DEPARTMENT OF LABOUR & PENSIONS
CAYMAN ISLANDS GOVERNMENT

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GUIDANCE NOTE – PART 2 FOR PENSION PLAN ADMINISTRATORS

NATIONAL PENSIONS (AMENDMENT) ACT, 2023

The National Pensions (Amendment) Act, 2023 ("2023 Amendment") was passed in Parliament on the 23rd November 2023. Following the passage, Cabinet issued an Order which commenced the 2023 Amendment on the 9th December, 2023.

With the passage of the 2023 Amendment, the overall process for the approval of the disbursement of pension payments under the property withdrawals provisions has remained unchanged. However, the types of withdrawals have been expanded and the documentation required for each type has increased.

A. GENERAL POINTS:

1. Under the National Pensions Act ("Act"), a person must be Caymanian, as defined in the Immigration (Transition) Act (2022 Revision), in order to withdraw from their pension for housing purposes, as permitted under Part VIIA of the Act. In order to determine if a person is Caymanian, please see the Right to be Caymanian Checklist in Appendix A of this Guidance Note.

2. Two or more persons that are Caymanian may apply for access to their pension for housing purposes as long as each person meets the requirements of the relevant section.

3. Members that are unemployed may apply to withdraw from their pension account for housing purposes. As required by section 52D, the applicant is required to make 3% additional contributions. If the member is presently unemployed, the individual is legally required to make these contributions once they resume employment. For the avoidance of doubt, a restriction will be placed on any and all property related to such a withdrawal, as required by section 52G.

4. Persons that have reached or past the normal age of pension entitlement may also apply for a withdrawal under the 2023 Amendment. For the avoidance of doubt, as required by section 52G, a restriction will be placed on any and all property related to such a withdrawal, regardless of the member's demographics.

5. As outlined in the Act as well as the 2023 Amendment Act, the process starts with the relevant financial institution and their release of an approval letter to the applicant(s). Part 1 of this Guidance Note outlines the obligatory content of these letters, for which the language has been agreed between the financial institutions and the Department of Labour & Pensions.

6. The term, "financial institution" is defined under the Act and only these defined institutions are authorised to participate in the property/housing withdrawals provisions under the Act. The permitted financial institutions include Class A Banks, Building Societies, Credit Unions and the Cayman Islands Development Bank.

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7. Applications received prior to the 9th December will be subject to the provisions of the National Pensions Act (2012 Revision) that was in effect at that time, and <u>not</u> the National Pensions (Amendment) Act, 2023, <u>on the condition</u> that the applicant does not apply for and receive any further pension withdrawals.

8. If the applicant, that previously withdrew under the National Pensions Act (2012 Revision), decides to make a subsequent withdrawal under the 2023 Amendment, then all withdrawals will become subject to the terms of the 2023 Amendment. For example: additional contributions (property withdrawal repayment) of 1% will increase to 3%.

9. For the avoidance of doubt: Applications received on or after the 9th December are subject to the provisions of the 2023 Amendment.

B. <u>DEPOSIT: Purchase an existing dwelling unit, construct a new dwelling unit or purchase residential land</u>

10. The withdrawal of a deposit is permissible to purchase or construct a dwelling unit or to purchase residential land, <u>only</u> if the applicant is a non-current home owner <u>and</u> the dwelling unit will serve as the primary residence for the applicant. By definition, a non-current home owner is "..a person who does not currently own a dwelling unit in the Islands." By way of example, the dwelling unit would include a house, townhouse, condo, or an apartment.

11. Under the 2023 Amendment Act, the maximum withdrawal amount ("maximum") for a deposit to purchase an existing dwelling unit, construct a dwelling unit or purchase residential land is up to CI$50,000 per person. If the deposit required by the financial institution is greater than the maximum, then the additional amount must be secured by the applicant via other means. For the avoidance of doubt, the applicant may also withdraw their additional voluntary contributions to assist with the purchase.

