Annual Report
Assuring a future
for the Cayman Islands Workforce
2010-2011
I. CHAIRMAN’S INTRODUCTION

In the previous financial year, the National Pensions Board (“NPB”) developed a transition plan that, in conjunction with section 79 of the National Pensions Law, guided the work of the NPB in the 2010/11 period.

As a result, the NPB was able to complete the following items:

- Review the National Pensions Law and Regulations, to provide the Minister with the NPB’s recommendations for his proposed restructuring of the National Pensions Office (“NPO”)
- Review the 2007 Mercer Report on the review of the National Pensions Law and the 2008 NPB recommendations
- Review the annual budgets for the NPO and assess resources and revenues needed to comply with the National Pensions Law and Regulations
- Meet with the Legal Department in relation to the pension related cases
- Meet with other regulatory bodies such as the Immigration Department
- Comment on changes to the National Pensions (Pensions Fund Investment) Regulations
- Review the NPO Standard Operating Procedures
- Provide input to the Office of the Complaints Commissioner’s Own Motion Investigation of the National Pensions Office & National Pensions Board
- Sustain effective communications and a good working relationship with the Ministry

The NPB spent a considerable amount of its time reviewing the proposed amendments to the National Pensions Law. These various amendments included the legislative changes that would allow persons to access pension assets to assist with housing purchases, the amendment that would suspend both employee and employer pension contributions as well as the revamping of pension regime and the National Pensions Law.

While the NPB did not support the changes proposed by the Government to divert pension assets to assist with housing (because that undermines the core purpose of having funds available for retirement), the NPB fulfilled its mandate and provided the Ministry with its views and recommendations on all proposed amendments. Additionally, the NPB appreciated the Ministry’s inclusion of the NPB’s perspective in the development and revision of legislative changes to the National Pensions Law and Regulations. Furthermore, the NPB also appreciated the tireless work of the Superintendent and the staff of the NPO and looked forward to the increased resources for the NPO that were discussed with the Ministry.

Oren Merren, AB, LLB, MBA, LLM
Chairman, National Pensions Board
II. BACKGROUND

The National Pensions Board ("the Board") is established under Section 78 of the National Pensions Law (2010 Revision) ("the NPL"). The Board is to consist of a Chair, a Deputy Chair and between 5 and 9 additional members. The appointment of Board Members is to be gazetted and its duties, responsibilities and powers are laid out in the NPL and its Regulations. The Superintendent of Pensions is the Chief Administrative Officer of the Board as stated in section 79 (2) of the NPL.

Pursuant to section 80 of the NPL, the duties of the Board are to:
- Administer the NPL and its Regulations;
- Promote the establishment, extension and improvement of pension plans throughout the Islands;
- Advise the Minister in respect of business of the Board; and
- Make recommendations to the Minister in respect of pension plans.

III. COMPOSITION:

During the timeframe of this report, the members of the National Pensions Board were:

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<tr>
<th>Chairman:</th>
<th>Mr. Orren Merren</th>
<th>Term Expires</th>
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<td></td>
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<td>Oct 2012</td>
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<tr>
<th>Deputy Chairman:</th>
<th>Mrs. Rhonda Kelly</th>
<th>Term Expires</th>
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<tr>
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<td>Mr. Kimbert Solomon (December 2010 to October 2013)</td>
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<th>Members:</th>
<th>Term Expires</th>
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<td>Mr. William Adam</td>
<td>Oct 2011</td>
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<td>Mr. Vaughan Carter</td>
<td>Oct 2011</td>
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<td>Mrs. Delores Gordon</td>
<td>Oct 2011</td>
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<td>Mrs. Linda Bush</td>
<td>Oct 2012</td>
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<td>Mr. John Pitcairn</td>
<td>Oct 2012</td>
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<tr>
<td>Mr. Edward Bodden</td>
<td>Oct 2012</td>
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<tr>
<td>Ms. Philippa McFarlane</td>
<td>December 2010 to October 2013</td>
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Ms. Amy Wolliston, Acting Superintendent of Pensions was formally appointed as the Superintendent of Pensions in October 2010. The Superintendent serves as the Chief Administrative Officer to the Board and the recording secretary of the Board is a staff member of the National Pensions Office.

