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COVER STORY

TRANSFORMING EMPLOYEE BENEFITS IN THE UAE: A COMPREHENSIVE OVERVIEW OF THE NEW SAVING SCHEME

In this article:

- Introduction of the Savings Scheme
- Employer Participation Protocols
- Calculation of Contributions and Financial Flexibility
- Tax and Financial Implications

The UAE has consistently led the way in pioneering innovative policies aimed at advancing the employment market and retaining top-tier global talent.

In a significant development on October 10, 2023, the Ministry of Human Resources and Emiratisation (MoHRE), in collaboration with the Securities and Commodities Authority (SCA), unveiled Cabinet Resolution No. (96) of 2023. This resolution marks the introduction of a voluntary and alternative end-of-service benefits scheme, known as the 'Savings Scheme', applicable to both employers and employees in the private sector. The resolution came into effect the day following its official publication.

The Savings Scheme represents a ground breaking option alongside the existing end-of-service benefits system. This voluntary initiative empowers employees to invest their end-of-service benefits in well-established funds, offering them the prospect of earning returns upon the completion of their service tenure. This strategic move aligns with the UAE's commitment to fostering a dynamic and attractive employment landscape while providing employees with enhanced financial flexibility.

The objectives of the Savings Scheme are twofold: firstly, to safeguard employees from the adverse impacts of inflation, default, and bankruptcy, and secondly, to provide employees with the opportunity to reap benefits from investing in diverse economic activities within the UAE.

The Savings Scheme presents a range of investment possibilities, encompassing:

1. Sharia-compliant funds

2.A Capital Guarantee portfolio ensuring a risk-free investment

3.Diverse investment portfolios with differing levels of financial risk corresponding to anticipated returns.

The key points of the legislation have been summarized below:

1. Savings Scheme Framework:

The Savings Scheme allows employees to divert their end-of-service pay-outs into recognized investment funds, presenting an innovative opportunity to customize financial gains based on individual preferences.

2. Employer Participation Protocols:

Prospective participating employers must adhere to a structured process to participate in the Savings Scheme, employers must take several key steps as outlined below:

i. Initially, they need to submit a formal request to the Ministry of Human Resources and Emiratisation (MoHRE), adhering to the specified procedures.

ii. Following this, employers are required to select a licensed investment fund that aligns with the scheme. Additionally, they have the responsibility of determining which category of employees will be included in the alternative scheme, with participation becoming mandatory for the selected individuals.

iii. As part of the transition, employers are expected to discontinue the use of the current end-of-service benefits for those employees chosen to engage in the alternative scheme.

iv. Furthermore, employers must accurately calculate and remit the basic subscription amount without subtracting it from the beneficiary's salary, noting that these contributions are non-refundable.

Employees have the right to select the investment fund for their voluntary subscription. Employees of the "skilled labour" category may choose any type of investment option, while employees of the "unskilled labour" category must adhere to the capital guarantee option. However, in the absence of a specific choice, contributions will automatically be directed to the Capital Guarantee Fund.

These procedural guidelines aim to streamline employer participation in the Savings Scheme, fostering a seamless transition for both employers and employees alike.

3. Calculation of Monthly Contributions:

Employers are mandated to calculate the monthly subscription amount based on the employee's tenure. Contributions for those with less than 5 years of service amount to 5.83% of the basic monthly salary, while those with 5 years or more contribute 8.33%.

The stipulated timeframe for transferring these contributions to the investment fund is within 15 days of each month.

4. Employee Voluntary Contributions:

Complementing employer subscriptions, employees have the option to make additional contributions, capped at 25% of their total salary.

Employers facilitate this process by deducting the additional amount from the employee's wages, and transferring it to the employee's investment account, providing an added layer of financial security.

