective date —
- (a) an annual information return under section 16; and
  - (b) audited financial statements.
- (2) Within thirty days after final distribution of the assets of a pension plan under section 60, the administrator shall give the Director written notice that all the assets of the plan have been so distributed.

## **PART VIII - Surplus**

### **Distribution of surplus**

- 38.** (1) An administrator shall only use the ongoing surplus after an actuarial assessment under a defined benefit pension plan in accordance with subregulation (2).
- (2) The surplus shall be used —
- (a) firstly, to maintain an adequate security margin in the plan in accordance with guidelines to be issued from time to time by the Director;

- (b) secondly, to make inflation adjustments to the existing benefits in accordance with section 45 and with subregulation (3); and
  - (c) thirdly, in reducing the contribution rate equally of both the employee and the employer.
- (3) The inflation adjustments that are provided shall be made —
- (a) by indexing the benefits in accordance with a formula based upon increases in the annual Consumer Price Index of the Islands;
  - (b) by providing an annual percentage increase in the amount of the benefits or an annual increase of a specified amount; or
  - (c) by a combination of the methods described in paragraphs (a) and (b).
- (4) For the purpose of subregulation (3), the employer may select the method of providing the inflation adjustments.

## **PART IX - Sales, Transfers and New Plans**

### **Successor employer**

- 39.** The terms and conditions in accordance with which a transfer of assets made under section 68(4) are that —
- (a) in the case of a defined contribution pension plan, the full value of the defined contribution accounts of the employees who become employees of the successor employer shall be transferred;
  - (b) in the case of a defined benefit pension plan, the assets transferred shall be an amount equal to the solvency assets of the plan multiplied by the proportion that the solvency liabilities of the transferring members bears to the total solvency liabilities of the plan at the date of the transfer;
  - (c) a transfer report, approved by the Director, prepared and certified in the case —
    - (i) of a defined benefit pension plan, by an actuary; or
    - (ii) of a defined contribution pension plan, by an independent accountant or auditor,
- shall be filed with the Director;
- (d) where the liabilities and related assets of the transferring members are transferred to a successor plan having existing members, the Director shall not approve a transfer report until the Director is satisfied that the treatment of ongoing funding and surplus in both plans is equitable among all members concerned in the affected plans; and
  - (e) notice of the transfer shall be given to members and former members of the prior plan and to the members and former members, if any, of the



successor plan, disclosing the funded ratios on a going concern and on a plan winding up basis of both the prior plan and the successor plan.

### **Adoption of a new pension plan**

**40.** The terms and conditions to which transfers of assets under section 69 are subject are that —

- (a) in the case of a defined contribution pension plan, the full value of the defined contribution accounts of the employees who become employees of the successor employer shall be transferred;
- (b) in the case of a defined benefit pension plan, the assets transferred shall be an amount equal to the aggregate of the accrued benefits of the transferring members valued, for each member, on the greater of —
  - (i) going concern basis, using the salary projections and other assumptions that were used in the most recently filed actuarial valuation report;
  - (ii) solvency basis, using the assumptions that were used in the most recently filed actuarial report,

and if there are insufficient assets in the existing pension plan, the shortfall shall be paid by the employer to the successor pension plan on the date of transfer;

- (c) a transfer report, approved by the Director, prepared and certified in the case —
  - (i) of a defined benefit pension plan, by an actuary; or
  - (ii) of a defined contribution pension plan, by an independent accountant or auditor,

shall be filed with the Director;

- (d) where the liabilities and related assets of the transferring members are transferred to a successor plan having existing members, the Director shall not approve a transfer report until the Director is satisfied that the treatment of ongoing funding and surplus in both plans is equitable among all members concerned in the affected plans; and
- (e) notice of the transfer shall be given to members and former members of the existing plan and to the members and former members, if any, of the successor plan, disclosing the funded ratios on a going concern and on a plan winding up basis of both the existing plan and the successor plan.

**Publication in consolidated and revised form authorised by the Cabinet this 13th day of March 2018.**

**Kim Bullings**  
*Clerk of the Cabinet*

