UAE Pensions: Increased Compliance Scrutiny

There is a quiet effort by the authorities to identify employers who have not registered their eligible employees for the UAE state pension. The potential liabilities faced by these employers do not make for easy reading.

This article sets out the statutory pension obligations on employers and employees based in the UAE and the associated penalties for non-compliance. Different rules apply in the other Gulf Co-operation Council (‘GCC’) countries (and for UAE national employees working in Abu Dhabi).

Background

In the GCC, 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 a lack of knowledge about the statutory obligations by individuals and employers alike.

The UAE Federal Pensions and Social Security Law No.7 of 1999 (as amended) (’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] (’Resolution’), which obliges the registration of all non-UAE GCC nationals (‘GCC nationals’) employed in the UAE for a 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 must be registered by their employer with the General Pensions and Social Security Authority (‘GPSSA’), the federal body responsible for administering UAE state pensions. These employees are not entitled to receive end of service gratuity. 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. The Emirate of Abu Dhabi has a separate pension law (please see below section 'State Pension in Abu Dhabi' for more information).

The Pensions Law and Resolution do not provide a time bar for claims for an employer's non-compliance. 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. Therefore, where an employer has not registered an eligible employee with the GPSSA, the penalties for non-compliance can be onerous.

Who must be Registered?

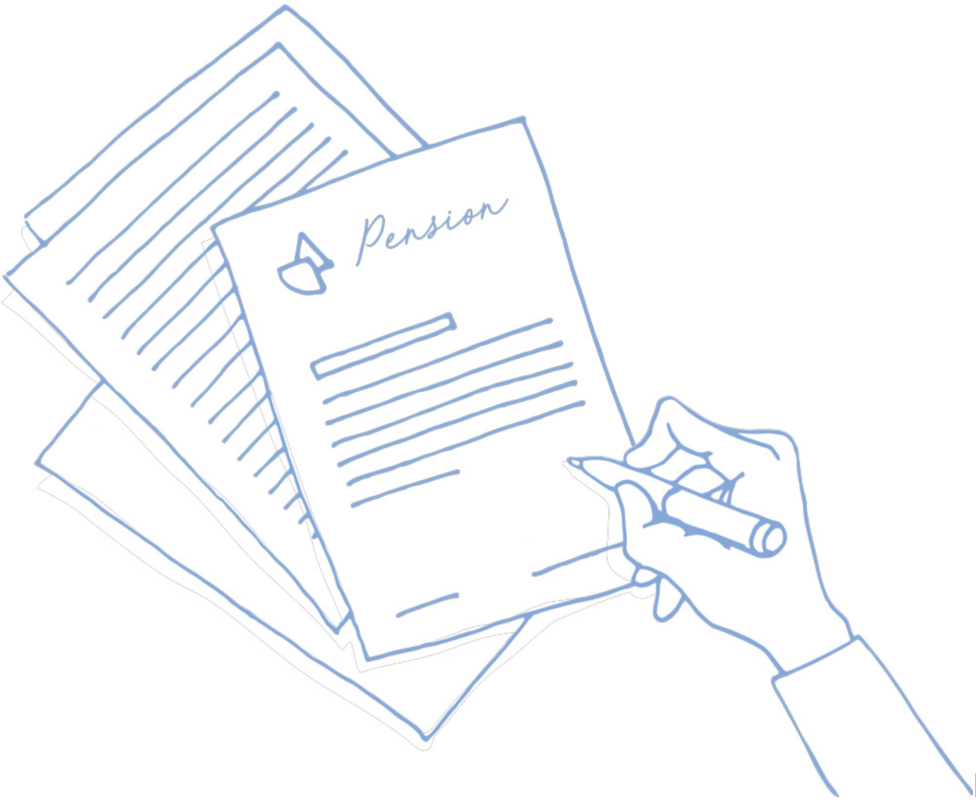
Only UAE national employees who hold a 'family book' are required to be enrolled in the GPSSA pension scheme. By contrast, GCC nationals qualify for registration solely based on their nationality and proof thereof – there is no requirement to provide a family book or equivalent.

Importantly, eligible UAE and GCC nationals cannot opt out and registration is a mandatory requirement.

Registration

In order to register employees, an employer must first register with the GPSSA. On doing so, the employer will be provided with a registration number, akin to an account or identification number. At the time of registration employees will also receive an individual registration number upon first registration, which will remain with the employee during their 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 and incurring the associated penalties.



Penalties

Any eligible employee who was not registered during the course of employment can make a valid claim for contributions either directly or via the GPSSA. The GPSSA itself may also claim for unpaid contributions from the employer.

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 the late registration of a GCC national, the relevant state pension authority will determine the applicable fines and will communicate this to the GPSSA, that, in turn, will seek to recover these from the employer.

Where pension contributions are paid late, the GPSSA may impose fines on the employer which are calculated at the daily rate of 0.1 percent 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 in addition to its obligation to make the unpaid contributions.

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 (‘ADRPF’), which manages pensions on behalf of Abu Dhabi based and employed UAE nationals. The ADRPF does not manage the pensions on behalf of GCC nationals; this responsibility still lies with the GPSSA.

Similar considerations and obligations to those outlined above continue to apply in Abu Dhabi. However, 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 ADRPF may apply unspecified fines for non-registration or late registration, where the time limit for registration of individuals is 10 days.

Increased scrutiny

The authorities are increasing their efforts to identify employers who are not complying with their applicable pension requirements including, in some cases, physical inspections by the relevant pension authority. We are aware of employers whose failure to register eligible employees has been the subject of significant penalties.

Conclusion

The concerted effort to identify employers who are not complying with the applicable pension regulations is likely to intensify in the future. 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.

Al Tamimi & Company's Employment & Incentives team regularly advises on regional employment matters, including in relation to pensions and the relevant legal requirements for employers. For further information, please contact Gordon Barr (g.barr@tamimi.com) or Yasmin Naja (y.naja@tamimi.com).