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CI National Pensions Board

Cayman Islands National Pensions Board

Annual Report

July 1, 2007 - June 30, 2008



**National Pensions Board
ANNUAL REPORT
JULY 1, 2007 – JUNE 30, 2008**

BACKGROUND

The National Pensions Board (Board) is established under Section 78 of the National Pensions Law (2000 Revision). 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 National Pensions Law, Section 80 and its Regulations. The Superintendent of Pensions is the Chief Administrative Officer of the Board.

The duties and responsibilities of the Board and the Superintendent include:

- Administering the Law and regulations;
- Promoting the establishment, extension and improvement of pension plans throughout the Islands;
- Advising the Minister in respect of business of the Board; and
- Making recommendations to the Minister in respect of pension plans.

COMPOSITION

The Board composition changed in October 2007. In keeping with staggered appointment terms, to ensure Board continuity, the composition at fiscal year end was as follows:

		Term Expires
1. Chair	Mr. Bryan Bothwell	Oct. '09
2. Deputy Chair	Mrs. Rhonda Kelly	Oct. '09
3. Member	Mr. William Adam	Oct. '08
4. Member	Mr. Vaughan Carter	Oct. '08
5. Member	Mr. Ronnie Dunn	Oct. '08
6. Member	Ms Anna Goubault	Oct. '10
7. Member	Mr. Philip Jackson	Oct. '10
8. Member	Mr. Ian Pairaudeau	Oct. '09
9. Member	Mr. Cyril Theriault	Oct. '09

The Deputy Superintendent of Pensions serves as Secretary to the Board and the recording secretary of the Board is a staff member of the National Pensions Office.

STAFFING LEVELS

At the time of writing this report, the National Pensions Office staffing levels had increased to 8 from its initial complement of 2, back in 1999.

YEAR END	STAFF MEMBERS	INSPECTORS
June 2004	2	0
June 2005	5	1
June 2006	6	2
June 2007	8	3
June 2008	8	3

BOARD MEETINGS

The Board held Regular Board meetings and Special Board meetings; special meetings dealt primarily with the review of the National Pensions Law. The Board made a concerted effort to conclude the law review in the Financial Year.

The schedule of meetings was as follows:

Regular Board Meetings	Special Board Meetings
July 11, 2007	July 25, 2007
September 26, 2007	August 8, 2007
November 21, 2007	August 14, 2007
January 16, 2008	August 22, 2007
March 19, 2008	October 3, 2007
April 9, 2008	October 24, 2007
May 9, 2008 – part “special meeting”	November 8, 2007
May 16, 2008 – part “special meeting”	November 14, 2007
May 27, 2008 – part “special meeting”	November 21, 2007

ADMINISTER THE LAW AND REGULATIONS

REGISTRATIONS

During the period covered by this report, the National Pensions Office completed its annual renewal of registrations. In 2007/08, the Office received 116 Renewals/New Applications for pension plans, about the same as the 2006/07 year. It is still anticipated that annual renewals will show a marked decrease in the future due to one of the multi-employer plans reregistering many individual plans as one, in the form of a Master Trust. The registration and annual renewal process is still, for the most part, managed manually, however towards the end of the year changes were being made to the Pennat computer system so it could be used for future automatic tracking. As reported last year, this will improve the office's efficiency as well as allow the production of better and more meaningful statistical reports, with further enhancements to the Pennat database.

Over 30,000 pension accounts have been established, which held in excess of \$526,000,000 in invested assets (based on plan year end data for the 2008 calendar year). For the same plan year contributions paid into the plans totalled in excess of \$89 million and benefits paid out almost \$26 million.

The NPL has been enacted for ten (10) years. As reported last year the Board continues to be concerned that there are still non-compliant and thus partly unregulated pension providers, who have been allowed to operate, accepting pension monies and that the National Pensions Office (NPO) is still unable to determine if all such funds are being managed within the safeguards established by the Law.