12. In order to apply for a deposit under the 2023 Amendment, the member must provide the following documentation:
    a. Evidence that the person is Caymanian (see Appendix A);
        i. Notarised copies of valid photo ID and any documentation that proves the person is Caymanian <u>and</u> an original affidavit including all names listed across these documents
            1. If the applicant provides the pension plan administrator with the genuine documentation mentioned above, the administrator must certify that the original(s) is a true and correct copy, prior to the submission to the DLP.
    b. The fully and properly completed application inclusive of all relevant declarations

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including Part B that confirms that the person is a non-current home owner and the declaration in Part C that confirms that the dwelling unit will be the applicant's primary residence;

i. If any parts of the application are not relevant to the applicant, then "Not Applicable" should be entered in these areas.

c. A copy of the letter issued by the financial institution which states the deposit required and confirms approval in principle of the mortgage or residential land loan and the letter must be in the format required by the 2023 Amendment Act (see Part 1 of this Guidance Note);

   i. The original Financial Institution Consent Letter is also required with the submission. All financial institutions are familiar with this requirement and the associated language of it.

d. Where applicable, evidence that the member has complied with section 52B(10), 52BA(12), 52C(9) and 52D(1) in line with the DLP Guidance Note on the subject; and

e. An application fee of no more than CI$50, if required by the pension plan administrator.

13. Once the pension plan administrator has received all of the required documentation, the administrator must issue the cheque payable to the financial institution within 60 calendar days. Additionally, if the applicant fails to provide all of the required documentation, the administrator has the right to refuse the application within 7 calendar days of its submission.

14. Additional Contributions (Property Withdrawal Repayment)

   a. Applications received prior to 9 December, 1%

      i. Under the Act, if the applicant made a property withdrawal prior to the 9th December, 2023, the individual is required to make an additional contribution of 1% of the person's earnings per month towards the repayment of the withdrawal amount and this payment is not subject to the year's maximum pensionable earnings.

      ii. The additional contributions are required to start one month after the housing withdrawal cheque was issued to the financial institution.

      iii. The applicant is also required to notify their employer, in writing, and the employer is required to deduct the additional 1% of the employee's earnings per month and pay that sum into the current pension plan.

      iv. It is important that the employee's salary information and the additional 1% contribution are included on the employer's monthly contribution sheet. The salary information is required, as part of due diligence, in order to determine the individual's compliance with the Act.

      v. Furthermore, the additional amount is required to be properly identified on the contribution sheet as relating to the mandatory additional contribution (property withdrawal repayment) for the relevant employee so the pension plan administrator accurately records this amount for its intended purpose.

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vi. These additional contributions are required for the earlier of:
    1. Until 10 years from the issuance of the cheque;
    2. Until the withdrawn amount is repaid in full or
    3. Until the applicant reaches the normal age of pension entitlement

vii. For the avoidance of doubt, members may now make further lump sum payments to facilitate the faster repayment of their withdrawal

b. Applications received on or after 9 December, 3%
   i. Under the 2023 Amendment, if the applicant made a property withdrawal on or after to the 9th December, 2023, the applicant is required to make an additional contribution of 3% of their earnings per month toward the repayment of the withdrawal amount <u>and</u> this payment is <u>not</u> subject to the year's maximum pensionable earnings.
   ii. These payments are required to start one month after the housing withdrawal cheque was issued to the financial institution.
   iii. The applicant is also required to notify their employer, in writing, and the employer is required to deduct the additional 3% of the employee's earnings per month and pay that sum into the current pension plan.
   iv. It is important that the employee's salary information and the additional 3% contribution are included on the employer's monthly contribution sheet. The salary information is required, as part of due diligence, in order to determine the individual's compliance with the Act.
   v. Furthermore, the additional amount must be properly identified as relating to the mandatory additional contribution (property withdrawal repayment) for the relevant employee so the pension plan administrator accurately records this amount for its intended purpose.
   vi. These additional contributions are required for the earlier of:
       1. Until the withdrawn amount is repaid in full or
       2. Until the applicant reaches the normal age of pension entitlement
   vii. For the avoidance of doubt, members may now make further lump sum payments to facilitate the faster repayment of their withdrawal

