



ALL THE WAY

UAE Foreign Direct Investment Law



Historical Background

In 2017, the UAE Cabinet issued Federal Decree Law No 18 of 2017 (“**Decree**”) and amended the UAE Commercial Companies Law No 2 of 2015 to provide the government an opportunity to increase levels of foreign investment in certain activities and sectors of economy. The Decree amended particularly Article 10 of the UAE Commercial Companies Law which sets out the foreign ownership restriction and requires that 51% or more of the shares in a company established in the UAE must be owned by a UAE national shareholder.

In September 2018, the Federal Decree Law No 19 of 2018 regarding foreign direct investment (“**FDI Law**”) was issued. The FDI Law provided a Negative List for sectors in which an application for foreign direct investment (“**FDI**”) may not be made. It also authorized the government to separately issue a positive list of sectors in which an FDI application would be welcomed. In March 2020, the UAE Cabinet issued a the “Positive List of Economic Sectors and Activities in which Foreign Direct Investment is Permitted” (the “**Positive List**”).

The Positive List provided for the much-awaited list of business activities that allow 100% foreign ownership in companies by foreign investors (subject to the satisfaction of certain criteria).

There are accordingly 3 types of business activities in the UAE now: business activities in the Positive List, where 100% foreign direct ownership is allowed, business activities in the Negative List, where no foreign direct ownership is allowed, and the rest of business activities where 49% of foreign direct ownership is allowed.

Negative List

As per Article 7.2 of the FDI Law, foreign investment may be permitted in sectors of the economy if those sectors do not appear in the Negative List. The UAE government may add and remove sectors and activities in the Negative List. The sectors and activities that are listed in the Negative List are as follows:

- Oil Production and Exploration;
- Investigations, Security, Military, Manufacturing of Military Weapons, Explosives, Uniforms and Equipment;
- Banking and Financing Activities, Payment Systems and Dealing with Cash;
- Insurance Services;
- Hajj and Umrah Services;
- Manpower Recruitment Activities;
- Water and Electricity Services;
- Fisheries Services;
- Postal, Telecommunication and other Audio Visual Services;
- Land and Air Transport;
- Printing and Publishing Services;
- Commercial Agency;
- Medical Retail (including pharmacies); and
- Blood Banks, Poison Centers and Quarantine Services.

Positive List

The Positive List sets out over 1,000 economic activities which fall within 3 main categories, namely:

- Agricultural Sector;
- Manufacturing Sector; and
- Services Sector.

The Agricultural Sector list includes such activities as the growing and cultivation of various crops, forestry, and support activities in this sector. The Manufacturing Sector list includes amongst others the manufacture of certain food products, clothing, electronic items, transportation. The special requirement in such entities that are involved in agricultural, or manufacturing is that the company must use modern technology and contribute in research and development.

The Services Sector list contains activities which include legal and accounting services, healthcare, science, education, entertainment, hospitality, communications, and construction. Again, there are certain requirements in the Services Sector depending on the relevant activity.

A full list of activities in the Positive List in Dubai can be accessed from this [link](#) (in English and Arabic). A similar list for activities in Abu Dhabi is available [here](#).

There are no additional fees, guarantees, or share capital requirements. All companies must meet the licensing requirements of the licensing authorities. There are however no additional fees, guarantees, or share capital requirements for companies owned by foreign investors.

The Positive List allows for foreign investors to establish companies outside of the free zones, either in the form of a limited liability company (including single owner companies) or as private joint stock company, whereby the foreign investors would own 100% of the company subject to compliance with certain criteria and conditions as required by the licensing authorities (such as the Department of Economic Development in each Emirate).

Additionally the Positive List allows the Ministry of Human Resources and Emiratization to specify a minimum percentage of Emirati nationals to be employed by the foreign investment companies. It is however yet to be seen what the Emirati quota is to be. It however has already been confirmed that branches of foreign companies (except those that are based in one of the free trade zones) no longer require an Emirati agent, irrespective of the share of the foreign ownership.

To conclude, the Positive List is a welcomed development as it allows foreign investors to fully own and control companies involved in the activities listed in the Positive List. It sets out what those activities are and the requirements that needs to be satisfied. The right to full foreign ownership is undoubtedly changing the foreign investment landscape of the UAE as the region's appeal for foreign investors is increasing and thus boosting business in the sectors within the Positive List.

EKP has a dedicated team with extensive experience in advising foreign investors on corporate structuring and related issues in the UAE. If you have any questions, please contact Patrick Khoury (patrick.khoury@ekplegal.com) or Arthur Dedels (arthur.dedels@ekplegal.com)