As reported in each of the last two (2) years, two of the multi-employer plans were threatened to have their registrations revoked should they not prepare amendments to their plans and reports to meet the requirements of the Law. These plans did submit renewed documentation and reports for review, and the documentation was submitted to the Legal Department for their opinion. In June '08 a partial decision was received with respect to one of these plans, stating that it was in violation of part of the regulations under the National Pensions Law. Preliminary discussions took place with that plan's solicitor and necessary plan amendments were identified. Both plans signified their intent to remain operating in the Cayman Islands and to make the required plan amendments to be fully compliant and therefore obtain

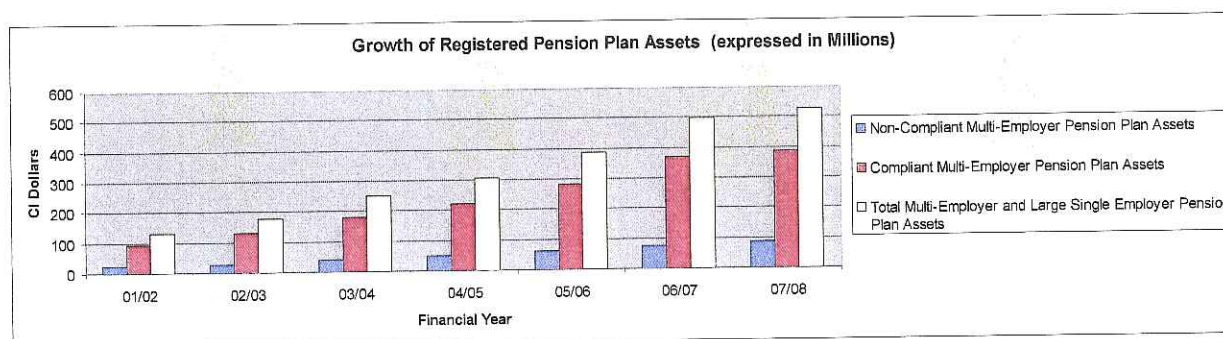
unqualified registration. When the revised documentation is received, it will be reviewed once again, in detail, and forwarded to the Legal Department for their opinion.

Note: Subsequent to fiscal year end the Board instructed that these two plans were to have final documentation submitted by December 1, 2008 or post a “bond” to the value of the pension funds. The plans did submit their documentation; minor changes were suggested by the National Pensions Office and made and the plans were accepted for registration subject to any requested changes received from the Legal Department upon their review of the revised documentation. At the time of submitting this report, the Legal Department has still not signed off on the last received versions of the plans’ documentation which remains a concern of the Board.

Of further concern to the Board is the fact that one of these pension plans is now in a vulnerable position and more needs to be done to protect Cayman Islands workers’ pension funds.

The following chart illustrates the growth in pension plan assets over the last 7 years.

Note: Prior to 07/08 Financial Year assets were reported based on plan year end occurring in the Financial Year. In 07/08 assets are reported based on plan year end occurring in the 2008 calendar year.



The following chart illustrates the contributions paid into and benefits paid out of the major pension plans at plan year ends in the 2008 full calendar year.

Pension Plan	Contributions During Plan Year	Benefits Paid Out During Plan Year	Value of Fund Year Ending '08
Multi Employer plans	82,986,538	23,273,461	474,711,493
Single Employer Plans	6,095,655	2,710,231	51,376,441
Total Major CI Plans	89,082,193	25,983,692	526,087,934

Note: Since the end of the fiscal year this report covers (June 30, 2008), worldwide financial markets have faced financial turmoil largely due to the “credit” crisis. At the time of writing there seems to be a consensus emerging that the volatility has somewhat stabilized and that the “worst” for the liquidity and credit markets may be behind us. Cayman Islands pension funds are not unlike pension funds in other parts of North America or the world, for that matter, being

invested in equity markets (the hardest hit in this turmoil) and largely denominated in US currency. The vast majority of pension plan members in plans operating in the Cayman Islands will see their fund balances showing markedly negative returns and reducing principal amounts contributed by employees and employers. Private pension plans in OECD member states reported average losses in excess of 20% for calendar year 2008.