c. Government Employees with Private Sector Pension Accounts
   i. If the applicant is a Government employee and has a private sector pension account from past employment, the individual can withdraw from that account as long as the person fulfills the requirements of the 2023 Amendment.
   ii. In order to fulfill the repayment requirements, the applicant will need to contact their Government HR personnel so that the mandatory monthly 3% salary deduction can be established. The deduction <u>must</u> be repaid to the private sector pension plan and <u>not</u> Public Service Pensions Board.

d. Allocation of Additional Contribution (Property Withdrawal Repayment)
   i. Pension plan administrators are required to properly allocate these additional

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contributions as being for the property withdrawal repayment for the relevant member.

ii. As these contributions are required under the Act, these payments are mandatory contributions and must be treated as such.

iii. For the avoidance of doubt, they are not accessible under section 47 as additional voluntary contributions.

15. Restriction

a. Under the Act, the Department of Labour & Pensions must file a restriction on the dwelling unit or residential land that was subject to the property withdrawal.

b. The restriction can be removed when the applicant has repaid the withdrawn amount in full or the property is being sold.

16. Sale of Property

a. Applications received prior to 9 December

i. If the applicant sells the dwelling unit or residential land, prior to attaining the normal age of pension entitlement or prior to paying off the withdrawal amount, then the applicant must repay the withdrawal amount or 10% of the fair market value, whichever is higher.

ii. In calculating the amount to be paid, the additional contributions (property withdrawal repayments) required under section 14 of this Guidance Note and Section 52D of the Act shall be deducted from the amount that the member is required to repay.

b. Applications received on or after 9 December

i. If the applicant sells the dwelling unit or residential land, prior to repaying the withdrawal amount in full, then the applicant must repay the withdrawal amount or 10% of the fair market value, whichever is higher.

ii. In calculating the amount to be paid, the additional contributions (property withdrawal repayment) required under section 14 of this Guidance Note and Section 52D of the Act shall be deducted from the amount that the member is required to repay.

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C. REDUCTION PAYMENT: Reduction payment on an existing mortgage and if applicable, arrears in strata fees related to the mortgaged property or residential land loan

17. The 2023 Amendment introduces the ability for Caymanians to apply for a withdrawal as a reduction payment toward their existing mortgage and, if applicable, arrears in strata fees related to the mortgaged property as well as a residential land loan.

18. The maximum withdrawal amount ("maximum") for a reduction payment is up to CI$50,000 per person. For the avoidance of doubt, the applicants may also withdraw their additional voluntary contributions to assist them.

19. In order to apply for a reduction payment under the 2023 Amendment, the member must provide the following documentation:

   a. Evidence that the person is Caymanian (see Appendix A);
      i. Notarised copies of valid photo ID and any documentation that proves the person is Caymanian and an original affidavit including all names listed across these documents
         1. If the applicant provides the pension plan administrator with the genuine documentation mentioned above, the administrator must certify that the original(s) is a true and correct copy, prior to the submission to the DLP.
   b. Evidence of the applicant's legal title to the respective dwelling unit or residential land (i.e.: current land register which was issued in the last 30 calendar days)
   c. The fully and properly completed application inclusive of all relevant declarations including, if applicable, Part C that confirms that the dwelling unit will be the applicant's primary residence;
      i. If any parts of the application are not relevant to the applicant, then "Not Applicable" should be entered in these areas.
   d. If applicable, copy of a letter issued by or on behalf of the relevant Strata Corporation addressed to the applicant certifying the arrears of strata fees, as set out in section 6(4) of the Strata Titles Registration Act (2013 Revision);
      i. The Strata Corporation is familiar with this type of letter, since such documentation is normally required as part of the sale of the property. For clarity: The letter is required to include:
         1. the name of the current owner(s) of the property as well as the Block and Parcel of the relevant property; and
         2. the timeframe as well as the amount which is presently in arrears in relation to the strata fees
   e. A copy of the letter issued by the financial institution holding the mortgage or residential land loan that states the amount required and confirms approval in principle for accepting a