5. Beneficiary Flexibility:

Beneficiaries hold the prerogative to select their preferred investment fund, ensuring alignment with their unique financial objectives. Upon the termination of employment, the employee is entitled to receive all basic subscription amounts contributed by the employer and any associated returns generated during the subscription period, within a 14-day timeframe. Even post-employment termination, employees retain the option to keep their funds in the investment account, offering an option for comprehensive long-term financial planning.

6. Tax and Financial Implications:

The implementation of the Savings Scheme necessitates a recalibration of tax planning for employers, particularly concerning expatriate employees. A thorough assessment of the program's implications is imperative for businesses to navigate this transformative shift seamlessly and mitigate any unforeseen liabilities.

7. Supervision of the Scheme:

The oversight of the scheme is conducted jointly by the MoHRE and SCA, aligning with relevant legislations. MoHRE takes charge of receiving and investigating labor complaint

associated with this alternative system, ensuring compliance during inspections. Concurrently, the SCA handles complaints pertaining to the performance of service providers managing the investment funds.

Additionally, the financial free zones authorities are tasked with supervising and resolving complaints specific to the alternative end-of-service benefits system within their jurisdiction. This comprehensive supervision framework aims to address concerns, uphold compliance, and ensure the smooth operation of the alternative system.

Conclusion:

The UAE's innovative Savings Scheme signifies a strategic leap toward ensuring a more secure and advantageous financial future for the private sector workforce. Aligned with the broader objective of attracting global talent, this initiative not only revolutionizes the traditional approach to end-of-service benefits but also showcases the UAE's commitment to fostering a progressive and employee-centric business environment. As organizations integrate this transformative change, meticulous consideration of the implications will be pivotal for a successful and seamless transition.

Central Bank of the UAE Introduces Revised Regulations for BNPL

LEGAL & REGULATORY UPDATES

Recognizing the evolving financial preferences worldwide, particularly the rising popularity of "Buy-Now, Pay-Later" and similar credit options, the Central Bank of The UAE (CBUAE) has introduced an updated Finance Companies Regulation.

According to the revised framework, entities can offer short-term credit services under the authorization of licensed Banks or Finance Companies, subject to approval by the CBUAE. Alternatively, these entities can engage in such activities by obtaining a license as Restricted License Finance Companies directly from the CBUAE.

Unlicensed entities currently involved in short-term credit services must seek approval from the CBUAE to operate as Restricted License Finance Companies or establish partnerships with licensed Finance Companies or Banks to continue their operations.



Buy Now Pay Later

DIFC Innovation Hub has forged a strategic alliance with WEMADE, a leading global gaming company based in South Korea.

**LEGAL & REGULATORY
UPDATES**

The purpose of this collaborative effort is to establish the 'WEMIX PLAY Center,' a global Web3 gaming hub that will play a pivotal role in enhancing Dubai's gaming ecosystem. This initiative aligns with the ambitious 'Dubai Program for Gaming 2033,' positioning the city among the top 10 global gaming industry hubs.

Marking a significant milestone as the first South Korean gaming company to partner with the DIFC Innovation Hub, WEMADE will capitalize on the hub's accelerator programs, innovation community, and favorable regulatory frameworks. The primary focus of this partnership is the expansion of the WEMIX ecosystem, with plans to set up the 'WEMIX PLAY Center' within the DIFC Innovation Hub. This center will serve as a hub for onboarding Web3 game companies.

A key aspect of this collaboration involves the establishment of a USD 100 million investment fund, with WEMADE taking the lead in spearheading this initiative. The fund's objective is to create a go-to-market pipeline for Web3 game developers, providing them with targeted access to millions of active players on the WEMIX PLAY platform, WEMADE's native platform for Web3 games. The platform currently features over 65 games from third-party developers, alongside WEMADE's main intellectual properties (IPs), creating a vibrant ecosystem for gaming enthusiasts.

This partnership enhances Dubai's standing as a global innovation hub, reinforcing its dynamic gaming sector. The collaboration is expected to push the city's digital ecosystem forward, contributing to economic diversification and fostering employment growth within the gaming sector for the next decade, aligning with the objectives outlined in the Dubai Program for Gaming 2033.