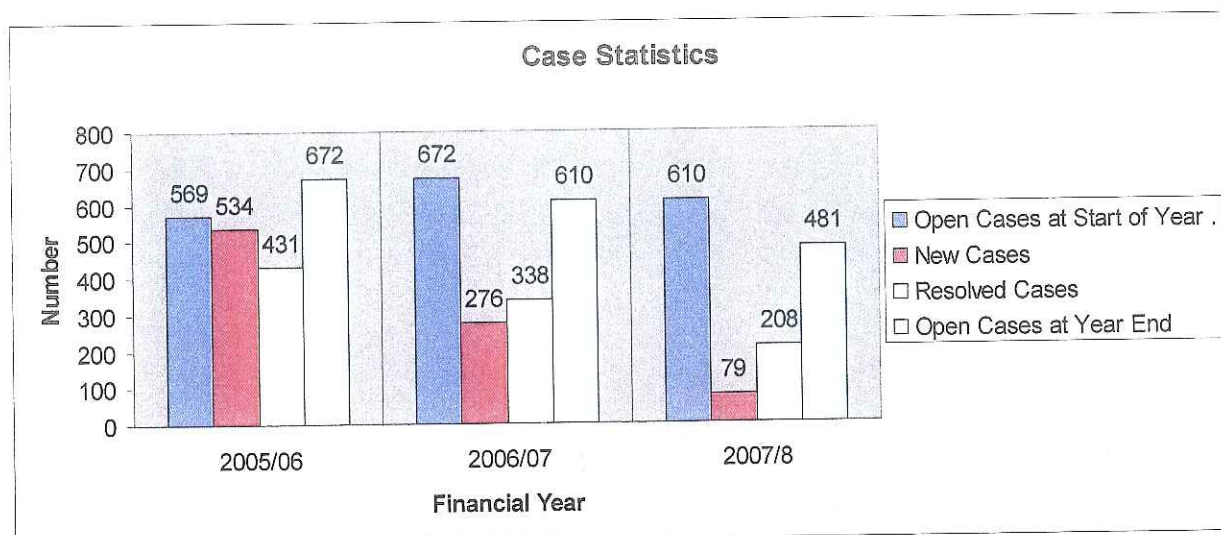
As the plans reach their year-end dates and make annual statements available to their membership they will be faced with many expressions of concern from the members. It must be presumed that, as in past market declines and "recessions," that the markets will recover and the losses are made up in the years to come. Those with many years to go before drawing benefits from their plans also face the least chance of being negatively affected by these recent market events. This shows the wisdom for funds to have some flexibility to better structure fund assets to take account of different age segments of members; but too much latitude will run the risk of all funds being too conservatively invested, resulting in inadequate earnings to meet members' retirement needs. Therefore, any new investment rules, accountability and oversight must remain robust.

ENFORCEMENT

At the beginning of the year there were 610 open cases for follow-up investigation. An open case is defined as an employer that is reported as delinquent in making contributions or one that the office has received a complaint about in an area other than contributions. During the year 208 cases were resolved, 79 new cases were identified and at year end 481 cases remained open. As explained in the notes following the table of case statistics, these numbers for 07/08 are believed to be largely understated. The Board, therefore, continues to be concerned about the timeliness of enforcement or other resolution of these cases and the apparent high number of new cases identified each year. The Board wants to investigate methods of drastically reducing the number of "open" cases so that new cases can be resolved in a timelier manner. The NPO did implement the revised Standard Operating Procedures and continued to evolve it throughout the course of the year. It appears to have improved getting in touch with employers being investigated, quicker, and in some cases, gaining their compliance.

In July '07 the Legal Department assigned new Crown Counsel to the NPO (part-time) and the NPO worked with counsel and during the year managed to advance 9 detailed prosecution files for recommendation of charges to be laid. In 3 of these cases charges were laid with the courts and 6 remained to be dealt with at year end. The joint efforts of the NPO and the Legal Department became derailed in late 2007, resulting in the Board, once again notifying the Ministry of its disappointment. This resulted in an exchange of correspondence between the Minister and the Attorney General; however, there was no satisfactory resolution of the ongoing frustration the Board is experiencing in ensuring the required resources are available to it, and the NPO, in achieving compliance with the provisions of the Law by administrators and employers.

