

Pensions in the UAE

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In the Gulf Co-operation Council (“GCC”) countries governments have implemented state pension schemes for the benefit of their employed citizens. However, not all of those who are entitled to participate in the state pension schemes in their country are registered and therefore not all eligible employees benefit from the scheme. Whilst there are a number of reasons for this the primary reason appears to be lack of knowledge about the statutory obligations by individuals and employers alike. This article seeks to set out the statutory obligations on employers and employees based in the United Arab Emirates (“UAE”). Different rules apply in the other GCC countries (and for UAE national employees working in Abu Dhabi).

Background

The UAE Federal Pensions and Social Security Law No.7 of 1999 (as amended) (the “Pensions Law”) governs pension provision for eligible UAE nationals. The Pensions Law was effectively supplemented on 1 January 2007 by the introduction of the GCC Pensions Resolution [Federal Cabinet Resolution 18 of 2007] (the “Resolution”), which obliges the registration of all non-UAE GCC nationals (hereinafter “GCC nationals”) employed in the UAE for pension in accordance with the schemes established in their home countries. The Pensions Law and Resolution apply equally throughout the UAE to all employers, including the various free zones in the UAE.

As a result of the Pensions Law and Resolution, every qualifying UAE and GCC national working in the UAE should be registered by their employer with the General

Pensions and Social Security Authority (“GPSSA”), the federal body responsible for administering UAE state pensions. In respect of GCC nationals, the GPSSA acts as a conduit for remitting contributions paid by employers and employees to the state pension authority in the employee’s home country.

Eligibility

Only UAE national employees who hold a ‘family book’ are entitled to be enrolled in the GPSSA pension scheme and are therefore not entitled to receive end of service gratuity. Those UAE nationals who are ineligible for registration are entitled to receive an [end of service gratuity payment](#) (or be registered with a qualifying company pension scheme) in accordance with the UAE labour law.

In contrast, GCC nationals qualify for registration solely based on their nationality and the ability to prove this – there is no requirement to provide a family book or equivalent.

Registration

In order to register employees, an employer must register itself with the GPSSA and on doing so will be provided a registration number, akin to an account or identification number. Concurrently, employees will also receive an individual registration number upon first registration which will remain with the employee during his entire working life.

Eligible employees must be registered within one month of the date of commencement of their employment. Accordingly, where employers enter into an employment contract with an UAE or GCC

national employee, it is worth the employer giving thought at that stage to the Company's registration status. If the employer is not already registered with the GPSSA, perhaps because the employer has not previously employed UAE or GCC nationals, it is useful to begin the registration process as early as possible to avoid delaying the employee's registration.

Late registration may attract penalties in the form of late fees and other fines. Penalties are assessed on a case by case basis by the GPSSA (acting where necessary on behalf of the relevant pension authorities in the other GCC countries). Where the penalties relate to late registration of a GCC national, the relevant state pension authority will determine the applicable fines and will communicate this to the GPSSA who will in turn seek to recover these from the employer.

Payment of Contributions

Once an employee is registered with the GPSSA, the employer is responsible for paying contributions to the employee's fund. The level of contribution, together with any applicable caps, vary and depend on the employee's nationality as different GCC states have different contributions requirements. In addition to contributions made by the employer, employees are also required to contribute to their own fund. Again, the amount required is dependent upon the employee's nationality due to the varying contribution requirements. The obligation falls on the employer to ensure that the employee's contribution, in addition to its own, is collected and paid on time. Employers are permitted to deduct the employee's contribution from their salary on a monthly basis in order to remit the relevant payment to the GPSSA along with its own contribution.

Opt-out and End of Service Gratuity ("ESG")

As set out above, it is compulsory to register UAE and GCC national employees for their relevant state pension schemes and the laws do not provide for an opt-out of pension contributions even where the employee consents.

The Pensions Law and Resolution are silent in respect of the relationship between the state pension scheme and ESG. However, UAE court judgments establish that an employee can choose to receive a pension or ESG payment (whichever is more beneficial to the employee), but not both. Notwithstanding that, the relevant court judgments apply to the relationship between pension and ESG for expatriate employees. Moreover, it is generally accepted that, pursuant to the Pensions Law and Resolution, pension contributions should be made on behalf of eligible UAE and GCC nationals.

As a result of the lack of obligation on employers to pay pension contributions for expatriate employees into the state pension scheme, the obligation to pay ESG arises. Paying ESG to UAE and GCC nationals will not satisfy the obligations set out in the Pensions Law and Resolution. Therefore, paying ESG to UAE and/or GCC nationals who qualify for participation in the state pension scheme is unlikely to extinguish the liability in respect of pensions.

Ultimately, ESG and the state pension scheme run alongside one another (with ESG being paid to eligible expatriates and non-eligible UAE nationals and pension contributions applying to eligible UAE and GCC national employees) and are not substitutes.

Non-compliance and Limitation of Claims

Where pension contributions are paid late, the GPSSA may impose fines against the employer which are calculated at the daily rate of 0.1% of the contributions payable for each day that the contributions are overdue. Similarly, where an employer has failed to register employees with the GPSSA, the employer can be fined AED 5,000 per employee.

The Pensions Law and Resolution do not provide a time bar for claims. Effectively, the result is that an employer's failure to register an employee and pay contributions to the state pension scheme and any

pursuant liabilities are not extinguished by lapse of time or any other circumstances. It is therefore possible that an employee who was not registered during the course of employment with the employer to make a valid claim for contributions either directly or via the GPSSA.

State Pension in Abu Dhabi

Whilst the Pensions Law and Resolution have federal remit, the Emirate of Abu Dhabi has a separate pension law, the Civil Pensions and Benefits in the Emirate of Abu Dhabi Law No. 2 of 2000, and a separate authority, the Abu Dhabi Retirement and Pensions Fund (“ADPFP”), which manages pensions on behalf of Abu Dhabi based and employed UAE nationals. The ADPFP does not manage the pensions on behalf of GCC nationals and this responsibility still lies with the GPSSA.

Similar considerations and obligations to those outlined above and continue to apply in Abu Dhabi. The main difference is in terms of liability for non-compliance. Essentially, late payment of contributions will attract fines of AED 100 per day and the ADPFP may apply unspecified fines for non-registration or late registration, where the time limit for registration of individuals is 10 days.

Conclusion

The summary of an employer’s legal and compliance obligations and liabilities for failure to register do not make for easy reading. There is a quiet effort by the authorities to identify employers who have not registered their eligible employees. The recent introduction by the UAE Ministry of Labour of rules requiring employers to first contact the GPSSA for exiting UAE nationals is largely designed to identify errant employers who have failed to register their employees and therefore not paid relevant contributions.

This concerted effort will only intensify in the future, and in light of the potential liabilities on employers for failure to comply, it is recommended that all employers ensure that their eligible employees are registered as soon as possible.

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