Gratuities and savings plans for Dubai-based companies: The massive opportunity for offshore trusts and trustees continues….

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Fresh back off the flight from Dubai speaking at STEP Arabia on this subject yesterday, I am still pinching myself that, after 10 years of banging this drum, real change is actually happening.

It is the biggest buzz that I have felt in the region for a long time. STEP Arabia was over-subscribed by 40+ attendees so it was very much '*standing room only*' this year and the spirit of Essam Al Tamimi's keynote was also one of innovation and vision.

This paper is intended as an update on the current status of DEWS and also a short practical guide to help DIFC and onshore Dubai companies understand what steps they need to take **now** and also for offshore law firms and trustees to understand where the opportunity lies to assist those companies.

The time-frame for compliance of 1 January 2020 is, at the time of writing **only 28 working days away** – not long to draft a trust, find a trustee, execute the trust instrument, communicate with staff, set up a trust bank account and start funding the trust.

HR Managers and Finance Directors need to take their heads out of the sand now (pardon the pun) and take action.

If you are new to advising Dubai clients or new to DEWS, my earlier paper of May 2019 sets out the landscape up to this point **click here**.

DEWS comes in on 1 January 2020 - we are told that this is a hard deadline.

Below I will recap on my worked examples from STEP Arabia for companies who are impacted by DEWS but who may prefer an alternative Qualifying Scheme.

Scenario 1 - Existing Scheme

Scenario - A DIFC employer who has been ahead of the curve and has a Guernsey or IOM end of service gratuity scheme in place already written under Guernsey or IOM law with a Guernsey or IOM trustee and administrator ("Existing Scheme").

The Existing Scheme may or may not have the additional "bell & whistle" of enabling employees to use it as a savings plan – it doesn't make a difference in the scenario.

The proposed new regulations to be issued on 17 December 2019 under the Employment Law, DIFC Law No. 2 of 2019 ("**Regulations**") foresee this eventuality.

Such schemes are very likely to fall within the definition of 'Qualifying Scheme' under the Regulations provided that they offer at least the same benefits as the core benefits of the DEWS scheme and, importantly, are regulated by a 'Recognised Regulator'.

Given that both Guernsey and IOM have a regulated pensions industry, schemes under Guernsey/IOM law and administered in Guernsey/IOM are almost certainly going to be regarded as Qualifying Schemes under the Regulations.

Jersey and other highly regulated offshore centres may well also qualify.

In this scenario, the employer would need to wait until the Regulations are published and, assuming the Regulations contain no surprises, apply to DIFCA for a Certificate of Compliance ("**Certificate**").

In the unlikely event that the Regulations contain surprises, some tweaks may be needed to the Existing Scheme prior to the application for the Certificate.

Those amendments would be made with the assistance of lawyers in the jurisdiction of the governing law of the Existing Scheme (for example, Guernsey, Jersey or IOM).

If the Existing Scheme isn't fully funded with accrued gratuity, the employer would need to decide whether or not to transfer accrued benefits into the Existing Scheme with or without the consent of each member of staff.

Accrued benefits are those end of service benefits accrued by employees up to 31 December 2019.

Scenario 2 – A DIFC Employer Who Doesn't Have an Existing Scheme and Who Doesn't Want DEWS

Scenario - Some DIFC employers may not have any arrangements in place for their staff but they may not want to sign up to DEWS either.

The reasons for that may be varied….

- The employer may not want the funds to be held in the UAE under DEWS.
- The employer may have a particularly good or long-standing relationship with an alternative offshore trustee to the DEWS trustee.
- The employer may want their scheme to be more bespoke than DEWS; for example, as well as gratuity provision and savings plan elements, the employer may want to incorporate matching contributions or additional incentive mechanisms for their staff.
- The employer may have strong preferences about the investment funds available beyond those currently provided by DEWS.

There could be any number of reasons for not wanting DEWS.

In this situation, the employer is under **serious time pressure** to get an alternative trust to DEWS set up before 1 January 2020.

In the light of this, there are two options available:

(a) The employer can contact a lawyer or trustee in Guernsey or IOM, get a trust instrument drafted and a trustee, administrator and investment advisor selected, get the trust live with a nominal sum of $10 and have it ready for 17 December 2019 (when the Regulations come out) so that a Certificate of Compliance can be obtained immediately.

In this case, if the Regulations contain any surprises, the trust will have been drafted in a flexible manner so that changes of proper law, consequential amendments and changes of trustee can be implemented within 24-48 hours of the legislation date (if, in the unlikely event Guernsey/IOM are not considered sufficiently comparable to DIFC). Such changes are likely to cost no more than $500-$1,000 to implement (on top of the fees for drafting and administering the trust).

OR

(b) The employer could wait until 17 December 2019 (when we know the content of the Regulations) and *then* draft the trust from scratch thereby potentially saving the $500-$1,000 to tweak an existing trust. Although there is a potential cost saving with this, my view is that the Regulations are unlikely to disallow Guernsey or IOM as both have regulated pensions industries and both are already home to some large UAE schemes.

As such, I would strongly advocate option (a) over option (b).

Once the trust is live, and compliant with the published Regulations, the employer will need to apply to DIFCA for its Certificate of Compliance as soon as possible.

The employer would also need to consult with staff about the transfer in of any accrued gratuity benefits.

Scenario 3 – Onshore Dubai Employer

Scenario – onshore UAE employer without an existing scheme.

With DIFC employers now being forced to safeguard gratuity benefits, they may be at a serious competitive advantage to onshore Dubai and wider GCC companies in terms of attracting and retaining talent and reducing recruitment costs.

As such, onshore firms may also now be following suit by setting up their own end of service and employee savings schemes either in the DIFC or offshore in Guernsey, Jersey or IOM.

Until equivalent Federal legislation comes in, there will be complete freedom as to where these schemes are set up and how they are drafted although companies are likely to gravitate towards established pensions jurisdictions.

It is certainly fantastic to see the DIFC taking steps to bring the safeguarding of employees into line with international standards and it is a great opportunity for DIFC service providers and offshore service providers alike.

I very much look forward to working with HR and Finance Directors in the UAE to roll more and more of these schemes out into the region.

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