This partnership is expected to be finalized at a Web3 event scheduled in early 2024.





THOUGHT LEADERSHIP

With the objective of promoting innovation, the Dubai Financial Services Authority (DFSA) has recently issued Consultation Paper No. 153 ("CP"), introducing updates to the regulatory regime for persons seeking, in respect of Crypto Tokens, to engage in any of the activities which constitute a financial service under the DFSA Regulatory Law and General Module.

The DFSA has set a deadline of March 4, 2024, for the submission of public comments on the CP. Reflecting on March 2022, the DFSA published Consultation Paper No. 143 on the regulation of Crypto Tokens. The primary aim was to establish a robust framework that addressed the diverse risks inherent in Crypto Token business.

DFSA Consultation Paper 153: 11 Proposals for the Regulation of Crypto Tokens

The regime came into force roughly 14 months ago, in November 2022. It is important to note that, in terms of its scope, the CP does not address the regulation of Investment Tokens (i.e., security token or a derivative tokens).

The CP outlines 11 proposals designed to enhance the Crypto Token regime, reflecting a proactive approach by the DFSA in addressing emerging challenges within the Crypto Token sector.

1. Recognition

The primary proposal focused on the recognition of Crypto Tokens. The DFSA has set out standard recognition criteria for all Crypto Tokens, considering the regulatory status, transparency, market depth, technological resilience, and other risks.

Correspondingly, Financial Services can only be carried on in or from the Dubai International Financial Centre (DIFC) with a Crypto Token that is Recognized. As such, the DFSA has placed this restriction with the purpose of mitigating potential higher-risk activities linked to illiquid or less mature Crypto Tokens.

An exception is granted to DFSA-licensed custodians, allowing them to safeguard or administer any Crypto Token, excluding certain Prohibited Tokens.

However, the DFSA has reviewed its previously adopted recognition approach, and allowed for more flexibility. Moreover, the DFSA is proposing a reduction in the recognition fee from USD 10,000 to USD 5,000.

In this respect, the DFSA has additional criteria for Fiat Crypto Tokens, which includes a mandate that 80% of the reserves shall be held in cash.

THOUGHT LEADERSHIP

Likewise, to allow for flexibility in recognizing Fiat Crypto Tokens issued in other jurisdictions with comparable regulation, and to avoid the need for frequent adjustments in response to changing market dynamics, the DFSA is proposing to change their additional recognition criteria.

dynamics, the DFSA is proposing to change their additional recognition criteria.

This adjustment would instead require reserves to be held in assets expected to maintain value, possess highly liquidity, are appropriately diversified, carry minimal credit risk, and require daily valuation.

Additionally, given the risks linked to maintaining a peg against multiple fiat currencies, the DFSA is proposing defining a Fiat Crypto Token as exclusively referenced or pegged to a single fiat currency.

2. Collective Investment Funds

The focus of the CP subsequently shifts to the second proposal, which seeks to ease the regulatory approach and constraints pertaining to Collective Investment Funds.

Notably, the DFSA has placed limitations on External Funds and Foreign Funds investing in Crypto Tokens, and in certain cases, restrict investments to Recognized Crypto Tokens only.

DFSA is now considering to allow External Funds to invest up to 10% of their gross asset value (GAV) in Recognized Crypto Tokens, subject to specific requirements, while permitting Foreign Funds with investments of up to 10% of GAV in Crypto Tokens to be offered in DIFC, also provided that specific conditions are met.

Additionally, new requirements for Authorized Firms offering Units of Foreign Funds investing in Crypto Tokens are introduced, and certain Domestic Funds can invest in unrecognized Crypto Tokens, capped at 10% of GAV, exclusively for Qualified Invest Funds (QIF).

3. Custody of Crypto Tokens

Another fundamental aspect within the Crypto Token regime is the custody of Crypto Tokens, which assumes a significant role in ensuring their secure storage and safeguarding.

