



Relaxation of Foreign Direct Investment in the United Arab Emirates

On 23.09.2018, the government of the United Arab Emirates ("UAE") issued long anticipated regulations on foreign direct investment by way of Federal Decree-Law No. 19 of 2018 ("FDI Law"). The FDI Law aims at further diversifying the UAE economy by strengthening the country's attractiveness to foreign direct investment. To achieve this objective, the FDI Law establishes an exemption to the general rule under the UAE Commercial Companies Law, whereby foreign partners are only permitted to own a maximum of 49% of the shares in companies incorporated in the territory of the UAE. Detailing the FDI Law, the so-called Positive List was adopted by the UAE Cabinet in July 2019 and specifies a total of 122 economic activities across 13 sectors which will be eligible for up to 100% foreign ownership.

1. Which investments are covered by the FDI Law?

Prior to the enactment of the FDI Law, a fundamental principle of UAE company law limited foreign investors who were seeking to conduct business in mainland UAE to hold not more than 49% of the shares in a mainland company. The remaining 51% of the shares had to be registered in the name of a UAE national partner. Only for companies incorporated in free zones across the UAE, 100% foreign ownership was permissible.

Now, the FDI Law provides for an exemption to this general rule by allowing foreign investors to own up to 100% of the shares in mainland companies provided they operate in certain economic sectors which are eligible to foreign direct investment. In order to distinguish the sectors and activities presently excluded from foreign direct investment from those which are open to liberalised foreign ownership rules, the FDI Law as well as the respective secondary legislation introduced the Negative List and the Positive List.

a. Negative List

The Negative List is included in the FDI Law itself and sets out such sectors and activities which are not available for any relaxation of the minimum 51% national shareholding requirement due to reasons of national security or public services.

The UAE Cabinet may amend the Negative List at any time. At present, the Negative List comprises the following economic sectors and activities: security and military, exploration, drilling and production of oil, banking activities, financing, payment systems and dealing with cash, insurance services, water and electricity services, services related to fishery, postal, telecommunications, audio and video services, land and air transport services, printing and publishing services, commercial agency services, medical retail services, poison centres, blood banks and quarantine facilities.

b. Positive List

As opposed to the Negative List, the Positive List is not included in the FDI Law. Instead, in July 2019, the UAE Cabinet adopted the Positive List based on recommendations of the newly established Foreign Direct Investment Committee. The UAE

Cabinet is entitled to make amendments to the Positive List whenever it deems necessary.

Currently, the Positive List specifies 122 activities across 13 sectors which will, in theory, be eligible for up to 100% foreign ownership. It comprises of 19 activities from the agricultural sector, 51 activities from the industrial sector and 52 activities from the services sector, e.g. agriculture, manufacturing, hospitality and food services, space, renewable energy, transport and storage, information and communication, professional, scientific and technical activities, administrative services, education, healthcare, art and entertainment as well as construction.

In practice however, it remains to be seen whether foreign investors will indeed succeed in achieving 100% foreign ownership for each activity set out in the Positive List. The UAE government announced that it will be left to the discretion of each of the seven Emirates of the UAE to determine the permitted level of foreign ownership for each of the 122 activities in the respective Emirate. Therefore, in the absence of federal guidelines, different Emirates may implement different levels of permitted foreign participation for the exact same activity. Hence, foreign investors are well advised to engage with the competent Emirate-level authority prior to selecting the location of their registered office in order to gather all information available on the exact percentage of share capital which can be held by foreigners in the specific Emirate.

2. Which requirements have to be met by investors?

In return for greater ownership rights in companies registered in mainland UAE, foreign investors are obliged to comply with additional requirements.

It may be mandatory for foreign investors to employ a certain number of UAE nationals as well as to join the Tawteen Partners Club at the Ministry of Human Resources and Emiratisation. With respect to some activities, foreign investors will also be required to create technical and innovative added value.

Moreover, the Positive List imposes stricter minimum share capital requirements on companies operating in the agricultural



sector (AED 7.5 to AED 10 million) as well as on companies carrying out industrial related activities (largely between AED 15 million and AED 100 million). This indicates the objective to primarily attract investments of large global investors to the UAE's agricultural and manufacturing sectors. Since most minimum share capital requirements for service-related activities do not seem to have changed under the Positive List, investments in such activities are, on the other hand, likely to be of interest to foreign small and medium-sized enterprises.

3. Which application procedures have to be followed?

Foreign investors seeking to own all or a majority of shares in a UAE mainland company engaged in an activity mentioned in the Positive List are required to follow certain procedures.

As a first step, like all companies, foreign investors must apply for an initial approval of the license from the competent licensing authority, the Department of Economic Development in the respective Emirate. Secondly, an application for a Foreign Direct Investment License has to be submitted to the authority in charge of foreign direct investment in such Emirate. The competent authority must approve the application within five working days. Otherwise, the application is deemed to be rejected. If an application is rejected or deemed to be rejected, the foreign investor may object before the competent authority within 15 working days. The competent authority must rule on the objection within 10 working days. In case the objection is rejected or not considered within the said period, the applicant is entitled to object the decision before the competent court within 30 days of rejection or the lapse of the 10-day period. If the investment project violates any of the legal grounds set out in the FDI Law, e.g. posing a threat to national peace or security, the competent authority must reject an application. In such circumstances, the foreign investor may not object or appeal the rejection.

Companies which have been granted a Foreign Direct Investment License are required to be listed in the Foreign Direct Investment Registry. The name of such companies must include the suffix "Foreign Direct Investment".

Foreign investors wishing to conduct an activity not mentioned in the Positive List may still submit an application for a Foreign Direct Investment License. However, the competent authority's decision to reject the application is final and, thus, neither subject to objection nor to appeal.

4. What questions remain unanswered?

The FDI Law has partially removed the existing foreign ownership ceiling of 49% by allowing foreign investors to own up to 100% of the shares in UAE mainland companies which conduct certain activities in selected sectors. However, in the years to come, it remains to be seen if the implementation of the FDI Law will indeed be investor-friendly, in particular with respect to permitted levels of foreign ownership, Emiratisation requirements as well as the assessment of the added technical and innovative value of investment projects.

In addition, it is yet unclear to what extent the competent authorities will allow already existing mainland companies to restructure according to the FDI Law. Such move would enable foreign minority partners to (finally) hold a majority, if not the entirety, of shares in such companies.

A step in the right direction might well be a current report on a global manufacturer of food products which recently succeeded in increasing its 49% share in a Dubai mainland company to 100%. It would be very much welcome if investor-friendly decisions like that will henceforth become the norm.

Do you have questions? - We would be glad to answer them!

From our office located in the heart of Dubai, our team of German attorneys has been advising small and medium-sized companies, corporations and individuals on the laws of the United Arab Emirates for more than a decade. Our areas of expertise include corporate and commercial law (in particular business set ups), commercial agency law, employment law as well as tenancy and real estate law. We would be happy to attend to your questions as well. Contact us!

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