The statistics concerning open, new and resolved cases are illustrated graphically in the following chart (subject to the explanations subsequently noted). This data is not available in a format which will permit reporting on years prior to the 05/06 fiscal year.



For the period of 2007/8, in particular, the case statistics graph is not an accurate picture of all reported violations of the National Pensions Law (NPL).

The NPO is required, by the Law, to ensure all MEPP's submit their Monthly Delinquency Reports, promptly process these reports, initiate investigations, issue arrears directives when necessary and then take action as the Law requires.

During 2007/8 only one (1) MEPP submitted all of their Monthly Delinquency Reports with two (2) MEPP's submitting no reports at all for the year, a total of 43 reports were received, only about 60% of the required amount.

During 2007/8, the NPO spent a considerable amount of time working on reviewing and refining the MEPP delinquency reporting format and the enforcement procedures. While this work was ongoing, the NPO suspended the normal processing of delinquency reports from the Multi Employer Pension Plans. The suspension of processing of MEPP Monthly Delinquency Reports and not issuing the required NPL arrears directives to all employers in arrears was in violation of the NPL.

Generally, most of the cases opened in any financial year are generated from delinquency reports. As no reports were processed in 2007/8 and those 2007/8 reports have still not been processed, the resulting case statistics do not accurately reflect the number of employers violating the Law during 2007/8. In this instance, the opened cases were generated primarily by employees filing complaints with the NPO. While statistics in the past have included cases opened as a result of employees' complaints, in this financial year, the employee generated cases were the cause of all but six (6) of the seventy nine (79) new cases.

Progress of pension matters in the courts continues to be excruciatingly slow. Additionally, workers have still not received any benefit of the successful prosecution in the Courts reported on in the last two reports of the Board, by way of pension monies being credited to their pension accounts. The filing, or threatening to file, motions of appeal appears to be delaying the court ordered payment to the pension plans. There has still not been a final disposition report received from the court in this matter and discussions between counsel would lead one to believe that a settlement will be reached, albeit perhaps an unsatisfactory settlement in the view of the Board and the plan members who have been wronged.

Note: Subsequent to fiscal year end an agreement was reached between the Legal Department and defence attorneys in the above noted case. This agreement was approved/accepted by the courts. Employees' pension accounts, in the end, were credited with approximately 80% of the

pension contributions taken from their salaries and an identical amount as the employer contribution. The credited amount agreed by the Court included no “interest” on arrears contributions as is required by the Law. In addition the defendant was required to pay a portion of fines levied by the summary court, into the court and also costs to be credited to the National Pension Office. These costs, once credited to the National Pensions Office, were turned over to the plan administrators for credit to the employees’ accounts, to bring the credit to the 80%. Needless to say the Board is disappointed with this result, after nearly 4 years of pursuing legal action.

Progress of other cases through the legal system appears, at least to the Board, to be taking an inexcusable amount of time. If an employer is deducting pension contributions from their employees’ wages, and not remitting these to the pension provider on time, in the view of the Board, that should be a simple matter for the legal system to resolve and deal with in a very short time frame.

Up to June ’09 (date of completion of this report), there have been 20 cases advanced to the legal system, with the 1st case being advanced in January ’05. Of these 20, 5 have been concluded and 2 involved “owners” who are no longer on Island and charges have been deferred until their return. Of the remaining 13, 1 entered the system in late 2006, 3 entered the system in the first half of 2007, 6 had charges laid in 2008, 2 had charges laid in 2009 and 1 was submitted to the Legal Department, last month, for its review. There have been numerous “mentions” in the majority of these cases.