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reduction payment on an existing mortgage and if applicable, arrears in strata fees related to the mortgaged property as well as a residential land loan. The letter must be in the format required by the 2023 Amendment (see Part 1 of this Guidance Note).

   i. The original Financial Institution Consent Letter is also required with the submission. All financial institutions are familiar with this requirement and the associated language of it.
   ii. Furthermore, where there is an existing mortgage and associated arrears in strata fees, the payment for the arrears in strata fees shall be made through the financial institution.

f. Where applicable, evidence that the member has complied with section 52B(10), 52BA(12), 52C(9) and 52D(1) in line with the DLP Guidance Note on the subject; and
g. An application fee of no more than CI$50, if required by the pension plan administrator.

20. Once the pension plan administrator has received all of the required documentation, the administrator must issue the cheque payable to the financial institution within 60 calendar days. Additionally, if the applicant fails to provide all of the required documentation, the administrator has the right to refuse the application within 7 calendar days of its submission.

21. Additional Contributions (Property Withdrawal Repayment)

a. Applications received on or after 9 December, 3%

   i. Under the 2023 Amendment, if the applicant makes a property withdrawal on or after to the 9th December, 2023, the individual is required to make an additional contribution of 3% of your earnings per month toward the repayment of the withdrawal amount and this payment is not subject to the year's maximum pensionable earnings.
   ii. These payments are required to start one month after the housing withdrawal cheque is issued to the financial institution.
   iii. The applicant is also required to notify their employer, in writing, and the employer is required to deduct the additional 3% of the employee's earnings per month and pay that sum into the current pension plan.
   iv. It is important that the employee's salary information and the additional 3% contribution are included on the employer's monthly contribution sheet. The salary information is required, as part of due diligence, in order to determine the individual's compliance with the Act.
   v. The additional amount must be properly identified as relating to the mandatory additional contribution (property withdrawal repayment) for the relevant employee so the pension plan administrator accurately records this amount for its intended purpose.
   vi. These additional contributions are required for the earlier of:
      1. Until the withdrawn amount is repaid in full or
      2. Until the applicant reaches the normal age of pension entitlement

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vii. For the avoidance of doubt, members may now make further lump sum payments to facilitate the faster repayment of their withdrawal

b. Government Employees with Private Sector Pension Accounts
   i. If the applicant is a Government employee and has a private sector pension account from past employment, the individual can withdraw from that account as long as the person fulfills the requirements of the 2023 Amendment.
   ii. In order to fulfill the repayment requirements, the applicant will need to contact their Government HR personnel so that the mandatory monthly 3% salary deduction can be established. The deduction <u>must</u> be repaid to the private sector pension plan and <u>not</u> Public Service Pensions Board.

c. Allocation of Additional Contribution (Property Withdrawal Repayment)
   i. Pension plan administrators are required to properly allocate these additional contributions as being for the property withdrawal repayment for the relevant member.
   ii. As these contributions are required under the Act, these payments are <u>mandatory</u> contributions and must be treated as such.
   iii. For the avoidance of doubt, they are <u>not</u> accessible under section 47 as additional voluntary contributions.

22. Restriction

a. Under the Act, the Department of Labour & Pensions must file a restriction on the dwelling unit or residential land that was subject to the property withdrawal.
b. The restriction can be removed when the applicant has repaid the withdrawn amount in full or the property is being sold.

