

UAE

100 % Foreign Ownership Sectors to be announced in early 2019

The new Foreign Direct Investment Law (the **FDI Law**) allows foreign investors to own up to 100 per cent of UAE companies in certain sectors up from the 49 per cent limit permitted for businesses outside the Free Zones.

The FDI Law will allow certain licensed foreign direct investments to benefit from specific exemptions from the Commercial Companies Law (including the foreign ownership restrictions) and other federal laws. These exemptions will not be automatic but investors will need to apply following a process set out in the FDI Law. The FDI envisages a “Positive List” of sectors eligible for such exemptions but does not specify what the sectors are. The UAE Council of Ministers is to issue the list based on recommendations of the Foreign Direct Investment Committee headed by the Ministry of Economy (the **FDI Committee**). It is anticipated that the list of sectors will be announced in Q1 2019.

Increased foreign ownership will likely be permitted in technology, outer space, renewable energy, artificial intelligence and manufacturing among other sectors under consideration.

The FDI Law is the latest in a series of reforms aimed at reducing the economy's reliance on oil, stimulating economic growth and creating jobs for UAE Nationals.

How to apply to be on the Positive List

The foreign investor submits an application for approval of the licence to the foreign direct authority in the relevant Emirate (the **FDI Authority**).

The approval is issued within 5 working days from the date of submission provided all requirements are met and the company formed is registered in the Foreign Direct Investment Register at the Foreign Direct Investment Unit of the Ministry of Economy (the **FDI Register**). The Judicial Police may carry out inspections to ensure that the activity is undertaken in line with the licence obligations.

Should the application be refused or the terms and conditions of the licence expired, the foreign investor may appeal to the Competent Authority within 15 working days from the date of the decision or date of expiry of the licence. Rejection or absence of settlement within 10 working days from the date of filing may be escalated to the competent court within 30 days from the date thereof.

Obligations as a “Positive List” Company

Aside from a general obligation to adhere to the federal and local laws, and conduct the activity as reflected in the licence, a number of obligations will likely be imposed on companies wishing to benefit from this scheme, such as:

- Maintaining books and records in accordance with legal requirements including appointing one or more licensed auditors for a renewable period of one year (up to six consecutive years);
- Implementation of Emiratisation policies by the company to be set out in a Resolution of the UAE Council of Ministers;
- On-going collaboration with the FDI Authority (by maintaining regular accounts for the FDI Project, notifying the date of commencement of work or production date, providing information, documentation and statistics as may be required by the relevant authorities).

Negative List

The Negative List where 100% foreign ownership will not be possible includes:

- Oil exploration and production
- Investigation, security, military (including manufacturing of military weapons, explosives, uniforms, and equipment)
- Banking and financing activities
- Insurance services
- Water and electricity services
- Fishing and related services
- Post, communications and other audio-visual services
- Land and air transportation
- Printing and publishing
- Commercial agency, and
- Medical retail trade such as private pharmacies.

The Negative List may be revised by the Government with new sectors being added or removed.

Option

If a business is not covered by the Positive or the Negative Lists, an application can be submitted to the FDI Authority by the foreign investor. The investment must first receive the approval in principle of the relevant federal or local authority having the general power over licensing the project (for e.g. the Department of Economic Development) following which the foreign investor must apply to the FDI Authority.

The FDI Authority may either reject the application or refer it to the FDI Committee after coordination with the licensing and local authorities of the relevant Emirate. The Ministry of Economy then refers the application, with the recommendation of the FDI Committee, to the UAE Council of Ministers for approval.

Projects that may affect a strategic sector, public health or morals and values will immediately be rejected with no possibility to appeal.

Upon the Council of Ministers' approval, a comprehensive list of the required documentation, data and applicable fee will be communicated to the foreign investor and the licence will be issued within 5 working days from the completion of the requirements. If the licence application is approved, the company will have to register in the FDI Register. The name of the company will have to include "foreign direct investment."

The "approved entity" will then have to comply with the Positive List's requirements.

DIFC

New Companies Regime

The Dubai International Financial Centre (the **DIFC**) has introduced a new companies regime under its new Companies Law (DIFC Law No. 5 of 2018), Operating Law (DIFC Law No. 7 of 2018), Companies Regulations and Operating Regulations all of which came into effect on 12 November 2018 and which replace the former Companies Law (DIFC Law No. 2 of 2009) and its operating regulations.

One of the most significant changes under the new Companies Law is the re-classification of entity types. Now, Limited Liability Companies (**LLCs**) have been abolished and Companies Limited by Shares will be classified as either a Public Company (**PLC**) or a Private Company (Ltd). The Recognised Company (i.e. branches of foreign companies) regime has been retained.

LLCs incorporated under the old Companies Law have been automatically converted into Private Companies whereas companies incorporated as companies limited by shares have automatically been converted into either Private Companies or Public Companies. All companies should have received a notification of their new status following conversion which can be contested within 30 days.

Generally, Private Companies are subject to fewer regulatory requirements than Public Companies under the new Companies Law and Regulations.

Key Changes

The key changes introduced under the New Companies Law and Regulations are as follows:




- Introduction of private (up to 50 shareholders) and public companies (any number of shares) limited by shares;
- Abandoning the minimum share capital requirement for a Ltd.;
- Introducing a minimum of USD 100,000 capital for a Plc;
- Introduction of a statutory pre-emption right (which can be excluded in the Articles of Association of the Ltd.);
- One director and no company secretary required for a Ltd.;
- New standard DIFC Articles;
- Ultimate Beneficial Ownership: All DIFC entities (subject to certain exemptions) must now maintain a Register of Ultimate Beneficial Owners. This Register must be put in place within 90 days of the date of enactment of the new Companies Law. And any change will have to be provided to the DIFC Registrar of Companies;
- Issuance of shares for non-cash consideration: The Board of Directors of a Ltd. may reasonably calculate the value of the non-cash consideration while an independent valuation must be completed for Plcs; and
- Replacing the requirement for a legal opinion to be provided with the modified Articles of Association with an Incorporators Statement (for initial Articles) or Director's Certification (for post-incorporation amendments) of compliance with DIFC law of the proposed changes to the Articles.

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