Hence, an Authorized Firm which provides Custody of Crypto Tokens must comply with the DFSA's Client Asset requirements.

THOUGHT LEADERSHIP

Key obligations include implementing systems and controls to ensure the secure safeguarding and segregation of Client Crypto Tokens, developing policies and procedures regarding the storage of a client's private keys, transparent disclosure to clients regarding the chosen storage arrangements and the rationale behind such storage choices, including details on transfers between wallets. Furthermore, responsibility for any unauthorized or incorrectly transferred Crypto Tokens is assigned to the firm providing the custody; and adherence to technology governance requirements is mandated.

4. Segregation

Firm assets and Client Crypto Tokens should always be recorded, registered, and held separately.

However, the DFSA proposes that Authorized Firms Providing Custody may opt to either segregate a Client's Crypto Tokens or pool them with those of other Clients. However, this is contingent upon the firm transparently disclosing the chosen approach, its rationale, and any associated risks.

5. Unauthorized or Incorrectly Executed Transfers

It has been established that firms providing Custody of Crypto Tokens are mandated to take responsibility for unauthorized or incorrect transfers of such Crypto Tokens.

The DFSA's fifth proposal outlines rectification measures for such transfers, such as compensation arrangements, disclosure requirements related to such compensations, and the implementation of appropriate policies and procedures. The DFSA further proposes an annual review of the selected measures to comply with this obligation.

Quarterly reporting is proposed to help the DFSA identify vulnerabilities and ensure compliance with the specified measures.

6. Third Party Agents

Before engaging a Third Party Agent (TPA), an Authorized Firm must assess the TPA's suitability for holding Crypto Tokens, following DFSA guidance. The DFSA requires evaluating the TPA's authorization, supervision for custody, and the adequacy of their arrangements. This includes examining the TPA's systems and controls, policies for safeguarding and segregating Crypto Tokens, and technology governance requirements.

THOUGHT LEADERSHIP

7. Records

In ensuring transparent and secure management of Crypto Tokens, Authorized Firms are mandated to uphold meticulous record-keeping practices, including, accuracy, segregation of entries for each client, details on the transfer history, and ownership status of Crypto Tokens. Additionally, the records should indicate the type of storage and segregation status, with a proposal that these records be readily available to the DFSA upon request.

The CP proposes enhanced requirements for custody records, considering the potential risks of fraud and misappropriation associated with Crypto Token custody.

8. Daily Reconciliation

In response to the heightened risks of fraud and misappropriation in Crypto Token custody, the DFSA proposes daily reconciliation, aligning with the IOSCO Crypto and Digital Asset (CDA) Recommendations for regular and frequent reconciliations, including situations where Client Crypto Tokens are held with TPA.

9. Safe Custody Auditor's Report

The DFSA has addressed the requirements with regard to auditing systems to secure private keys against hacking, theft, or fraud. Consequently, the DFSA has proposed requiring a Safe Custody Auditor's Report for the audit of systems and controls for storing client Crypto Tokens.

10. Financial Crime

This current proposal focuses on providing further guidance in Travel Rule compliance, transaction monitoring, and blockchain analysis. It considers integrating Crypto Token transfer requirements into the AML module. Additionally, the DFSA suggested mandating Authorized Persons to develop policies for Travel Rule compliance, necessitating robust transaction monitoring procedures to identify and report suspicious transactions.

11. Staking

The DFSA is proposing to limit Proof of Stake (PoS) consensus mechanisms (i.e., staking services) to be offered only by Authorized Firms who provide Custody of Crypto Tokens, subject to specific requirements.

THOUGHT LEADERSHIP

Consequently, the DFSA proposes to no longer allow Authorized Market Institution (AMIs) to provide any facility or service in relation to staking. Risks associated with staking, including validators, liquidity, losses, and the dissemination of misleading information, are being examined.

