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BRIEFING

NEW UAE FOREIGN DIRECT INVESTMENT LAW

NOVEMBER 2018

- WHAT DOES THE NEW FDI LAW MEAN FOR FOREIGN INVESTORS?
- WHICH SECTORS/SERVICES WILL BE AFFECTED BY THE CHANGE?

The UAE Government has now enacted Federal Decree-Law No. 19 of 2018 ("FDI Law") in furtherance of its objective to allow increased foreign shareholder participation in UAE registered companies beyond the current restriction of 49%. To date, foreign investors wanting to wholly (or majority) own UAE businesses have been limited to structuring their investment to free-zone registered companies or restricting operations to a branch/representative office. By their nature, free-zone registered companies and branch/representative offices have limitations as to their trading and/or investment activities in the UAE, and hence foreign investors have often found structuring commercial activities in the UAE challenging.

The FDI Law does not represent a wholesale change to the investment climate in the UAE and, to avoid doubt, it does not allow 100% foreign ownership across all sectors of the economy. Rather, the FDI Law introduces a framework under which the UAE Government (acting through a newly formed FDI Unit and FDI Committee in addition to the existing licensing departments of the Department of Economic Development), may designate certain sectors of the economy as being available to more than 49% foreign ownership. These are deemed to be "priority" economic sectors and are in furtherance of Federal Decree-Law No. 18 of 2017 (an amendment to the UAE Commercial Companies Law) which gave scope to the UAE Cabinet to authorise foreign investors to have an increased shareholding in companies within certain sectors.

"THE FDI LAW INTRODUCES A FRAMEWORK UNDER WHICH THE UAE, MAY DESIGNATE CERTAIN SECTORS OF THE ECONOMY AS BEING AVAILABLE TO MORE THAN 49% OWNERSHIP."

FDI Unit and FDI Committee

The FDI Law provides, in summary, for the establishment of:

1. by decision of the Ministry of Economy, an FDI Unit, which shall, amongst various responsibilities, be charged with: (i) proposing FDI policies, priorities and programmes; (ii) building a base of investment data and information; (iii) consolidating and facilitating registration/licensing procedures for FDI projects; (iv) promoting/advertising the FDI environment; (v) preparing periodical reports on the FDI environment in the UAE; and (vi) attracting FDI to vital/strategic sectors; and
2. by decision of the UAE Cabinet, a FDI Committee, charged with studying and recommending to the UAE Cabinet, amongst others things: (i) a list of economic sectors that may benefit from additional levels of foreign ownership ("Positive List"); and (ii) adding to the list of sectors that shall not be open to additional levels of foreign ownership ("Negative List").

Positive List

The FDI Law does not explicitly set out the economic sectors in which foreign ownership beyond the current 49% limitation may be permitted. Rather, it provides that a Positive List will be developed by the FDI Committee, based on certain key criteria including:

• Strategic plans in the UAE	• A return on investment for the UAE economy
• Innovation in the economy	• Job and training opportunities for Emirati nationals
• The impact on other Emirati owned companies	• The reputation and competence of the foreign investor
• Use of modern technology	• Impact on the environment

The above criteria confirm that licences to permit majority foreign ownership will be discretionary and require a robust business case to be determined by the applicable authorities on a case by case basis. The FDI Law also provides that the conditions of investment will prescribe:

- the legal form of entity which may be established;
- the percentage of capital capable of being owned, hence there may be a requirement for some Emirati national ownership of a minority investment;
- the minimum capital to be invested (with any conditions or controls attaching to this investment); and
- a prescribed Emirati workforce/employees to be engaged by the company.

Negative List

The FDI Law sets out a number of sectors/activities in the Negative List, which the FDI Committee shall be able to add to. Currently, the Negative List includes:

- Exploration and production of petroleum products
- Hajj and Umrah services (including labour supply and recruitment)
- Banking & finance activities and payment/cash handling systems
- Insurance services
- Postal, communication and audio-visual services
- Water and electricity services
- Land and air transport services
- Commercial agents services
- Retail medicine (private pharmacies)

"[THE FDI LAW] WOULD APPEAR TO GIVE COMFORT TO FOREIGN INVESTORS THAT THE UAE'S LONGSTANDING FRIENDLY INVESTMENT CULTURE WILL CONTINUE TO APPLY."

Other welcome measures

The FDI Law also provides assurances that profits generated in the UAE from any FDI investment, the proceeds from a liquidation of the investment and funds collected from the settlement of any dispute can be transferred out of the UAE, subject always to existing legislation. This would appear to give comfort to foreign investors that the UAE's longstanding friendly investment culture (allowing the easy repatriation of funds) will continue to apply.

We will continue to monitor the implementation of the FDI Law and further announcements by the UAE Government.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.

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