This has led to increased concerns as to how best to protect assets of those employers from whom arrears are being pursued from further depletion during the legal process, including while waiting on judgements and completion of any appeals process. The Board has addressed elements of the poor enforcement and recovery issue in their recommended revisions to the NPL but not all the risks in the process can be so remedied. The Board fully recognizes that the current system of enforcement, from the role of the NPO, through the Solicitor General’s Office and the Courts, needs improvement to protect funds legally owed to employees’ pension accounts from depletion during a process that seems to be prone to manipulation by what appear to be stalling tactics, while the assets of the defendants are not able to be protected for the benefit of members. In addition, the Attorney General has recommended consideration be given to preventing defendants from accessing monies secured to offset pension debts.

The Ministry has also been reminded of the recommendations of the pension consultancy report to assist with compliance (submitted in March ’07 by Mercer HR Consulting and received by the Board in the current Financial Year) and those that the NPO submitted to the Ministry, possible changes which could be dealt with quickly to streamline gaining compliance, including the use of administrative fines.

With its submission of suggested changes to the Law, the Board has also recommended consideration be given to using semi-judicial bodies, not unlike the current employment-tribunals, perhaps a benefits-tribunal to be shared with the Health Insurance Commission, to rule on the more flagrant aspects of non-compliance with provision of the Law. In this way many matters could be kept out of the legal system and hopefully reach speedier and less costly resolution. In the meantime, public reports indicate that from time to time the HIC is also pursuing some of the same employers as are awaiting prosecution for breaches of the NPL and this therefore indicates that joint action should be possible and, it is to be hoped, would be more effective than the experience to date.

These recommended revisions to the NPL will not replace the enforcement support needed from the NPO, Legal Department and the Courts to protect workers’ pension funds. The Board accepts that even if procedures and alternative forums can be instituted that will ensure more timely resolution of non-compliance than has proven possible with the current legal and judicial systems, the Court must remain the ultimate arbiter available, to ensure that innocent employers or other persons are not wrongfully harmed. However, it is clear that there are inadequate safeguards against those who use delaying tactics to

abuse the Court system, often squandering funds that should rightfully belong to employees' pension accounts.

Improved cooperation with other Government Departments and agencies would also improve compliance. In support of this there has been some improvement in dialogue between various government bodies, however little in the way of concrete action to date. The Board is hopeful changes will be made to improve cross agency information sharing between the various licensing bodies and "employment" related entities and the NPO.

The Board re-iterates its former belief that the improvement in the use of technology by the NPO in order to more fully integrate with pension providers must be expanded and that the resources must be made available to accomplish this goal. Late in the Financial Year the NPO did distribute to the multi-employer pension providers two proposed standardized reporting formats, one for "delinquent" employers and one for tracking employer movements between plans, for their use. It is expected these formats will be finalized in the new Financial Year and that all plans will reach the point of submitting reliable data and that further links with Pennat can be explored.

The large amount of arrears from employers that has been identified, if not recovered from employers, will almost undoubtedly negatively impact society in general (therefore primarily the Government) and not just the workers directly and unfairly exposed, as many of them will likely need to fall back on the safety nets that the Pensions Legislation was to have replaced. Although it is a figure that cannot be fixed precisely at any time (with existing procedures), it is sizable and continues to grow.

In but three of the cases under investigation (at time of preparation of this report – mid 2009) it is estimated that in two of them each employer owes in excess of \$300,000 and in the other one the amount owed exceeds \$600,000. In all cases employee deductions have been taken and not remitted to the provider. One of these cases is in the Courts, and while the case is delayed, the employer continues making deductions and not remitting them. The NPO is working with the other 2 employers and are hopeful payment arrangements can be agreed.

In addition to the problems associated with employers and their compliance with the Law, the NPO reported that some Administrators were not fulfilling their obligations under the Law and taking actions that should be expected of them. This led to the Board directing the NPO to issue instructions to all Administrators, to enforce certain provisions under the Law, including the billing of and collection of interest, on late contributions. A number of sessions were held with the Administrators to ensure they understood their responsibilities in the administration of the Law. Their compliance will be monitored going forward. This action should assist in improving a culture of compliance with the Law, by all stakeholders, for the benefit of the employees as the Law envisioned.