Not to be overlooked, the DFSA has set a primary criterion for assessing whether proprietary trading in Crypto Tokens within the DIFC falls within the scope of DFSA Regulation – specifically, by determining whether it is conducted by way of business.

The DFSA is also exploring the integration of Crypto Tokens in insurance, focusing on the integration of Distributed Ledger Technology (DLT) for efficiency. While generally not regulating DLT use supporting back-office operations, they seek feedback on regulatory and prudential aspects related to Crypto Tokens in insurance, including market trends, volatility concerns, and prudential treatment for insurers dealing with Crypto Tokens.

In conclusion, while the overall changes may not be extensive, notable adjustments to the Regulation of Crypto Tokens involve an alignment with global standards, including an enhanced and flexible approach for the recognition of Crypto Tokens and stablecoins, easing regulatory constraints for Collective Investment Funds, and enhancing measures for custody, segregation and unauthorized transfers. The CP reflects the DFSA's commitment to proactive regulation and navigating the dynamic landscape of Crypto Tokens with vigilance and adaptability.

THOUGHT LEADERSHIP



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DEBTOR ARREST WARRANT IN UAE

THOUGHT LEADERSHIP

1. As per article 319 of the UAE Civil Procedure Law (Federal Decree Law 42/2022), the execution judge may issue an order, at the request of the prevailing party, to imprison the debtor if he has abstained from enforcing any writ of execution (e.g.: judgment), unless he proves his insolvency. Hence, the law placed the burden of proving insolvency on the debtor.

However, on 24 October 2023, the Plenary Assembly of the Dubai Court of Cassation (DCC) (consisting of eight judges) issued a unanimous decision under DCC 4/2023, whereby the above principle was reversed. The said decision obliged the creditor to prove the debtors' solvency as a pre-condition to apply for a summons to arrest and imprison the debtor.

Nevertheless, the decision asserts that paragraph 2 of article 319 is still applicable and specifies conditions under which a plea of insolvency is not permissible if the debtor abstains from the payment in any of the following cases:

If the debtor has smuggled or concealed his money with the intention of harming the creditor, and it has been impossible for the creditor because of this to execute against these properties.

· If the debt comprises one or more of the instalments due by the debtor, or the debtor was one of those who guaranteed the principal debtor for the payment before the court or the execution judge. However, an exception is made if the debtor has proved the occurrence of new facts that affected his solvency. These new facts should render him incapable of paying the instalments or the value of the guarantee or any part thereof, after imposing these instalments upon him or after giving him the guarantee.

In a nutshell, the DCC's ruling shifts the burden of proving intentional non-payment by the debtor onto the creditor, requiring the latter to demonstrate that the debtor possesses the means to settle the debts but is deliberately avoiding doing so.

THOUGHT LEADERSHIP

This decision (i) ensures a more humane approach towards debtors, (ii) safeguards the interests of both creditor and debtor, (iii) reflects a more just and fair judicial process, (iv) encourages foreign investment in the UAE, like the decriminalization of bounced cheques in UAE which was moved from the Penal Code to the Commercial Transaction Law and considered the bounced cheque due to insufficient funds as an executive deed instead of being criminalized.

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Stephanie Naaman is a highly qualified lawyer with more than 10 years of experience in the legal industry. She possesses a comprehensive array of legal proficiencies, encompassing commercial law, civil law, corporate law, employment law, property law, banking law, criminal law, as well as the practice of civil and criminal litigation. She consistently assists the clients in drafting various types of agreements including cross-border transactions and M&A. She also undertakes due diligence and restructuring, conducts legal studies and provides legal advices on several legal matters.



ROUNDUP

WHAT KEPT US BUSY AT RASMA LEGAL



DIFC Innovation Hub

 Rasma Legal, joins hands with the DIFC Innovation Hub as Partners. Committed to breaking barriers, fostering innovation, and empowering startups, this collaboration perfectly aligns with our vision for positive change in the industry. Read our coverage by [Legal Era](#).

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