23. Sale of Property

a. Applications received on or after 9 December
   i. If the applicant sells the dwelling unit or residential land, prior to repaying the withdrawal amount in full, then the applicant must repay the withdrawal amount or 10% of the fair market value, whichever is higher.
   ii. In calculating the amount to be paid, the additional contributions (property withdrawal repayment) required under section 21 of this Guidance Note and Section 52D of the Act shall be deducted from the amount that the member is required to repay.

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D. PAY OFF: Pay Off an existing mortgage and if applicable, arrears in strata fees related to the mortgaged property

24. Under 2023 Amendment Act, Caymanians can apply for a withdrawal to pay off their existing mortgage and if applicable, arrears in strata fees related to the mortgaged property, so that the dwelling unit is free from any encumbrance (i.e.: the payment must result in the financial institution's removal of their Charge and, if applicable, the Strata Corporation's removal of their Charge).

25. The maximum withdrawal amount ("maximum") for payoff is up to CI$100,000 per person. For the avoidance of doubt, the applicant may also withdraw their additional voluntary contributions to assist them.

26. In order to apply for a payoff under the Act, the member must provide the following documentation:
    a. Evidence that the person is Caymanian (see Appendix A);
        i. Notarised copies of valid photo ID and any documentation that proves the person is Caymanian and an original affidavit including all names listed across these documents
            1. If the applicant provides the pension plan administrator with the genuine documentation mentioned above, the administrator must certify that the original(s) is a true and correct copy, prior to the submission to the DLP.
    b. Evidence of the applicant's legal title to the respective dwelling unit or residential land (i.e.: current land register which was issued in the last 30 calendar days)
    c. The fully and properly completed application inclusive of all relevant declarations including the declaration in Part C that confirms that the dwelling unit will be the applicant's primary residence;
        i. If any parts of the application are not relevant to the applicant, then "Not Applicable" should be entered in these areas.
    d. If applicable, copy of a letter issued by or on behalf of the relevant Strata Corporation addressed to the applicant certifying the arrears of strata fees, as set out in section 6(4) of the Strata Titles Registration Act (2013 Revision);
        i. The Strata Corporation is familiar with this type of letter, since such documentation is normally required as part of the sale of the property. For clarity: The letter is required to include:
            1. the name of the current owner of the property as well as the Block and Parcel of the relevant property; and
            2. the timeframe as well as the amount which is presently in arrears in relation to the strata fees
    e. A copy of the letter issued by the financial institution holding the mortgage that states the

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amount required and confirms approval in principle for paying off on an existing mortgage and if applicable, arrears in strata fees related to the mortgaged property. The letter must be in the format required by the 2023 Amendment Act (see Part 1 of this Guidance Note).

i. The original Financial Institution Consent Letter is also required with the submission. All financial institutions are familiar with this requirement and the associated language of it.
ii. Furthermore, where there is an existing mortgage and associated arrears in strata fees, the payment for the arrears in strata fees shall be made through the financial institution.

f. Where applicable, evidence that the member has complied with section 52B(10), 52BA(12), 52C(9) and 52D(1) in line with the DLP Guidance Note on the subject; and
g. An application fee of no more than CI$50, if required by the pension plan administrator.

27. Once the pension plan administrator has received all of the required documentation, the administrator must issue the cheque payable to the financial institution within 60 calendar days. Additionally, if the applicant fails to provide all of the required documentation, the administrator has the right to refuse the application within 7 calendar days of its submission.

