

Client Alert



Shifting Sands in the Middle East: New Foreign Direct Investment Law in the UAE

UAE Federal Decree-Law No. 19 of 2018

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Seyfarth Synopsis: Landmark legislation in the United Arab Emirates (the “UAE”) has recently been passed which formalizes a framework to allow for relaxed rules on foreign investment into the country and, most importantly, for 100% of foreign ownership in certain sectors. This marks a radical departure from the established law and custom in effect since the country’s inception in the 1970s. The UAE remains a premier global hub and base of operations for multinational companies operating or seeking to operate in the Middle East, Africa and South Asia.

On the heels of years-long speculation in the Middle East and many global markets, the UAE has very recently promulgated new legislation liberalizing its inward foreign direct investment regime by adoption of UAE Federal Decree-Law No. 19 of 2018 (the “FDI Law”). The FDI Law has been published in the UAE’s Official Gazette and is therefore considered to be immediately effective. Even though it has been successfully passed, the FDI Law still remains open to interpretation and will require implementation by way of concomitant law, decree and/or analogous rule, as is commonly the case with overarching legislation in the UAE.

The UAE Cabinet is the executive branch of the United Arab Emirates’ confederation. The FDI Law sets forth the framework through which the UAE Cabinet may exercise its inherent power to permit foreigners to apply to the relevant UAE government regulator(s) to own more than 49% of equity in operating and holding companies trading in certain sectors of the economy.

This represents a marked departure from established law which has stipulated that foreigners are only permitted to own a maximum of 49% of equity in onshore corporate vehicles in the UAE. That is to say, Article 10 of UAE Federal Law No. 2 of 2015, commonly referred to as the UAE’s Commercial Companies Law, mandates that a UAE national shareholder or a company majority owned by UAE national(s), must be the registered 51% shareholder of companies incorporated in the UAE and issued a license to operate by the UAE government.

This rule, however, does not apply to companies incorporated inside free zones in the UAE, which are specially demarcated territories within the UAE which have their own laws, rules, regulations and licensing authorities. Free zones are typically centered around certain industry sectors. For example, the Jebel Ali Free Zone has long been an attractive jurisdiction for shipping companies, importers and logistics players. The Dubai International Financial Centre is a financial free zone that is home to funds, financial institutions, investment offices, law firms and banks.

Notwithstanding the 51%-49% ownership restrictions mentioned above, foreign corporations and individuals continue to successfully invest in, operate and manage companies in the UAE by way of entering into certain minority interest protective

arrangements which typically take the form of shareholders agreements, management agreements, proxies and/or powers of attorney. This suite of documentation is always bespoke and investors should always seek careful legal counsel in making these arrangements, as there may be barriers to enforceability of certain types of these agreements, depending on what is entered into and how relationships are structured.

The FDI Law has now created a “negative list” which is an explicit declaration of the sectors of the economy in which 100% foreign ownership will not be permitted. The UAE Cabinet reserves the right to add or subtract sectors from this list at its own discretion and without any advance notice or justification. The sectors appearing on the “negative list” are:

- 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)
- Blood banks, quarantines and venom/poison banks

The new law mentions a “positive list” but does not definitively populate that list at this time. It is understood that the sectors to appear on this list will be sectors in which increased foreign ownership levels will be permitted, subject to certain extra conditions like minimum capital requirements and mandatory Emirati employee quotas, for example.

The FDI Law also sets forth, at an overarching level, the application procedure that a foreign investor would need to undertake in order to seek permission for increased foreign investment. Rejected applications will have the benefit of an appeals process.

Additionally, the FDI Law authorizes the establishment of two new government bodies: a Foreign Direct Investment Unit and a Foreign Direct Investment Committee. The exact roles and powers of these two new federal bodies are still to be clarified, but their establishment itself is a strong signal supporting the proposition that the UAE is very serious about attracting new and large amounts of structured and unstructured foreign capital into its already diversified and sophisticated economy.

The UAE continues to act as bastion of stability and economic prosperity in what can often be a politically and economically volatile region. To this end, our current and prospective clients should be continuously mindful of the UAE’s unique status as a regional marketplace and as a conduit for business in the greater Gulf, North Africa and South Asia.

Seyfarth has experience in advising on inbound and outbound investments and international corporate, commercial and M&A matters for corporates, multinationals and high net worth individuals in the Middle East and Asia. If you have any questions about this Client Alert, please contact Sai Pidatala at spidatala@seyfarth.com.

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