

## The DIFC's new defined contribution scheme: What will it look like, what does this mean for the UAE and what is offshore's role?

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MAY 2019

*Group Partner of Collas Crill Guernsey's International Private Clients and Trusts team, Angela Calnan, explains.*

In 2012, at the ripe young age of 36, I resigned from the law firm I was working at in the Dubai International Financial Centre (DIFC) to move back to Guernsey and, like many peers at the time, I was on the receiving end of an end-of-service gratuity payment.

As with many DIFC companies, the firm did not offer a pension scheme during my time there so the end of service gratuity payment was, essentially, in lieu of that. However, a mid-career lump sum felt more like a bonus than funds to be put towards retirement savings, and that is how it was treated.

During my time in Dubai the region was still developing. It was still seen as a short-term, hardship posting with the average tenure of us and our expat friends being about 2 or 3 years – not a huge length of time to be absent from making contributions to your pension back home.

However, a study last year by Willis Towers Watson found that expats are staying in the UAE a lot longer now – 5 to 10 years. That is a significant amount of time to take a holiday from your domestic pension – particularly as the end of service gratuity payment that you receive in the UAE, if converted into retirement income, could only amount to about 5% of your final basic salary.

So, the end of service gratuity system falls far short of helping expats to save for retirement and we have been looking into solutions for many years now.

Over the last couple of years we have helped several UAE employers establish offshore trusts to fund end of service gratuities; some UAE employers have gone further and enabled the employees to use the offshore trust as a defined contribution system in order to boost retirement savings.

If run well and invested well, these schemes are cost neutral. To me, the establishment of these schemes has always felt like a "win win" and it has always really surprised me that more UAE businesses haven't set them up. Until now....

In 2020, the 2000+ companies in Dubai's International Financial Centre ("DIFC") will finally take the plunge.

### **The New DIFC DC Scheme**

The new DIFC Scheme is proposed to come into force on 1 January 2020.

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It is proposed that the structure will be structured as a DIFC law trust with a DFSA regulated fund administrator administering the 10-12 passive funds that the trust is invested in.

The trust will have an independent trustee – likely to be a leading global trust company.

DIFC-based employers will contribute to the DC Scheme at the same level of benefit as the old gratuity system which will be approximately 5.83% of an employee's monthly salary for employees who have been with a company less than 5 years and approximately 8.33% for those with more than 5 years of service.

It is envisaged that staff will also be able to use the Scheme as a savings plan and can make monthly top up contributions.

It is also envisaged that employers will be able to use the Scheme to make their own top up contributions in order to attract and retain staff.

As with a typical pension arrangement, staff will be able to control how their money is invested – either cautiously, with a balanced approach or aggressively. Failing that, there will be a sensible default option for those employees not wishing to control the investment strategy of their pot.

Importantly, the funds will be owned by the Scheme's trustee for the benefit of the employees as opposed to the funds remaining under the control of the company (the latter being the case for approximately 80% of companies which currently ring fence gratuity liabilities).

Separation of the end of service / retirement pot from the control of the company has long been a concern of employees in the region and has, perhaps, been a contributing factor in the slow evolution of retirement savings in the region.

This brings us nicely on to the positioning of the offshore financial centres in this area.

## **What is Offshore's Role?**

It is likely to be the case that the trustee of the DIFC's new DC Scheme will be an international trust company headquartered offshore but with a presence in the DIFC. DIFC trust law is relatively new as compared to, say, the trust laws of the Channel Islands so it is likely that the Scheme will be administered by an offshore trust company with a long track record of administering employee incentive structures. Particularly given the likely scale of the new Scheme.

Furthermore, non-DIFC companies based in the UAE (and even the wider GCC) will still be looking for trust-based solutions and are, arguably, more exposed to the uncertainty of Federal law than DIFC companies in any event.

Non-DIFC UAE employers can establish their own DIFC trusts which would have the dual advantages of (i) taking the assets out of the control of the employer; and (ii) safeguarding the assets from any onshore claims (due to the DIFC's firewall provisions).

However, the Channel Islands' firewall provisions are arguably much more robust than those of the DIFC as (a) they have been successfully tested; and (b) trying to bring a claim 5,600kms away in the Channel Islands is far less appealing for a claimant and, as such, the employees' retirement money is potentially better protected.

## **Conclusion**

The DIFC's new Scheme is a long overdue and very welcome development in seeking to safeguard the retirement benefits of expat staff in the region.

It will be interesting to see the extent to which DIFC companies and their employees make use of the additional features of the Scheme to use it as a savings plan and a means of providing additional employer contributions.

In terms of the offshore trust industry, Non-DIFC UAE employers still need to set aside their gratuity liabilities and they may also wish to create enhanced schemes offshore which cater for employee and extra employer contributions.

Indeed, by moving the issue to the top of its agenda, the DIFC has focussed to the minds of onshore UAE companies to look after and retain their expat staff by setting up their own schemes offshore.

For more information about setting up a scheme in the Channel Islands, please contact me.

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