IV. STAFFING LEVELS

The staff complement of the National Pensions Office for 2010-11 financial year was as follows:
<table>
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<th>YEAR END</th>
<th>INSPECTORS</th>
<th>TOTAL STAFF MEMBERS</th>
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<tr>
<td>June 2007</td>
<td>3</td>
<td>8</td>
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<tr>
<td>June 2008</td>
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<td>8</td>
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<td>June 2009</td>
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<td>June 2010</td>
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<tr>
<td>June 2011</td>
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<td>6</td>
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As planned, the third Pensions Inspector started early in the financial year and enhanced the capacity of the NPO to prosecute employers. There were also efforts to recruit the NPO’s 4th Inspector, but that was unsuccessful as the parties could not come to an agreement on the terms.

Unfortunately, by the end of the year, another Inspector resigned leaving the office with only 2 Pensions Inspectors. However, approval was granted to commence the recruitment process and by the end of the year, interviews were already completed to replace the Inspector that resigned. The Ministry also worked to identify additional funding in the budget to further expand the recruitment of Pensions Inspectors which was impacted by the budget cuts that occurred.

In 2010/11, the NPO experienced other staff turnover with the resignation of the Receptionist. However, that postholder was subsequently replaced in the following financial year. Additionally, a new Administrative Officer was hired to replace another staff member that resigned at the end of the prior financial year.

While NPO was still experiencing staff turnover, the staff complement was slowly starting to increase which was welcomed by both the Superintendent and the Board. However, the recruitment of a new Deputy Superintendent was placed on hold, given the ongoing legislative reform.

Amongst the staff changes, the NPO also moved from Anderson Square to Bermuda House in September 2010, in an effort to reduce costs and consolidate departments under the same Ministry.

V. NATIONAL PENSIONS BOARD MEETINGS

There were eleven Board meetings held this year and the schedule of meetings was as follows:

<table>
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<tr>
<th>BOARD MEETINGS</th>
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<tr>
<td>14th December 2010</td>
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<td>20th January 2011</td>
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<td>27th January 2011</td>
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<td>3rd February 2011</td>
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<td>10th February 2011</td>
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<td>17th February 2011</td>
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<td>Date</td>
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<td>10th March 2011</td>
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<td>31st March 2011</td>
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<td>12th May 2011</td>
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<tr>
<td>6th June 2011</td>
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<tr>
<td>14th June 2011</td>
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With the ongoing legislative amendments planned by the Ministry, it was initially anticipated that the National Pensions Board would be dissolved by 1st July 2011 if the new National Pensions Bill (“the Bill”) was passed in the Legislative Assembly on schedule. Consequently, a substantial amount of the Board’s and Superintendent’s time and attention was spent focusing on the Bill, with assistance from the Ministry’s Legal Consultant.

VI. ADMINISTRATION OF THE LAW AND REGULATIONS

During this financial year, the annual renewal of registrations showed that there were over 50,000 pension accounts in existence, which held over CI$731,000,000 in invested assets (based on plan year end data for the 2011). In addition, the pension plans received over CI$82,000,000 in contributions and about CI$45,000,000 in benefits were paid out to members.

The following chart illustrates the growth of pension plan assets over the last five years.

![Growth of Registered Pension Plan Assets (expressed in Millions)](chart)

Following the sale of the pension plan administrator in late 2009, in this financial year, work continued in line with the NPO’s and Board’s terms and conditions surrounding the sale and appointment of the subsequent pension plan administrator.

In addition, one pension plan administrator indicated that their pension plan was interested in winding up. As a result, the necessary documentation, notices and reports were filed this financial year which resulted in the required approval for the members’ pension assets to be transferred to one of the multiemployer pension plans already registered locally. Accordingly, the pension plan formally wound up.

National Pensions Board
Another pension plan administrator also advised of their intention to wind up their pension plan as well. Accordingly, the relevant process commenced this year.

At the start of this reporting period, there were 685 open cases for follow-up investigation. An open case is defined as an employer that is reported as delinquent regardless of the source of that report. During the year, 74 cases were closed, 100 new cases were identified and at year end, 711 cases remained open.

During the 2010/11 financial year, the NPO closed 74 cases which resulted in the collection of over CI$443,709.20 for pension plan members’ accounts.

