

UAE FOREIGN DIRECT INVESTMENT – UPDATE

NOVEMBER 2020

To further promote Abu Dhabi's ease of doing business as an internationally competitive global hub, the Abu Dhabi Department of Economic Development has announced that it will issue a licence allowing 100% foreign ownership for certain entities. This briefing provides an update to the UAE's developing foreign investment legislative framework.

Background to the development of foreign direct investment legislation

In September 2017, the Commercial Companies Law ("**CCL**") was amended to provide the UAE Cabinet with the authority, upon a proposal by the Ministry of Economy, to issue a resolution permitting greater foreign ownership for companies operating in certain sectors and/or undertaking certain business activities. Following this amendment to the CCL, the Foreign Direct Investment Law ("**FDI Law**") was issued and came into effect in September 2018. In April this year, we saw the formal publication of the "Positive List" of economic sectors and business activities that may benefit from greater foreign ownership (see paragraph "*Relaxation under the Positive List*", below).

Most recently, on 28th October, the Abu Dhabi Department for Economic Development (the "**DED**") announced that it will issue a licence allowing 100% foreign ownership for certain Abu Dhabi onshore companies.

Abu Dhabi Licence

Licence criteria

Although no supporting regulations have been issued at the date of publishing this briefing, the Abu Dhabi DED has announced in the local press that it will issue a Foreign Direct Investment Licence, where certain investment criteria are met, to enable foreign investors to own up to 100% of a UAE onshore entity. The investment criteria include a minimum share capital of AED2 million and for the business activity to fall within the scope of the "Positive List" (see paragraph "*Relaxation under the Positive List*", below).

Further information required

It is currently unclear what the process and timing will be for obtaining a Foreign Direct Investment Licence from the Abu Dhabi DED. It is also not clear from press reports whether the licence will be available to existing companies that otherwise meet the licence criteria. If the licence is available to existing companies and foreign investors wish to increase their ownership to 100%, a careful review of any contractual arrangements that may be in place with UAE nominees (and any other contractual arrangements with change of control restrictions) will be required.

Foreign direct investment - key developments

- Foreign Direct Investment Law - issued in 2018
- Positive List - formally issued in April 2020 and sets out economic sectors and business activities that may benefit from a relaxation of the foreign ownership restriction
- Abu Dhabi FDI Licences - announced on 28th October

Relaxation under the Positive List

Economic sectors and business activities

The Positive List was formally published in April this year via a Cabinet Resolution. The list, however, had been in circulation in the market for some months prior to its publication in the UAE's Official Gazette. The list includes a focus on technology, knowledge and innovation, with business activities such as renewable energy, education services and the manufacturing of "*space vehicles and machines*" appearing on the list. In addition, a broad range of other manufacturing businesses may benefit under the Positive List, along with the agriculture and farming sectors. Service sector activities such as certain legal, accounting and tax consultancies, as well as businesses conducting architecture, engineering, computer programming, construction and civil engineering activities also appear on the list.

A notable omission from the Positive List is the retail sector. This is, presumably, with the intent of protecting national interests around commercial agency (a sector, as mentioned above, expressly protected by the Negative List and other legislation). As a result of the foreign ownership restriction, commercial agents are often instrumental in bringing foreign products to market in the UAE.

The Negative List

The FDI Law also sets out a "Negative List" of economic sectors and activities that may not (subject to any applicable exceptions permitted under the CCL) benefit from a relaxation of the foreign ownership restriction. Typically, those sectors and activities that appear on the Negative List relate to areas of national interest or are sectors/activities that currently require 100% UAE ownership and do not permit any foreign ownership. For example, the list includes activities related to "*Investigations, security, military sectors and manufacturing of weapons, explosives as well as military hardware, equipment and clothing*", "*Hajj and Umrah services and labour supply and recruitment services*" and "*Commercial agents services*".

What next?

We would expect that the Abu Dhabi DED will issue regulations or guidelines around the process and timing for obtaining a Foreign Investment Licence and, no doubt, over time the Abu Dhabi DED's policy and practice on this will develop. It is also expected that other Emirates will quickly follow in Abu Dhabi's footsteps to ensure an even playing field in attracting foreign investment across the UAE.

Conclusion

It remains to be seen how the Abu Dhabi DED will implement the issue of its Foreign Investment Licence but this is a significant and positive step forward in encouraging greater foreign investment into the Emirate and giving effect to the FDI Law. According to the Abu Dhabi DED's Chairman, this "*contributes to achieving various objectives such as expanding the base of foreign investments; increasing the size of capital flows; enhancing and diversifying local production; and increasing the emirate's exports of goods and services*".

Abu Dhabi Foreign Investment Licence

- Available to companies that carry out an activity identified under the "Positive List" and have a share capital of at least AED2 million
- Other criteria may be applicable
- Further information, licensing criteria and/or regulations required from Abu Dhabi DED

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