As previously reported, the Board remains concerned that when the public's sense of moral outrage in respect of this inevitably surfaces, it will be directed at the Government, the Board, the NPO and the business community as a whole, resulting in a further loss of confidence in "good governance" in the Cayman Islands.

PROMOTE THE ESTABLISHMENT, EXTENSION AND IMPROVEMENT OF PENSION PLANS THROUGHOUT THE ISLANDS

The Board accepts that with the scarce resources available, the NPO cannot channel much, in the way of activity, to support this objective in the near term. Currently the NPO, and the Board, are almost entirely reactive in any activities in this regard.

The public awareness activities in the year were limited to those reported on by the NPO. However, as noted in previous years, public education on the benefits of adequate pension provisions and the roles of

employees in helping to protect their pension funds is key. This effort must therefore be stepped up considerably going forward and in support of this the Board has recommended full time dedicated resources be assigned, or contracted, and that their first task be to develop a comprehensive Public Education plan.

ADVISE THE MINISTER IN RESPECT OF BUSINESS OF THE BOARD

The Minister is kept fully informed of the business of the Board in a number of ways, including the monthly reports and invoices of the NPO, the attendance at Board meetings of the Ministry's appointed representative and the provision of the minutes of Board meetings. In addition, the Board has had to seek the help of both the Minister and the Ministry on a number of issues that impede enforcement of the Law, as noted above, and of the need for improved inter-governmental cooperation, for example with Immigration Department and in particular with the Trade and Business Licensing units and with the Legal Department. This need is particularly necessary to try to counter the flagrant disregard for the Law that continues to surface, albeit by a minority of employers.

During the course of the year the Board realized that there were certain inconsistencies with the way the Law envisioned the Board accomplishing the duties it was assigned by the Law (and indeed the NPO) and the structure of the NPO, being very much part of a Ministry as opposed to a statutory authority. Being part of a Ministry, it is the Minister and Cabinet that fund the resources available to the NPO (therefore the Board) and the Board has little direct input.

As a result the Board identified the need for a planning session with staff of the NPO, the Ministry and the Board. Unfortunately the session could not be scheduled prior to year end and had to be held shortly after. Subsequent to the session, the Board sent further correspondence to the Minister seeking clarification on what he (or Cabinet) sought in the role of the Board and ways the current conflicting procedures of the structure, compared to what the Law states, could be resolved. In view of the inadequacies in ensuring timely and adequate compliance with the NPL by employers and, to a lesser extent, pension administrators, the Board remains convinced that the NPO requires additional and proper resources and that the status quo is unacceptably risky, bearing in mind the size to which the private pensions market, as well as liabilities of delinquent parties, has grown.

MAKE RECOMMENDATIONS TO THE MINISTER IN RESPECT OF PENSION PLANS

The draft revisions to the Law proposed by the Board, along with its explanations and rationale for significant changes, were submitted to the Ministry during the reporting year. (The submission did not specifically address the regulations to the Law, which is work that still needs to be undertaken by the Board. A start was made in the current year but is being impeded by the lack of administrative resources.) The submission did attempt to address certain facets of administration of pension plans and the administration of the Law, ensure more timely enforcement, enhance protection of pension funds and employees' rights and address budget inadequacies of the NPO and the Board. It is felt that those creating the work, especially in the area of gaining compliance, sometimes time and time again, should bear the brunt of the cost of compliance. This goes for both employers and administrators, and charges should not be passed on to other plan members, either employers or employees.

In addition, in its proposals for changes to the Law, the Board has also recommended a clearer distinction of the respective roles of the Superintendent (NPO) and the Board, thus partly addressing, but only partly, the current situation addressed in the previous section. Areas of benefits available and the adequacy of benefits was also addressed in its submission.

The Board appreciates the cooperation and support provided by the National Pensions Office and the Ministry and trusts that more support will be forthcoming.

The National Pensions Board will be pleased to assist the Ministry in gathering any further public input that they deem necessary with respect to the National Pensions Law.