Client Alert

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UAE Foreign Direct Investment Law and Positive List – Further Expansion and Diversification of the UAE Economy

The United Arab Emirates (**UAE**) recently took a further step in advancing its initiative to increase levels of foreign direct investment in the country with the confirmation of 122 economic sectors and activities in which 100% foreign ownership is permissible in mainland UAE (**Positive List**). The Positive List was confirmed on 17 March 2020 by the UAE Cabinet Resolution No. 16 of 2020 (**FDI Cabinet Resolution**).

The Positive List follows on from, and compliments, UAE Federal Decree-Law No. 19 of 2018 on Foreign Direct Investment (**FDI Law**), which came into force on 30 October 2018, and is a significant development for foreign investors looking to invest in the UAE.

The implementation of the Positive List is expected to assist the UAE to achieve its objective of encouraging diversification in the economy, promoting further inward investment, creating jobs and reducing reliance on imports through greater local production capacity.

Background – the FDI Law

Prior to the FDI Law, if foreign investors wished to establish or invest in a company on mainland UAE (that is, outside one of the free zones), the maximum level of foreign shareholding was capped at 49%, with the remaining 51% shareholding being held by one or more UAE nationals or companies wholly-owned by UAE nationals (with certain exceptions for nationals of the Gulf Cooperation Council states (**GCC**)). However, the October 2018 enactment of the FDI Law crystalized what was perhaps one of the most eagerly anticipated legal developments in the UAE, by establishing the key new parameters for foreign direct investment into the UAE and setting the framework for 100% foreign ownership of companies on mainland UAE, as either a limited liability or a private joint stock company.

From the outset, the FDI Law established a negative list of 13 areas or sectors that remain subject to the long-established maximum 49% cap on foreign investor ownership (**Negative List**). Those areas and sectors are:

- exploration and production of petroleum products;
- investigations, security and military (including, *inter alia*, manufacture of military weapons);
- banking and certain other financial activities;
- insurance services;
- pilgrimage-related services and certain recruitment activities;
- water and electricity services;
- services related to fishing;
- post, telecommunication and certain audio-visual services;
- road and air transportation services;
- printing and publishing;
- commercial agency;
- medical retail, including pharmacies; and
- poison centres, blood banks and quarantine facilities.

The FDI Law also gives the power to the UAE Cabinet to expand the categories or to remove any from the Negative List.

When the FDI Law came into force, certain aspects were subject to further regulation, one of those being the Positive List, which remained to be finally approved by the UAE Cabinet.

The Confirmed Positive List

Now confirmed and effective, the Positive List, together with the FDI Law, represents a significant development for those non-GCC nationals looking to invest in companies on mainland UAE, and for existing investors, since scope is provided for "conversion" of already established onshore companies to FDI-licensed companies.

The 122 categories or activities on the Positive List fall largely within three broad sectors—with 19 activities within the agriculture sector, 52 within the services sector and 51 within the industrial sector. The full list can be found **here**.

General categories within those broader sectors include:

- manufacturing;
- advertising;
- renewable energy;
- transport and storage;
- hospitality and food services;
- science and technology;
- healthcare;
- education; and
- construction.

Minimum Capital Requirements and Other Requirements and Conditions

The FDI Cabinet Resolution also confirms the minimum share capital requirements that must be met for companies to carry on the relevant activity from the Positive List and to be 100% foreign owned. For the vast majority of the activities from the agricultural sector, the minimum share capital requirement is AED 7.5 million. For industrial sector activities, the minimum capital requirements range from AED 2 million up to AED 100 million. For the services sector, save for very few exceptions (one relating to retail and two more to healthcare), the minimum capital is described as being "*In accordance with the legislation in force*", which allows the individual Emirates to exercise their own discretion in setting capital requirements for some of the categories within that sector.

In addition, the FDI Cabinet Resolution specifies certain requirements and conditions that will apply to a business activity (if any). Requirements and conditions that attach to all business activities in the agricultural sector and that apply to some business activities in the industrial sector are described in the FDI Cabinet Resolution as follows:

(i) use modern technology;

(ii) bring high added-value;

(iii) contribute into research and development; and

(iv) meet the requirements of UAE licensing entities.

At this stage, it is unclear how companies will be expected to demonstrate compliance with these requirements, given that the concepts are not defined in the FDI Cabinet Resolution and no additional guidance has been issued to assist with their interpretation. However, the expectation is that clarity will come over time as more FDI company license applications are made by potential foreign investors.

Whilst the Positive List applies across the entire UAE, a degree of autonomy is retained in each of the individual Emirates, given that the relevant licensing authorities within each Emirate may impose additional requirements and conditions on companies that apply for FDI-licensed company status. The individual licensing authorities also have a broader role in the overall approval process, as they will receive all initial applications and will decide whether to reject or allow the application to proceed to the next stage of FDI licensing.

Emiratisation requirements (i.e. stipulations as to numbers of Emirati employees the FDI company must engage) will also apply if prescribed by the UAE Ministry of Human Resources & Emiratisation (**MoHRE**), although it is not yet clear what those requirements will be. One known condition, however, is that an FDI-licensed company must become a member of the Tawteen Partners Club, an organisation operated by MoHRE, which contributes to implementing Emiratisation policies.

Applying for a Foreign Direct Investment License

The FDI company licensing process is expected to be relatively swift, with guidance from the UAE Ministry of Economy Investment Department indicating that after an initial approval from the relevant licensing authority is obtained, the relevant competent authority (assuming it does not reject the application) will issue its approval of a license application within a maximum of 5 working days from submission of the application and the fulfilment of all requirements, conditions and procedures.

A decision to reject an application for an activity on the Positive List can be appealed to a dedicated foreign direct investment committee (**FDI Committee**), and an unfavourable decision of the FDI Committee can be referred to the local courts in the UAE, save that any decision to reject an application on public policy grounds (as set out in Article 19 of the FDI Law) is final and thus not open to appeal.

A procedure also exists for applying for an FDI company license if the proposed activity is not specified on the Positive List and is not excluded because of being on the Negative List. The application is first reviewed by the relevant competent authority, which has the option of rejecting the application or referring it to the FDI Committee for its consideration, with the UAE Cabinet making the final decision based on recommendations it receives from the FDI Committee. A decision of the relevant competent authority to reject a license application at the first stage where the activity is not on the Positive List is not subject to appeal.

The FDI Law and FDI Cabinet Resolution provide foreign investors with greater flexibility and more options to deal with the shareholding composition and ownership structure of companies in the UAE. Hunton Andrews Kurth LLP will continue to monitor further developments in the FDI Law and share our insights and experience as our clients navigate the FDI-licensing process. Please feel free to contact the authors for further information and assistance.

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