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The Positive List – Opening the Floodgates to Full Foreign Ownership in the United Arab Emirates?

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The UAE's Foreign Direct Investment Law (Federal Decree Law No.19 of 2018) was issued on 23 September 2018. Less than one year after its introduction, the UAE Cabinet agreed on the highly anticipated "Positive List", summing up all relevant economic activities and sectors in which foreign investors will be able to invest up to 100% in UAE mainland companies. This incentive is expected to trigger a whole new range of foreign investments in the UAE, eventually leading towards more diversification of the national economy. This legal briefing gives an overview of the Positive List and its implications on foreign direct investment.

1. *What is the Positive List?*

The Positive List is part of the Foreign Direct Investment Law (FDI Law – Federal Decree Law No. 19 of 2018) which was created to relax the country's restrictive foreign direct investment regulatory framework. The FDI law partially put an end to the requirement of having at least 51% of the share capital in the hands of UAE nationals and/or companies wholly owned by UAE nationals (as currently stated in Art. 10(1) of the Commercial Companies Law (Federal Law No. 2 of 2015)).

The FDI Law contains both a Positive and a Negative List. The Negative List was published along with the FDI Law on 23 September 2018. The Negative List includes activities and sectors (Art. 7(2) FDI Law) that are not eligible for full foreign ownership:

- Oil exploration and production;
- Investigation, security, military (including manufacturing of military weapons, explosives, dress, and equipment);
- Banking and financing activities;
- Insurance;
- Pilgrimage and umrah services;
- Certain recruitment activities;
- Water and electricity provision;
- Fishing and related services;
- Post, telecommunication and other audio visual services;
- Road and air transport;
- Printing and publishing;
- Commercial agency;
- Medical retail (including pharmacies); and
- Blood banks, quarantines and venom/poison banks.

The Positive List was not originally included in the FDI Law, but a definition was given in Art. 1 FDI Law, according to which "[t]*he list* […] *includes the sectors and economic activities available to invest in by a Foreign Investor either 100% or any other lower percentage in accordance with the provisions of this Law by Decree.*"

According to Art. 6(2)(A) FDI Law, a Foreign Direct Investment Committee was established by the UAE Cabinet. The Committee made its recommendations on the economic activities and sectors that shall be included in the Positive List.

2. *Which activities are included in the Positive List?*

The Positive List contains 122 economic activities across three sectors in which a foreign investor will be allowed up to 100% ownership:

- Agriculture (19 activities);
- Industry (51 activities); and
- Services (52 activities).

a) Agriculture

The 19 agriculture activities (*e.g. cultivation of fruits, vegetables, grain, etc.*) mentioned in the Positive List are subject to the following:

- Except for one activity, all activities require a minimum share capital of AED 7.5M (approx. EUR 1.8M);
- Companies need to join the Emiratisation Partners Club;[1] and
- The use of modern technology in the production process is mandatory.

b) Industry

The 51 industry activities mentioned in the Positive List are subject to the following:

- The required minimum share capital varies from AED 15M to 100M (approx. EUR 3.75M to 25M);
- Companies need to join the Emiratisation Partners Club; and
- The use of modern technology in the production process is mandatory.

The Positive List distinguishes between light and heavy industry. As a general rule, light industry activities (e.g. *garment manufacturing, leather products manufacturing, pharmaceutical products manufacturing, aircraft maintenance, and repair, aircrafts engines maintenance and repair, vessels maintenance and repair, vessels engines maintenance and repair, etc.*) require a lower minimum share capital (AED 15M).

Heavy industry activities (e.g. *manufacture of motor vehicles, trailers and semi-trailers, commercial ships building, ships parts and floating structures parts manufacturing, construction of floating or submerged drilling platforms, construction of floating structures*) generally require a higher minimum share capital (AED 100M).

c) Services

The Positive List contains 52 service activitiesare. Among other things, the following service activities are included in the list:

- Civil engineering, electricity, plumbing, demolition and site preparation, building construction, rental of construction and demolition machinery and equipment, but limited to infrastructure projects such as airports, highways and sports facilities with a value of AED 450M, other construction-related activities;
- Educational services (pre-school, primary, secondary and higher education); and
- Hotel and Restaurants Management.

As a general rule, the minimum share capital for this activities is according to the general legal requirements (non FDI Law related). It should be noted, however, that some service activities require a minimum share capital (e.g. hospital activities require a minimum share capital of AED 100M – approx. EUR 25M).

[1] The Emiratisation Partners Club is an initiative launched in 2017 by the Ministry of Human Resources and Emiratisation (MOHRE).

3. Are all activities included in the Positive List open to full foreign ownership?

As for now, the level of ownership that will be allowed for each activity is not fully clear. The Positive List does not mention any limitations on shareholding. Regardless of this, it is expected that some activities will still require a minimum Emirati shareholding (e.g. 30%). Moreover, for some activities the level of foreign ownership will depend on the respective Emirate and its policy towards foreign direct investment.

4. What are the requirements to take advantage of the Positive List?

The requirements to obtain approval for setting up a business under the Positive List are laid out in Art. 10 FDI Law. The conditions and procedures depend on the local regulations within the respective Emirate. The respective local authority of each Emirate shall be competent to license an FDI project and subsequently add the company to the FDI register. The company name shall include the words "Foreign Direct Investment" to its name. Licenses will need to be renewed annually.

Prior to the implementation of the Positive List, foreign investors could request an approval of the Emirate's competent authority.

5. Conclusion

It is expected that the updated FDI Law will increase the competitiveness of the UAE economy. While crucial information on the permitted level of foreign shareholding is not included in the Positive List, it is expected that those commercial activities that will not be subject to full foreign ownership will – at least – be eligible to a majority foreign ownership.

The changes brought about by the FDI Law should – once all details and requirements have become clear – be taken into account by foreign investors just entering the UAE market as well as by existing foreign investors alike. Existing foreign might consider restructuring their businesses under the FDI Law provisions.

Foreign investors should keep in mind that both the Positive and Negative List can be altered by the UAE Cabinet. The Positive List will be binding once it has been published in the UAE Federal Gazette. It is expected that by then the missing information (e.g. shareholding level) will have been clarified.

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