Key takeaways about the new alternative end of service benefits scheme in the UAE

Introduction

On 10 October 2023, the UAE Cabinet issued Cabinet Decision No 96/2023 (the **Decision**) in which it announced the introduction of a voluntary alternative scheme relating to end of service (**EOS**) benefits for non-GCC national employees (the **New Scheme**).

The New Scheme allows employers to offer their employees the opportunity to opt into a voluntary EOS benefits scheme that operates based on monthly contributions made by employers into an investment fund.

The New Scheme is optional for employers at the moment, but it is hoped by the UAE government that it will be taken up by many employers in the coming months and years.

A Significant Change

The New Scheme is a significant change to the existing EOSG practices. The New Scheme means that employers of non-GCC national employees can 'opt out' of the existing lump sum EOS gratuity payments regulated by Federal Decree Law No 33 of 2021 (the **UAE Labour Law**) in exchange for adoption of the New Scheme and regular contributions into an approved investment fund.

The New Scheme operates on the basis of monthly contributions (the **Basic Contribution** or the **Basic Subscription**) made by employers to an investment find through a subscription. The monthly Basic Contribution is calculated based on a set formula and the employer pays this amount into an SCA approved investment fund on a monthly basis. The employee can select the type of investment fund that meets their savings and investment needs (low risk, medium risk, high risk or Sharia compliant). The employee also has the option of electing to make additional voluntary contributions (**Voluntary Contributions**).
The benefits of the New Scheme can broadly be summarised as follows:

- **Protection:** The New Scheme aims to protect employees from inflation, default and lack of payment due to employer insolvency.
- **Administrative:** The New Scheme offers employers an alternative to having to facilitate large financial lump sum payments at the end of an employee's service, and/or having to manage large dormant fund reserves.
- **Flexibility**: The New Scheme fosters opportunities for employees in relation to savings and investments that were not previously available to them. Employees can select the investment option that befits their individual risk tolerance by choosing a low, medium, or high-risk investment option, or a Sharia-compliant investment.
- **Economic:** It is hoped the New Scheme will boost the attractiveness and flexibility of the UAE labour market for employees and potential expatriate employees and position the UAE to attract global top talent. The New Scheme facilitates investment into various economic activities in the UAE, which the UAE Cabinet believes will generally aid the UAE economy.

The New Scheme is currently aimed at non-GCC national employees in the private sector, but non-GCC national employees in the government sector can also join the New Scheme.

End of service benefits for Emiratis and GCC nationals will remain regulated by legislation concerning pensions and social securities for UAE nationals.

Operation of the New Scheme

Employers opting for the New Scheme must formally subscribe to the New Scheme through the Ministry of Human Resources and Emiratisation (**MOHRE**). Employers adopting the New Scheme will also have to:

- Select and contract with one of the investment funds approved by the Securities and Commodities Authority (the **SCA**).
- Determine which employees are to be included in the New Scheme; and
- Discontinue use of the old EOS gratuity system for those employees that are transferred into the New Scheme.

If an employee is selected by the employer for participation in the New Scheme, that employee's participation in the New Scheme is mandatory.

Employees enrolled into the New Scheme will have to select the type of investment offered by the approved investment fund provider that meets the employee's savings and investment needs (low risk, medium risk, high risk or Sharia compliant). Employees will also have to decide on whether they wish to make Voluntary Contributions. Voluntary Contributions are paid by the Employer into the selected investment fund but are deducted from the employee's salary. Voluntary Contributions can either be a percentage of the employee's gross salary, or a specific amount, but cannot exceed 25% of an employee's total annual salary. Voluntary Contributions are not taken into consideration when calculating EOS benefits.

Basic Contribution is paid by the employer and may not be deducted from the employee's salary.
When it comes to calculating the Basic Contribution, the Decision distinguishes between full-time employees and part time employees (i.e. employees with variable working hours). Basic Contribution is calculated as follows:

- *Full time employee & employment service period is less than 5 years:* 5.83% of a full-time employee's monthly basic salary.
- *Fulltime employee & employee service period is more than 5 years:* 8.33% if the full-time employees' monthly basic salary.
- *Part-time employees*: the same percentages as above when it comes to service periods, but the calculation is based on the part time employee's basic salary in accordance with the UAE Labour Law.

If the employer's Basic Contribution payments are overdue by more than two months, MOHRE will suspend the issuing of new work permits for that employer, and may also take other administrative actions.

If the employer's Basic Contribution payments are overdue by more than four months, MOHRE will impose a penalty on the employer of AED 1,000 dirhams per beneficiary per month on the employer. This can add up quickly for employers with large numbers of employees.

Regulators of the New Scheme

MOHRE and the SCA are responsible for supervision and control of the New Scheme:

- MOHRE is responsible for all complaints or claims associated with any labour matters connected to the New Scheme.
- The SCA will be responsible for complaints about the performance of the investment fund service providers.

In addition, the financial free zones authorities are responsible for the supervision, control, and resolution of complaints regarding the New Scheme system that fall within their jurisdiction.
It remains to be seen how the governance around this will operate in practice.