28. Additional Contributions (Property Withdrawal Repayment)

a. Applications received prior to 9 December, 1%

i. Under the Act, if the applicant made a property withdrawal prior to the 9th December, 2023, the individual is required to make an additional contribution of 1% of their earnings per month toward the repayment of the withdrawal amount and this payment is not subject to the year's maximum pensionable earnings.
ii. These additional contributions are required to start one month after the housing withdrawal cheque was issued to the financial institution.
iii. The applicant is required to notify their employer, in writing, and the employer is required to deduct the additional 1% of the employee's earnings per month and pay that sum into the current pension plan.
iv. It is important that the employee's salary information and the additional 1% contribution are included on the employer's monthly contribution sheet. The salary information is required, as part of due diligence, in order to determine the individual's compliance with the Act.
v. The additional amount is required to be properly identified on the employer's contribution sheet as relating to the mandatory additional contribution (property withdrawal repayment) for the relevant employee so the pension plan administrator accurately records this amount for its intended purpose.
vi. These additional contributions are required for the earlier of:
   1. Until 10 years from the issuance of the cheque;
   2. Until the withdrawn amount is repaid in full or
   3. Until the applicant reaches the normal age of pension entitlement
vii. For the avoidance of doubt, members may now make further lump sum

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payments to facilitate the faster repayment of their withdrawal

b. Applications received on or after 9 December, 3%
   i. Under the 2023 Amendment, if the applicant made a property withdrawal on or after the 9th December, 2023, the individual is required to make an additional contribution of 3% of their earnings per month toward the repayment of the withdrawal amount <u>and</u> this payment is <u>not</u> subject to the year's maximum pensionable earnings.
   ii. These payments are required to start one month after the housing withdrawal cheque was issued to the financial institution.
   iii. The applicant is required to notify their employer, in writing, and the employer is required to deduct the additional 3% of the employee's earnings per month and pay that sum into the pension plan.
   iv. It is important that the employee's salary information and the additional 3% contribution are included on the employer's monthly contribution sheet. The salary information is required, as part of due diligence, in order to determine the individual's compliance with the Act.
   v. The additional amount must be properly identified as relating to the mandatory additional contribution (property withdrawal repayment) for the relevant employee so the pension plan administrator accurately records this amount for its intended purpose.
   vi. These additional contributions are required for the earlier of:
      1. Until the withdrawn amount is repaid in full or
      2. Until the applicant reaches the normal age of pension entitlement
   vii. For the avoidance of doubt, members may now make further lump sum payments to facilitate the faster repayment of their withdrawal

c. Government Employees with Private Sector Pension Accounts
   i. If the applicant is a Government employee and has a private sector pension account from past employment, the individual can withdraw from that account as long as the person fulfills the requirements of the Act.
   ii. In order to fulfill the repayment requirements, the applicant will need to contact their Government HR personnel so that the mandatory 3% salary deduction can be established. The deduction <u>must</u> be repaid to your private sector pension plan and <u>not</u> Public Service Pensions Board.

d. Allocation of Additional Contribution (Property Withdrawal Repayment)
   i. Pension plan administrators are required to properly allocate these additional contributions as being for property withdrawal repayment.
   ii. As these contributions are required under the National Pensions Act, these payments are <u>mandatory</u> contributions and should be treated as such.
   iii. For the avoidance of doubt, they are <u>not</u> be accessible under section 47 as additional voluntary contributions.

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29. Restriction

a. Under the Act, the Department of Labour & Pensions must file a restriction of the dwelling unit or residential land that was subject to the property withdrawal.
b. The restriction can be removed when the applicant has repaid the withdrawn amount in full or the property is being sold.

30. Sale of Property

a. Applications received prior to 9 December
    i. If the applicant sells the dwelling unit or residential land, prior to attaining the normal age of pension entitlement or prior to paying off the withdrawal amount, then the applicant must repay the withdrawal amount or 10% of the fair market value, whichever is higher.
    ii. In calculating the amount to be paid, the additional contributions (property withdrawal repayment) required under section 28 of this Guidance Note and Section 52D of the Act shall be deducted from the amount that the member is required to repay.

b. Applications received on or after 9 December
    i. If the applicant sells the dwelling unit or residential land, prior to repaying the withdrawal amount in full, then the applicant must repay the withdrawal amount or 10% of the fair market value, whichever is higher.
    ii. In calculating the amount to be paid, the additional contributions (property withdrawal repayment) required under section 28 of this Guidance Note and Section 52D of the Act shall be deducted from the amount that the member is required to repay.