Under section 48 of the NPL, the administrator or an agent of an administrator shall notify the Superintendent in writing of any contribution which is in arrears within forty five days of becoming aware that such contribution has not been paid. Subsequently, the NPO initiates investigations, issue directives, when necessary and then takes action.

With all of the projects, legislative changes and ongoing pension matters, the 2010/11 financial year was demanding on the resources of the NPO. The Acting Superintendent was formally appointed as Superintendent, but the post of Deputy Superintendent was not filled which proved to be challenging and impacted the activities of the NPO.

In relation to the prosecution of employers under the NPL, charges were brought against another employer by the end of June 2011. One of the employers was a parent company consisting of multiple entities. Collectively, the employers owed over CI$750,000 and given these significant amounts, the Superintendent determined that prosecution was the best recourse in order to bring resolution to these matters. While the preparation of the necessary evidence for the Legal Department took a considerable amount of the Inspectors’ time, it proved worthwhile when the Legal Department supported with the prosecution recommendation.
The discussion of administrative fines was ongoing especially given the reform and legislative changes that were underway. It was expected that the new Fixed Penalty Ticket regime would be included in the National Pensions Bill that was being drafted. The ongoing volume of cases continued to highlight the need for an alternative method of enforcement. This matter was discussed with the Ministry and the Board as explained below.

In addition, the need of collaborative enforcement efforts with Immigration and Trade and Business Licensing remained a feasible approach to building the culture of compliance which was one of the objections that the Ministry’s pension reform sought to address.

VII. PENSION AWARENESS, DEVELOPMENT AND TRAINING

PENSIONS HOLIDAY (SUSPENSION OF PENSION CONTRIBUTIONS)

The suspension of pension contributions also known as “the Pensions Holiday” came to an end for Caymanians in April 2011. As per the National Pensions (Amendment) Law, 2010, Caymanians and their employers were able to suspend their pension contributions for one year, after filing the required documentation and obtaining “approved person” status with their pension plan administrator. Based on the data received from the pension plan administrators, approximately 1,000 Caymanians participated in the “pensions holiday”.

As part of the ongoing education of this matter, the Superintendent participated in CITN’s program, “Let’s Talk to the Experts” along with one of the pension plan administrators. In addition, press releases were completed to educate employers, employees and the general public when the “pensions holiday” ended for Caymanians.

FREEDOM OF INFORMATION (FOI) REQUESTS

The NPO received seven FOI requests during the timeframe of this report. The requests sought information on the following topics: the salary increments of staff, delinquent employers, internal monthly reports, pension plan audited financial statements, delinquency reports and auditor communication.

VIII. UPDATES AND RECOMMENDATIONS TO THE MINISTRY

ACCESS TO PENSION FOR HOUSING PURPOSES

On 15 September 2010, Private Member’s Motion No.3/10-11 on Pension Deductions was passed by the Legislative Assembly. This resolved that “the Government considers amending the necessary legislation so as to allow Caymanians to make a one-time withdrawal of up to CI$35,000 from their pension for the sole purpose of providing a deposit to a local financial
institution towards the purchase of either a parcel of land, or the construction of a new home or an existing residence or apartment in the Cayman Islands.”

Following the passage of the Private Member’s Motion and the approval of Cabinet, work began on the preparation of a separate amendment to the NPL in order to accomplish the objectives of the Motion, prior to the completion of the National Pensions Bill. In preparing this amendment, the Ministry consulted with various stakeholders including pension plan administrators, the Superintendent and the Board.

The Board did not support this amendment and met with the Minister in mid 2011 to communicate their concerns, which were formally documented in a letter a few months later, pursuant to their responsibility under section 80 of the NPL. The Board’s concerns were that the proposed amendment permitted an inappropriate use of pension assets which should be intended for income replacement in retirement especially given the age of the Cayman Islands’ pension regime. The Board was also of the view that there were already housing programmes in place to ensure that Caymanians are able to borrow money to purchase land / homes. Accordingly, the Board held the view that such programmes should be refined rather than use pension assets for such a purpose.

As previously agreed by the Minister, during the legislative drafting process, the Board was provided with copies of the draft amendment for their review and as requested, the Board provided the Ministry with their comments. The proposed amendment was subsequently passed in the 2011/12 financial year.

