Annual Report
Assuring a future for the Cayman Islands Workforce
2011-2012
I. CHAIRMAN’S INTRODUCTION

The National Pensions Board ("NPB") continued its role in the 2011/12 financial year and focused primarily on the ongoing review of the National Pensions Law and Regulations. Of the twelve meetings held in the period of this report, eight focused on the proposed legislative amendments.

In addition to providing the Ministry with feedback on the proposed changes to the National Pensions Law, the NPB also met with the Hon. Minister to discuss their perspective on the changes, which was welcomed and appreciated by the Ministry. The NPB acknowledges that the Ministry’s inclusion of the NPB’s viewpoint ensures that they are able to fulfil their statutory responsibilities under the legislation.

In April 2012, the National Pensions (Amendment) Law, 2010, which was also known as the "Pensions Holiday" expired. As a result, all employers and employees were required to resume the payment of pension contributions. The NPB welcomed the expiry of this legislative amendment and was pleased that the Government did not opt to extend the amendment’s effective period.

However, the Government did proceed with the National Pensions (Amendment) Law, 2011 which permitted Caymanians access to their pensions contributions in order to purchase property and houses/dwelling units. The NPB did not support this amendment and shared its viewpoint with the Ministry, to the effect that diverting pension assets to assist with housing undermines the core purpose of having funds available for retirement. However, the amendment was passed in the Legislative Assembly in late 2011.

The NPB fully supported the Ministry’s decision to review and revise the National Pensions (Pension Fund Investments) Regulations. As a result, the NPB vetted the terms of reference for the project and actively contributed by providing their perspective to the selected consultants. The NPB welcomed further progression of this project which will benefit pension plan members, in the long term.

The NPB was further pleased to learn of the recruitment of additional enforcement staff within the National Pensions Office ("NPO"), as agreed with the Ministry in the previous financial year. The NPB remains concerned about the staff complement within the NPO, while it fully appreciates the hard work of the staff of the NPO as well as the Superintendent.

Orren 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) ("NPL"). The Board is to consist of a Chair, a Deputy Chair and between five and nine additional members. The appointment of Board Members is to be published in the Gazette 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.

As per Section 80 of the NPL, the duties and responsibilities 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 period of this report, the members of the National Pensions Board were:

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<tr>
<th>Office</th>
<th>Name</th>
<th>Term Expires</th>
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<tbody>
<tr>
<td>Chairman</td>
<td>Mr. Orren Merren</td>
<td>October 2012</td>
</tr>
<tr>
<td>Deputy Chairman</td>
<td>Mr. Kimbert Solomon</td>
<td>October 2013</td>
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<td>Members:</td>
<td>Mr. William Adam</td>
<td>October 2012</td>
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<td>Mr. Vaughan Carter</td>
<td>October 2012</td>
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<td>Mrs. Delores Gordon</td>
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<td>Mrs. Linda Bush</td>
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<td>Mr. John Pitcairn</td>
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<td>Mr. Edward Bodden</td>
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<td>Mrs. Philippa McFarlane Ebanks</td>
<td>October 2013</td>
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Ms. Amy Wolliston is the Superintendent of Pensions. As a result, she also serves as Chief Administrative Officer to the Board and the recording secretary of the Board is a staff member of the National Pensions Office ("NPO").

Following the appointment of Mr. Mario Ebanks as the Director of the new combined Department of Labour and Pensions ("DLP"), the Chairman invited Mr. Ebanks to attend meetings of the Board.
IV. STAFFING LEVELS

The staff complement of the NPO for 2011-12 financial year was as follows:

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<tr>
<th>YEAR END</th>
<th>INSPECTORS</th>
<th>TOTAL STAFF MEMBERS</th>
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<tbody>
<tr>
<td>June 2008</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>June 2009</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>June 2010</td>
<td>2</td>
<td>5</td>
</tr>
<tr>
<td>June 2011</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>June 2012</td>
<td>4</td>
<td>7</td>
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With the resignation of one of the Senior Pensions Inspectors in 2010/11, the NPO began the recruitment of his replacement within this financial year. Furthermore, with the identification of additional funding by the Ministry, the NPO was able to hire two new Senior Pensions Inspectors and by the end of the financial year, the enforcement arm of the NPO included four officers for the first time.

In the previous financial year, the Receptionist also resigned; however, the NPO’s new Receptionist was quickly in place early in the financial year, due to the opportunity to transfer a similarly skilled staff member from another department. With this approach, the recruitment of the new post holder proved to be a brief process, which supported the overall administration of the NPO.

The staff changes and enforcement resources were well received by the Superintendent and the Board; however the recruitment of the new Deputy Superintendent remained on hold, which proved challenging.

With the Ministry’s decision to amalgamate the National Pensions Office and a portion of the Department of Employment Relations into the new Department of Labour & Pensions, the two offices moved into new premises at MidTown Plaza.

