UAE foreign direct investment law: recent developments

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The UAE has emerged as a major access point for foreign investment in the region. Global investors are using the UAE as a platform to enter the wider region. The growth in foreign direct investment in the UAE has led the Government to enhance its efforts in building a sustainable and diversified economy.

In line with the various initiatives to encourage foreign investment in the UAE, His Highness Sheikh Khalifa bin Zayed Al Nahyan issued the Decree Law No 19 of 2018 (‘Decree’), which permits 100 per cent foreign ownership of local businesses by global investors in the UAE mainland to increase Foreign Direct Investment (‘FDI’) in the UAE.

The Decree prescribes a negative list which consists of sectors in which foreign investors cannot own more than the legally prescribed registered shares (‘Negative List’). The Negative List includes the following activities:

1. exploring, prospecting and producing the petroleum;
2. investigation, security, military sectors, and manufacture of weapons, explosives, military equipment, devices and uniforms;
3. banking and financing activities;
4. insurance services;
5. Hajj and Umrah services;
6. water and electricity services;
7. services related to fisheries;
8. post, telecommunication and audio-visual services;
9. services of land and air transport;
10. printing and publishing services;
11. commercial agent services;
12. medical retail trade such as private pharmacies; and

13. poison centres, blood banks and quarantine centres.

While prescribing a Negative List, the Decree also proposes a Foreign Direct Investment Committee (‘Committee’), to be formed pursuant to a resolution by the UAE Cabinet (‘Cabinet’), with the responsibility of recommending to the Cabinet, sectors and activities in which foreign investors may be permitted to own up to 100 a per cent registered shareholding.

On 2 July 2019, the Cabinet issued a resolution approving a positive list, which includes permitted sectors and activities for FDI pursuant to the Decree and covers 122 main activities categorised into numerous sub-activities, in the agriculture, manufacturing, education, health and services sectors (‘Positive List’).

The Cabinet delegated the implementation of the Positive List to relevant corporate regulators in each Emirate of the UAE, which is effectively the Department of Economic Development (‘DED’) in each Emirate.

On 17 March 2020, the Cabinet issued Cabinet Resolution 16 of 2020 Concerning The Determination of the Positive List of Economic Sectors and Activities Eligible for Foreign Direct Investment and Percentage of their Ownership which sets out the activities included in the Positive List which finally paved the way for its publication in the Official Gazette on 31 March 2020 and came into force in the UAE.

Applications pursuant to the Positive List are currently being accepted by the DED in Dubai and Ras Al Khaimah (‘RAK’). The DED in Abu Dhabi did accept a few applications however, for now, it has suspended the same until the upgrade of its IT system can accommodate that applications to be filed online. The other Emirates have not, as of yet, commenced receiving FDI applications under the Positive List. The DED in Dubai and RAK are the only two Emirates that have approved applications and in both instances Al Tamimi & Company assisted its clients to get these approvals.

Frequently asked Questions

Who should apply for an exemption under the Decree?

The aim is to target large companies that are able to positively influence the UAE’s economy.

Can existing companies benefit from the Decree?

A foreign investor can submit an application to convert his/her existing company to a FDI company or incorporate a new company, subject to the FDI committee’s approval.

How can an application be made?

An application can be made to a committee (currently sitting in the DED) alongside any supporting documentation that the committee may request such as:

1. yearly consolidated turnover of the foreign investor(s)’ group entities;
2. individual audited financial reports of the significant companies in the group;
3. copy of the companies’ lease agreements (if any);
4. the number of the employees in the UAE and other countries (otherwise, the projected number of staff that the company will have once incorporated in the UAE and the number of subsidiaries that the foreign investor has worldwide);

5. in terms of UAE companies, total salary of the employees and total expenses' amount (if any);
6. future investment plans in the UAE and generally;
7. a request letter for the application; and
8. the prescribed application form.

It is understood that the reason behind requesting the aforementioned documents is that the committee is looking for evidence of the foreign investors' financial capabilities in UAE, the country of origin and globally.

How much is the required minimum foreign capital?

The Decree defines the foreign capital as fixed assets and intangible rights, such as concession rights, patents, trademarks and trade names owned or registered in accordance with the laws and regulations applicable in the UAE.

The Positive List includes a specific value of capital for each sector. As such, investors are required to submit financial statements and auditors' reports as evidence of their financial capabilities.

Is the FDI approval only for 100 per cent ownership?

No, it is at the committee's sole discretion. The application may be approved to allow up to 100 per cent foreign ownership. There are instances in which the committee granted 75 to 80 per cent foreign ownership to the foreign investors.

Is a local service agent required?

Although the Decree does not require the appointment of a local service agent, the DED in Dubai requests FDI companies appoint a local service agent that will not have any authority to manage, operate or interfere in the business of the company. Such local service agent will not acquire any rights or interests in the company and will simply provide services on matters that concern federal and local government departments such as fulfilling immigration requirements on the company's behalf in return for a fixed annual fee. The agent cannot claim any rights over the assets of the company during its operation of after liquidation.

Licensing

The applications are reviewed by the committee in DED on a case-by-case basis. Where an application meets all the conditions and procedures set out in the Decree, the foreign investor will be able to incorporate a new FDI company or convert his existing company into an FDI company based on the committee's approval.

As the approval will be granted to a limited liability company, a minimum of two shareholders are required either of which can be corporate entities or natural persons.

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