Bermuda National Pension Scheme, Occupational Pensions

Briefing Summary: Where we are now - the highlights

Service Area: Employment, Pensions and Incentives, Trusts and Private Wealth

Location: Bermuda

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The National Pension Scheme (Occupational Pensions) Amendment Acts 2019, 2020 and 2021 together introduced extensive amendments to the National Pension Scheme (Occupational Pensions) Act 1998, most of which came into force on various dates between 30 December 2019 and 5 July 2021. Below is a summary of the most important of those amendments.

All registered plans

- The amendments to the legislation that would otherwise require non-Bermudian employees (unless exempted) to be enrolled in a registered pension plan have yet to be brought into operation.
- The definition of "self-employed person" does not distinguish between Bermudians and non-Bermudians such that the legislation applies to any person who is self-employed.
- Administrators may now send annual statements to members by electronic means to the address provided by the member for the purposes of electronic communication.
- All trustees must be approved by the Pension Commission. The application deadline for trustees acting prior to this requirement becoming effective has now passed. It was 2 September 2020. Any trustees that missed this deadline should apply for an extension of time to submit the necessary forms. Failure to do so could result in a conviction and liability to fines or imprisonment or both.
- All assets of a registered pension plan must be held in a separate and distinct fund by an approved trustee only.
- An employer who fails to pay contributions monthly, in arrears within 30 days is liable to pay interest on the unpaid contributions (employee, if applicable and withheld, and employer contributions) at the rate of not more than 7% per annum as prescribed by the Minister of Finance, in addition to the unpaid contributions.

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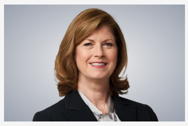
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- The required vesting period is 1 year, subject to approval by the Pension Commission of another vesting period in the case of multi-employer pension plans.
- The commuted value or account balance, as applicable, of a member who terminates employment must be paid or transferred by the plan administrator within 45 days of receipt of the member's direction in accordance with the options permitted in the legislation.
- The commuted value or account balance, as applicable, of a member who terminates employment and fails to provide a direction shall be dealt in accordance with the administrator's fiduciary obligations or as directed by the Pension Commission.
- The above two requirements are subject to a pension plan that provides for an employee who terminates employment to remain a member and the member electing to do so.
- The beneficiary of a member who dies before completion of one year (previously it was two years) of membership in the pension plan, will receive a lump sum payment equal to the member's contributions, if any, plus earnings thereon.
- A pension plan may permit variation of pension payments due to the mental or physical disability of a member which disability, in the opinion of a qualified medical practitioner, is likely to reduce the member's life expectancy to 5 years or less.
- Small pensions having a commuted value or account balance, as applicable, of $50,000 or less may be paid out as a lump sum where a member or former member has attained age 65.
- Surplus may only be paid out of a pension that has been wound up with the consent of the Pension Commission.
- The threshold for administrators submitting an auditor's report to the Pension Commission within 6 months of the end of the fiscal year is $3,000,000 or more in assets.
- An employer must retain the records specified in the legislation with respect to its pension plan and each of its employees for a minimum of 7 years following the date of termination of the employee.
- Financial hardship refunds are now available to cover funeral expenses.

Defined contribution plans only

- "Pensionable earnings", used to determine the value of employer and employee required contributions, include **any** bonus, including payments from a profit-sharing scheme, and remain capped at $200,000 per year, unless the cap is disapplied under the terms of the pension plan.
- The submission of a tri-annual report by plan administrators to the Pension Commission in relation to defined contribution pension plans is no longer required.
- A member or former member who has attained age 65 or older may receive a lump sum payment of up to 25% of their account balance.
- Administrators of defined contribution pension plans must ensure a range of investments that is subject to approval by the Pension Commission from time to time.

This briefing note is intended to highlight the most important amendments to the National Pension Scheme (Occupational Pensions) Act 1998 that have come into effect over the last few years. For further guidance about the National Pension Scheme (Occupational Pensions) Act 1998 as amended, please contact us.