Other features of the New Scheme

- **Protection of Basic Contributions:** Basic Contributions paid by the employer into the investment fund cannot be made subject to judicial enforcement, seizure, liquidation, or bankruptcy procedures. This is a an extremely helpful aspect of the New Scheme. It protects employee EOS benefits that would otherwise have been tied up in the employer's asset pool.
- **Investment options:** The Decision sets out that investment funds must provide a variety of investment options to cater for different risk appetites and different expected investment returns, but that two of the options that must be provided are a capital guarantee option, and a Sharia compliant fund option. This means that employees can select the investment option that is most suited to their risk appetite and needs.
- **Protection of Prior Accrued Entitlements:** An employer must ensure that their employees' entitlements from prior to the employer's adoption of the New Scheme are preserved. The Decision does not provide details as to how EOS gratuity accumulations are to be accounted for / incorporated into the framework of the New Scheme. It is possible that employees could be given the option to voluntarily incorporate any accrued EOS gratuity into the New Scheme. This mirrors the approach taken in the DIFC, where the employee savings scheme was introduced to supplant the traditional EOS gratuity payments.
- **Contribution Withdrawals:** During the course of employment, employees cannot withdraw the Basic Contributions made by their employer. The period of employment is calculated from the commencement of the employment (not from the date of subscription to the Scheme). However, subject to the terms set by the fund manager, employees can access the Voluntary Contributions and/or the investment returns during the course of their employment.
- **Investment of Fund Monies:** The SCA may require a percentage of the Basic Subscriptions and Voluntary Contributions to be invested in the UAE's economy and market, provided that such an investment does not harm employee interests and provided strict conditions are met.
- **Employment terminates prior to 1 year elapsing:** If an employment relationship lasts less than one year, an employer can recover the Basic Subscription amounts paid into the investment fund. This mirrors the situation where the employer would not have been liable to pay EOS gratuity pursuant to the provisions of the UAE Labour Law.
- **Payments to the employer:** If the employee owes

Conclusion

The New Scheme is a very significant development for the employment and labour landscape in the UAE. It provides a more dynamic approach to EOS benefits and empowers both employers and employees with various benefits vis-à-vis the EOS gratuity system.

The New Scheme provides employees with greater flexibility in managing their EOS benefits. The New Scheme gives employees access to a variety of investment options and empowers employees to customise the investment of their EOS to better suit their individual needs and long-term financial goals. For employees who need a little extra support to reach long term savings and investment goals, the Voluntary Contributions mechanism may be a good way to facilitate regular savings to help reach those long term goals.

For employers, the New Scheme alleviates some of the burdens of managing accrual and payment of EOS benefits. Under the New Scheme employers make regular contributions into an approved investment fund, meaning they no longer have to provision or budget for large lump-sum payments to be made at future points in time. Similarly, the New Scheme is anticipated to make the UAE labour market a more attractive one, allowing employers to attract the best talent worldwide.

The UAE authorities further hope that the New Scheme will boost the UAE economy, either through the investment of funds from the New Scheme and/or by positioning the UAE as a financially attractive and safe place to reside and work.

Key points for employers:

- **Optional:** Employers are not yet obliged to subscribe to the New Scheme but those who do are required to discontinue the use of the current EOS gratuity model regulated by the UAE Labour Law. Employers should consider whether they are open to adopting the New Scheme and should consider clearly communicating their position on adoption of the New Scheme to employees.
- **Subscribing**: Employers opting for the New Scheme must formally request a subscription through MOHRE and contract with one of the investment funds licensed by SCA to provide these investment services. Once subscribed to the New Scheme, employers are required to participate in the New Scheme for a minimum of one year. One of the steps an employer will need to complete as part of adopting the New Scheme is selecting the approved investment fund provider and entering into a contract with that investment fund provider.
- **Payment processes**: Employers will have to consider their administrative processes, policies and procedures to ensure that they can calculate and pay Basic Contributions for the relevant employees within the mandated timeframes. All Basic Contributions and Voluntary Contributions are paid in UAE Dirhams, so currency conversion protocols may need to be developed and documented. In addition, employers will want to ensure that they have clear written instructions from employees about any Voluntary Contributions to be made.
- **Payment timing and penalties:** Employers enrolled into the New Scheme will need to account for regular monthly payments and ensure that payments can be facilitated consistently on a month-to-month basis. Penalties for late payment apply and may include suspension of the company's ability to process work permits, other administrative restrictions and/or fines of AED 1,000 per beneficiary per month. Final contributions upon termination of employment and/or death of an employee must be made into the within the same timeframes as those set out int 10 days of the employee's passing.
- **Previously accrued EOS benefits:** An employer must ensure that their employees' entitlements from prior to the adoption of the New Scheme are preserved.
- **Withdrawal from the New Scheme:** Employers can only withdraw from the New Scheme with MOHRE approval and subject to conditions. On withdrawal by the employer from the New Scheme the employer cannot recover the Basic Subscription amounts paid by the employer.

Key points for employees:

- **Participation:** A non-GCC national employee is eligible to adopt the New Scheme. If an employer opts to participate in the New Scheme and nominates an employee to be part of the New Scheme, then the employee's participation in the New Scheme is mandatory.
- **Fund selection:** Employees will have the option to select the investment type that best suits them (low risk, medium risk, high risk or Sharia compliant). One of the options that must be offered to employees by the investment fund is a capital preservation investment option. If the employee selects an investment option without a capital guarantee, then the employee is liable for any losses incurred during the investment. In those circumstances the employee cannot file a claim against the employer for losses incurred during the investment.
- **Contributions:** Under the New Scheme, employers have to pay the Basic Subscriptions into the investment fund within strict timeframes and penalties will apply if payments are not made on time. Employees can also opt to make additional Voluntary Contributions to help boost long term savings and investment goals. If an employee wants
- **Access to funds:** Employees cannot withdraw any Basic Payments from the investment fund during the course of their employment, but they can withdraw part or all of the Voluntary Contributions or their investment returns at any time during their employment (in accordance with terms set by the fund manager). On termination of the employment relationship, employees can decide to withdraw what they are owed, or keep the funds invested and continue with the investment.

If you have any questions about the Decision or the New Scheme, or if you require advice and/or assistance with the adoption of the New Scheme, please get in touch with Natasja Pollemans.

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