

Up to 100% foreign ownership of projects in UAE



The article provides a brief overview of the new

FDI Law that offers an arrangement for the UAE Cabinet to allow foreign shareholders to own up to 100 per cent of companies in selected sectors. To carry on business “onshore” in the UAE, a company established under the UAE Commercial Companies Law has to be at least 51% owned by a UAE or 100% by GCC national. For some foreign investors, particularly those unfamiliar with the region, this inability to have full legal ownership and control has been seen as a barrier to entry or limitation on their business in the UAE. This article highlights some of the principal of the new Foreign Direct Investment Law No. 9 year 2018 (“FDI Law”) and the impact that it will have on the foreign investors. As per Article 6 of the FDI Law, a new Foreign Direct Investment Committee (“Committee”) is to be set up. This Committee shall be in charge of the following:

- Issuing the Approved Activities List for foreign direct investors (“Positive list”)
- Making amendments to the Negative List for foreign direct investors
- Approving licensing applications
- Deciding the benefits for foreign direct investment projects

Positive list

The Committee will be responsible to prepare "positive list" to the UAE Cabinet which will set out the economic sectors in which greater levels of foreign ownership will be permitted (more than 49% of the share capital). When determining the positive list, the FDI Committee must take the following into account:

- integration with strategic plans of the UAE;
- achieving the best profit and added value to the UAE economy;
- raising innovation and providing job opportunities and training for UAE nationals;
- limiting negative effects on incumbent UAE companies that conduct a similar activity;
- the foreign investor's level of competency, expertise and international renown;
- the best use of modern technology; and
- achieving a positive impact on the environment.

Negative list

Higher levels of foreign investment will not be permitted in any sector that appears in the "negative list" set out in the FDI Law. The sectors that are currently listed in the negative list pursuant to Article 7 of the FDI Law are as follows:

- Oil exploration and production;
- Investigation, security, military (including manufacturing of military weapons, explosives, uniforms, and equipment);
- Banking and financing activities;
- Insurance services;
- Pilgrimage and umrah services;
- Certain recruitment activities;
- Water and electricity services;
- Fisheries and related services;
- Postal, communications and other audio-visual services;
- Land and air transportation;
- Printing and publishing;
- Commercial agency;
- Medical retail trade such as private pharmacies; and
- Poison centres, blood banks and quarantine.

Sectors not appearing on the positive or negative lists

If a foreign company wishes to carry on a foreign direct investment project which does not appear in either the positive or negative list, it may apply for permission to have a higher level of foreign ownership than 49 per cent in that sector. The FDI Law sets out the process to be followed in the event of such application.

Obligations of the FDI Company

As per Article 13 of the FDI Law, the FDI company must:

- Comply with all local and federal laws in relation to environmental health, pollution management, and general public health;
- Practice only the commercial activities mentioned in its license;
- Comply with the Emiratization quota (details of which will be issued separately by the ministry of economy);
- Keep accurate accounting records;
- Appoint authorized auditor(s) for a one-year renewable period, up to a maximum of six years;
- Comply with the relevant authorities' requirements regarding the FDI company's projects which the authorities may request from time to time;
- Notify the relevant authorities when the FDI company's projects commence within 5 days.

Although the FDI Law excludes the companies incorporated in free zones, it is worth mentioning that recently the economic departments in the UAE have released a list of activities that can be carried out onshore by companies established in free zones.