V. NATIONAL PENSIONS BOARD MEETINGS

There were twelve Board meetings held this year and the schedule of meetings was as follows:-
As the revisions to the NPL continued throughout the financial year, the Board maintained their legal status, although the initial plan was for it to be dissolved in July 2011. The work on the proposed changes to the NPL continued, throughout the year, with meetings focused on reviewing the draft legislation or discussing the sections of the NPL that were due to be revised. This ongoing process facilitated the opportunity for the Board to fulfill its statutory obligations under section 80. Furthermore, the discussions assisted the Ministry’s Legal Consultant with her work to support the legislative drafting process.

VI. ADMINISTRATION OF THE LAW AND REGULATIONS

During the financial year of July 2011 to June 2012, the annual renewal of registrations showed that there were over 50,000 pensions accounts in existence, which held over CI$757,845,000 in invested assets. In addition, the pension plans received over CI$92,542,000 in contributions and about CI$54,633,000 were paid out to members, as benefits.

The following chart illustrates the growth of pension plan assets over the last five years.
While significant time was spent on the pensions regime and legislative changes, the administration of the NPL and Regulations was statutorily required to continue under the NPO. Accordingly, the NPO’s work continued with a new pension plan administrator, in this financial year, to resolve the issues that arose, as part of the previous sale and the previously approved terms and conditions. Efforts in this area were advanced and some items should be resolved in the next financial year. Additionally, the work surrounding the wind up of one of the pension plans continued in this financial year and it is expected that the issue will be completed in the next reporting period. Another pension plan was delayed in the filing of their statutory filings and the NPO is presently working with the administrator and auditors to bring these filings up to date. Lastly, there was a newspaper article about one of the multiemployer pension plans and a theft by one of its senior staff members. The matter was investigated by the RCIPS and the staff member of the pension plan administrator was charged accordingly.

In the area of open case file investigations, the NPO continued to investigate complaints and cases of employer non-compliance. At the start of the financial year, there were 711 open cases, according to our case management system. During the year, 70 cases were closed, with 109 new cases opened. By the end of the year, the open case file statistics showed 750 open cases. It is noted that the case management system is in need of future development and refinements to improve our overall data management. Due to the 70 closed cases, the actions of the NPO resulted in the payment of CI$300,000 to the accounts of pension plan members.
With the large number of open cases, it was determined that (to assess the unresolved cases) the enforcement arm of the NPO would be divided into teams. This decision was reinforced by newly expanded enforcement resources, comprising four Pensions Officers (three of which were ex-police officers recruited, at least in part, because of their experience with preparing and managing cases for prosecution).

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, issues directives and (when necessary) takes action.

Given the projects, legislative changes and ongoing pension matters, the 2011/12 proved to be another demanding year, as the Superintendent continued to manage the NPO without the much-needed assistance of a Deputy Superintendent. The decision not to fill the Deputy Superintendent position continued to impact the NPO and its activities.

In the 2011/12 financial year, charges were filed against two employers, as one case. In this incidence, the two employers were interconnected and both were charged due to their outstanding pensions arrears estimated to be over CI$347,000. The preparation of cases for Court required a significant amount of an Inspectors’ time, which is proven to be worthwhile, when the Legal Department approves the decision to prosecute.

Given the volume of cases, the Superintendent and the Board continue to support the inclusion of an administrative fine regime in National Pensions Bill and this was discussed by the Board, as part of its feedback on the proposed legislative changes.

VII. PENSION AWARENESS, DEVELOPMENT AND TRAINING

PENSIONS HOLIDAY (SUSPENSION OF PENSION CONTRIBUTIONS)

The National Pensions (Amendment) Law, 2010, also known as “the Pensions Holiday” has been in effect for the past two years for non-Caymanians. The Pensions Holiday was implemented for both non-Caymanians and Caymanians, simultaneously; however, it expired for Caymanians in April 2011. Accordingly, in April 2012, the Pensions Holiday expired for non-Caymanians as well. According to statistics, 2,864 employees participate in the opportunity to suspend their pension contributions. As per the previous report, employees and their employers were able to suspend their pension contributions for one year, if the employee was Caymanian or for two years, if the employee was non-Caymanian. The process required the employer to file the mandated documentation with the pension plan administrator in order for the employee to be considered an “approved person”. Once the employee was considered an “approved person”,

National Pensions Board
then the employer and employee were both able to suspend contributions as permitted by the National Pensions (Amendment) Law, 2010.

VIII. UPDATES AND RECOMMENDATIONS TO THE MINISTRY

ACCESS TO PENSIONS FOR HOUSING PURPOSES

The work continued on the amendment to the National Pensions Law which sought to allow Caymanians access to their mandatory pension contributions for housing purposes. The Board maintained its fundamental objection on the withdrawal of pension assets to assist persons with such costs, as it believed that pension assets were to be utilized to pay for retirement.

