

# UNITED ARAB EMIRATES

## FOREIGN DIRECT INVESTMENT OVERVIEW

On 17 March 2020, the UAE Cabinet issued the complete Positive List for FDI in the UAE, enumerating the 122 activities and sectors where up to 100% foreign ownership would be permitted, as well as detailing the criteria for the establishment and licensure of companies under the UAE FDI Law. The Positive List became legally effective upon its publishing in the Official Gazette on 31 March 2020.

### Background

The United Arab Emirates (UAE) has long maintained certain restrictions on the level of foreign ownership of UAE based companies (a maximum of 49% shareholding for the foreign investor, and a minimum of 51% for the UAE national shareholder), in order to regulate foreign direct investment (FDI) in the country and keep certain sectors under national control. With the increasing interest from abroad in investment in the wider Gulf region, the UAE has been a focal point for inward FDI flows due to its business-friendly environment and access to talent. The federal government of the UAE indicated its desire to gradually relax some of the FDI restrictions in numerous public and private discussions. In 2017, the Federal Commercial Companies Law of 2015 was amended by decree, exempting certain companies and sectors (which were not identified) from the 51% local shareholder requirement applicable to UAE mainland onshore companies.

### The new FDI regime in the UAE

On 20 May 2018, a resolution permitting 100% ownership by foreign investors was passed by the Council of Ministers of the UAE, followed soon thereafter by the introduction of the Federal Law No. 19 of 2018 on Foreign Direct Investment (the **FDI Law**). The FDI Law contemplated 100% foreign ownership, but it was not applicable to all sectors and all applicants. It introduced a new 'FDI Committee' under the auspices of the Ministry of Economy, and an 'FDI Unit', to be established within the Ministry of Economy as well. The FDI Unit will be the government agency responsible for formulating over-arching strategy and policy for FDI in the UAE, with the FDI Committee being responsible for the implementation of the FDI Law and associated regulations. The FDI Law also devolved some responsibilities onto the various Emirate-level authorities for implementation within their specific Emirates.

## The negative and positive list

The FDI Law itself did not initially specify the types of industries which would constitute a so-called 'Positive List', specifying the activities and sectors (and Emirates) in which certain activities would be allowed to receive 100% FDI, but it did introduce a 'Negative List', with 13 activities which were not included as part of a prospective expansion of FDI and remain under UAE national control. These included (among other things) security and military industry, oil & gas exploration and production, banking, insurance, postal, telecommunications and transport services. Free zone companies were also excluded from the new FDI regime (largely also because free zones already permitted 100% foreign ownership). The Positive List did not appear in any formal sense until 2 July 2019, when the Federal Cabinet of the UAE announced the relaxation on FDI restrictions would apply to 122 activities.

## Initial implementation

In a practical sense, although federal approval for the Positive List was received by virtue of the UAE Cabinet resolution of July 2019, the federal authorities gave the power of implementation on the ground to the Department of Economic Development of each Emirate. This included the power to decide the extent to which a foreign investor could have an increased shareholding in a company incorporated in their Emirate – a key distinction was that 100% ownership was not automatic, and not all shareholders or businesses would qualify. The Positive List also indicated certain key areas for compliance for companies in order to take advantage of the new FDI Law:

a) Companies licensed to conduct one of the activities on the Positive List are required to maintain certain minimum share capital;

- b) Companies must commit to certain targets set for the employment of UAE nationals; and
- c) Other specific conditions for each business activity.

## Putting the FDI law into practice

The Department of Economic Development at each Emirate-level will continue to maintain the responsibility for oversight and implementation of the FDI Law in their respective Emirates, and will also maintain the discretion to impose or introduce other requirements or restrictions if it sees fit. Thus, it is important for foreign investors and their advisors to carefully review any application under the FDI Law and co-ordinate closely with the relevant Department of Economic Development.

## The way forward

The implementation of the Positive List and the wider FDI Law is a development to be warmly welcomed amongst all stakeholders in the UAE economy. It will encourage FDI to the UAE in a time of rising global economic headwinds, and assist the UAE to overcome both regional and global economic challenges. Foreign ownership restrictions have continued to remain at the top of the list of concerns of prospective investors to the UAE, from smaller individual investors to global multinational conglomerates and corporations, and the FDI Law will certainly assuage some investor concerns about the UAE Government's long term commitment to FDI

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