

UAE FDI Law: Positive List

Clarifications on 100% ownership in UAE (April 2020)

UAE Cabinet issues the “positive list” for Foreign Direct Investment (FDI) Law

There has been a significant development for foreign investors that are interested in investing in, or have already invested in, companies in the UAE. *Cabinet Resolution No.16 of 2020* sets out the 'positive list' of sectors and economic activities in which 100% foreign direct investment is permissible. Whilst we have been aware of the changes to the law since 2018 (Law No 19 of 2018), it was not clear which sectors would be permissible under the new regulations. Now, the UAE has released the full list of 122 activities eligible for 100% foreign ownership in mainland UAE, under the Foreign Direct Investment (FDI) Law. This means that a 'sponsor' will no longer be required to hold 51% of the equity saving sponsor fees and share of profits.

Introduction of FDI Law in UAE

In September 2018, the UAE amended the UAE Commercial Companies Law to allow the UAE Cabinet of Ministers the flexibility to permit increased levels of foreign ownership by non-GCC nationals (foreign investors) in certain companies and sectors of the economy. The *UAE Foreign Direct Investment Law No.19* (the FDI Law) introduced a framework under which foreign investors may apply to own more than 49% of the equity of companies incorporated 'onshore' in the UAE.

Negative List

Under the FDI Law, foreign investment above 49% shareholding will not be permitted in certain sectors of the economy which appear in the "negative list". The UAE Cabinet reserves the right to amend the "negative list" by adding or removing sectors. The negative activity list currently includes the following;

- *Banking activities and financing*
- *Insurance services*
- *Land and air transport services*
- *Payment systems + dealing in cash*
- *Commercial agent services*
- *Medical retail services (private pharmacies)*

Positive List

The FDI Law provides for a “positive list” of activities in which up to 100% foreign ownership by foreign investors is now permitted, subject to certain criteria being satisfied. The FDI Law states that the UAE Cabinet has the discretion to amend the "positive list" by way of resolution. On 17th March 2020, the UAE Cabinet issued a Cabinet Resolution setting out the 'Positive List of Economic Sectors and Activities in which Foreign Direct Investment is Permitted' (the positive list). The Resolution became effective on 31st March 2020. There are 122 economic activities spread across three broadly based sectors- being Agricultural, Manufacturing and Services and include activities such as:

- *Renewable energy*
- *Healthcare*
- *Construction*
- *Transport, storage & logistics*
- *Education*
- *Professional, scientific & technical*
- *Information & communications*
- *Arts & entertainment*
- *Services including legal, architectural, auditing and management consultancy*
- *Science & technology*
- *Hospitality & food services*

The Resolution dictates the minimum share capital requirements which will need to be met for companies that are, or will become owned 100% by foreign investors, and this differs per activity. Generally, for Agricultural activities the minimum capital is AED 7.5 million, Manufacturing activities from AED 2 million to AED 100 million, Services up to AED 100 million and Hospitals at AED 100 million. It also allows the competent licensing authority in each Emirate, and industry specific regulators, to impose additional conditions on such companies and states that Emiratisation requirements may be imposed by the UAE Ministry of Human Resources on companies that are owned 100% by foreign investors. Companies are generally required to use advanced technology, add value to the UAE economy, contribute to R&D and meet the individual requirements per sector. Up to now foreign investors have normally set up manufacturing industries in FreeZones where 100% ownership has always been available. However, by allowing 'on-shore' manufacturing activities the foreign investor will benefit from lower costs and most importantly direct access to the local markets.

For more information on the new FDI Law please contact us. We can assist if you want to form a new company with 100% foreign ownership, or to amend your existing license. The full list of activities can be provided on request.