Since the Ministry continued to refine the draft amendments to the National Pensions Law that would bring the Private Member’s Motion No.3/10-11 into effect, as part of their responsibilities, under section 80, the Board provided the Ministry for their feedback on the proposed amendments over the course of the financial year including formally writing to the Minister on the subject.

The National Pensions (Amendment) Law, 2011 (“2011 Amendment Law”) was debated and passed in the Legislative Assembly in September 2011. The 2011 Amendment Law was then published in the Gazette on the 8th November 2011 and came into effect on the same day.

As a result of the passage of the 2011 Amendment Law, meetings were held with both multiemployer and single employer pension plan administrators to introduce the new provision and inform the pension plan administrators of the new sections’ operation. The pension plan administrators met with the Honourable Minister, previously, to discuss the proposed amendment; however, once the change to the NPL was passed, further discussions were required on its implementation and the pension plan administrator’s reporting obligations to the National Pensions Office.

In addition to discussions with the pension plan administrators, communication was undertaken with the Lands & Survey Department in order to complete the filing requirements under the 2011 Amendment Law.

REVISION OF PENSION REGULATION

In the 2011/12 financial year, the Board continued to dedicate its time to the review and feedback on the proposed amendments to the National Pensions Law, as the Ministry sought to reform the pension regime. Of the twelve Board meetings held in this financial year, the vast
majority of those meetings involved, partially or entirely, the consideration of various proposed amendments to the National Pensions Law.

With respect to the National Pensions Bill, the Board maintained the view that the fines within the NPL needed to be increased and that there was a need for the introduction of an administrative fine regime to effectively and efficiently deal with employer compliance. The subject was also explored in a meeting between the Superintendent, the Senior Pensions Inspectors and the Clerk of Courts that proved feedback on the administration of a fixed penalty regime. While the Board respected the legal requirement of an enforcement matter to be heard in Court, the Board maintained the view that the Court was not the best place to deal with all compliance issues and it should not be the only recourse for the NPO.

There were also discussions around the need for employers to maintain specific records. Under the NPL, the NPO has the right to inspect businesses; however the NPL envisioned that records would be created and retained, although no specific provisions required these documents. The Board supported the inclusion of the records maintenance requirement and it was agreed that the NPL would mandate this information and the General Regulations would detail the specifics.

In addition to the feedback obtained from the Board, the NPO also participated in a public education campaign on the National Pensions Bill which included an online survey, presentations to the Chamber of Commerce and the pension plan administrators, as well as appearances on Cross Talk and Talk Today. Additionally, the Ministry held a press conference to announce the National Pensions Bill which included the participation of the Superintendent.

INVESTMENT REGULATIONS

With the Ministry’s approval of the need to review the National Pensions (Pension Fund Investments) Regulations, a Request for Independent Pension Consultant Project Submissions (“RPS”) was completed, in this financial year. The RPS was sent to three pension consultants including Mercer, Towers Watson and Morneau Shepell. All three pension consultant firms were known to the NPO as reputable firms that had the necessary skillset to undertake the work.

Each consulting firm made a formal submission to the Departmental Tender Committee (“Committee”) that was established for the project. The submission was evaluated based on qualifications of the consulting team, timeliness of their submission, knowledge of the Cayman Islands pension regime and price.

Following a review and assessment of each submission, the Committee unanimously agreed to recommend to the Chief Officer the selection of Morneau Shepell, as the suitably qualified and non-conflicted independent pension consultant to provide the necessary expertise for the reform
of the Investment Regulations. The Chief Officer agreed and Morneau Shepell ("the Consultants") was awarded the project.

As part of the project, the Consultants visited the Islands and met with the pension plan administrators as well as their respective investment professionals. The Consultants also met with the National Pensions Board, the Superintendent, the Ministry and staff from CIMA. Prior to the visit, each party was provided with a template and invited to provide written submissions on their recommended changes to the Investment Regulations. Accordingly, this preparatory work informed the meetings, which enabled each party to share their perspective on the suggested revisions to the Investment Regulations. The meetings were productive and well received by all parties involved.

In February 2012, the Consultants completed their report on the Recommendations on the Revision of the National Pensions (Pension Fund Investments) Regulations. Following the delivery of this report, the Superintendent made a presentation to Cabinet on the proposed changes, which was well received. As a result, Cabinet approved the development of formal drafting instructions to amend the Investment Regulations.

IX. ANY OTHER BUSINESS

OFFICE OF THE COMPLAINTS COMMISSIONER ("OCC") OWN MOTION INVESTIGATION

Following the release of the OCC report, the Commissioner was provided with updates on the changes that were currently underway within the NPO as well as the legislative changes under development.

The revision of the Standard Operating Procedures ("SOP") for the National Pensions Office was commenced in this financial year. The content of the SOP was revised by the Superintendent, in conjunction with one of the Senior Pensions Officers. The revision of the SOP was a continuing project, given the ongoing need for areas to be added and refined.