

COVID-19 crisis inspires global tightening of Foreign Investment Screening

United Arab Emirates

It has not traditionally been possible for a foreign shareholder to legally own 100 percent of an entity established “onshore” in the United Arab Emirates (UAE), outside of one of the UAE’s free zones.

A process of change began in earnest on September 23, 2018, when the UAE Cabinet enacted a Foreign Direct Investment law (FDI Law), intended to liberalize the onshore legal ownership regime and promote a more favorable environment for foreign investors. The FDI Law identifies sectors that are eligible for up to 100 percent foreign ownership. For more information on this, please see [our previous update](#).

Recently, on March 18, 2020, the UAE Cabinet issued Cabinet Decision No. 16/2020 Defining the Positive List of the Economic Sectors and Activities in which Foreign Direct Investment is Permitted and their Ownership (the **2020 Decision**). The 2020 Decision contains the full Positive List of economic sectors and activities eligible for foreign direct investment (**Positive List**), and also sets out the criteria for issuing licenses to legal entities wishing to take advantage of the FDI Law (**FDI Projects**).

The list covers certain key sectors of the UAE economy, including (but not limited to) agriculture, manufacturing, education, healthcare, entertainment, transport, certain professional services and research and development.

To be eligible for licensing as an FDI Project, a number of conditions are specified in the 2020 Decision. These include complying with mandatory minimum share capital requirements (ranging from 7.5 million AED to 100 million AED) and participation in the UAE’s Emiratisation program through the Tawteen Partners Club program run by the Ministry of Human Resources and Emiratisation (including compliance with Emiratisation thresholds). The 2020 Decision itself specifies the minimum share capital requirements for each activity on the Positive List and the other specific conditions for certain business activities. It should however be remembered that the licensing department(s) and

competent authorities in each Emirate are tasked with setting forth the conditions and procedures for establishment and licensing FDI Projects, as well as clarifying the required documents in accordance with the FDI Law, applicable laws in the UAE and applicable laws in the relevant Emirate. It therefore remains to be seen how the criteria set out in the 2020 Decision will be applied in practice in each Emirate.

The FDI Law does provide an indication as to the process required to establish an FDI Project. A foreign investor is required to obtain a preliminary approval from the relevant licensing authority. Thereafter, it must apply for an approval for a license for the foreign direct investment from the competent authorities (meaning here, the UAE’s FDI Committee). The competent authorities shall approve an application for a license upon the fulfilment of the relevant conditions and procedures with five (5) business days from the date of application or the fulfilment of the documents and information required. If this timeframe expires, the application will be considered to be rejected. It is possible in certain circumstances to appeal a rejection decision, although the decision of the Competent Authority to reject an application submitted on the approval of an FDI Project that is not mentioned in the Positive List shall be deemed final and is not subject to appeal.

It should finally also be considered that foreign investment in certain sectors or economic activities of the economy will remain partially or entirely restricted to foreign investment (the **Negative List**). Generally such sectors include, but are not limited to, oil exploration, drilling and production, the defense sector and the manufacturing of arms and equipment, insurance, financial institutions, haj and ummrah, postal services, telecommunications, ground and air transportation and blood and poison centers. If a contemplated activity is not on the Positive List or Negative List, an

application may be made to the relevant authorities to nonetheless consider the application. The final decision on approval of such an application will be made by the FDI Committee.

To date, the UAE Cabinet and Ministry of Economy have not issued any formal guidance as to the effect of COVID-19 on FDI Screening. However, the FDI Law indicates that the Competent

Authorities will reject (fully or partly) any FDI Projects which threaten national safety or security, affect the strategic sectors of the UAE, affect public health, morals or social values, affect the defense sector, or affect the foreign policy of the UAE. Rejections of FDI Projects on any of these grounds are not subject to appeal.

By **Adjou Ait Ben Idir**