**REVISION OF PENSION REGULATION**

Since informing the Board of the pensions legislation reform that was underway, this year, the Board spent considerable time providing the Ministry with its perspective on legislative changes including reviewing the actual draft bills as they were made available.

The Board was of the view that there needs to be a pensions adequacy review every five years which is conducted by an independent consultant. The review should take into account a variety of factors including the affordability of any increase for employers and employees, inflation, prior investment return and the minimum living wage. Based on the findings of the review, the Board believed that the contribution rate and other key items, such as the year’s maximum pensionable earnings, would be adjusted accordingly.

The Board also was of the view that the the normal retirement age should be consistent across the civil service and the private sector and any changes to the normal retirement age should be
implemented on an incremental basis. In line with the Mercer Report, the Board supported an increase in the normal retirement age to 65 years old.

If, as proposed, there will be two regulators for pensions matters, CIMA and a new Inspectorate (formerly the NPO), then the Board recommended that there was a mechanism in the proposed National Pensions Bill that would require information to be shared between CIMA and the new Inspectorate.

The Board also supported the concept of charging employers for the compliance work undertaken by the NPO to address their delinquency. The Board was also of the view that the money collected should be retained by the NPO however that matter needed to be explored with the Ministry of Finance.

The eligibility of employees was also discussed by the Board. Accordingly, the Board recommended that persons not requiring a work permit to work in Cayman (such as Caymanians and permanent residents) should commence contributions immediately, as contained in the current NPL. However, the Board was of the view that short-term employees on a work permit should not have to pay pension contributions until such employees have worked one year in the Cayman Islands.

The issue of compliance was also discussed throughout the legislative process. The Board believed that employees should be notified after their employer is reported delinquent to the NPO. The timeframe for the notification was discussed and some members were of the view that the earlier the employees are made aware, the greater the chances of employees providing supporting documentation to have the arrears determined. Alternatively, there was a concern regarding the administrative costs of notifying all employees every time there was a slight delay in the remittance of their employers’ pension contributions.

Discussions were also held regarding the best method to improve the efficiency and effectiveness of enforcement actions relating to employers. The Board was informed that Legislative Drafting recommended the use of a Fixed Penalty Ticket (“FPT”) approach. Furthermore, the Board was notified that Cabinet approved the new approach in an attempt to improve functionality and reduce the workload of the Legal Department. The Board was advised that with the FPT approach, it was anticipated that the Legal Department would only have to be involved in enforcement cases where the employer has opted to go to Court or the FPT was appealed. Under the FPT approach, it was envisioned that the penalties would be less than those fines that could be imposed by the Court and the new approach would still require the employer to pay their pensions arrears. The new approach was still being drafted as part of the legislative reform however it was expected to enable the NPO to better enforce the provisions of the NPL.
INVESTMENT REGULATIONS

The Ministry approved the commencement of the Investment Regulations portion of the ongoing Pensions Reform project. The initial step was the selection of an independent consultant to review and provide recommendations for the amendments to the National Pensions (Pension Fund Investments) Regulations. A key concern was the cost of the project which was estimated to be about $50,000 and the funding for the project was to be paid by the NPO.

To that end, work began on the Request for Independent Pensions Consultant Project Submissions document that was to be remitted to the specialist consultants in the pensions investment field. The document was paramount to the start of the review of the investment regulations since it determined the selection criteria for the consultants as well as the terms of reference for the project.

IX. ANY OTHER BUSINESS

OFFICE OF THE COMPLAINTS COMMISSIONER (“OCC”) OWN MOTION INVESTIGATION

In September 2010, the OCC report entitled, “Penny Pinching Pensions” was tabled in the Legislative Assembly. At the time of the OCC investigation, the Ministry had already announced its plan to review and reform the pensions regime including the establishment of separate regulators for pension plans and their administrators as well as private sector employers. This information was shared with the OCC as part of their investigation.

Given the Ministry’s review that was underway, the need for legislative changes was already identified and, following consultation between the Ministry, the Superintendent and the Board, drafting instructions were ongoing and a new National Pensions Bill was prepared within this financial year. Additionally, other improvements within the NPO were planned including procedural changes and increased resources to bolster the enforcement of the NPL.

Following the release of the OCC report, updates on the legislative changes and other matters were provided to the OCC on a regular basis.