

The Highlight of 2018: A New Foreign Direct Investment Decree in the UAE

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The Foreign Direct Investment Decree has finally arrived but, is it everything that we hoped for?

As promised, the UAE President His Highness Sheikh Khalifa bin Zayed Al Nahyan issued Decree Law No. 19 of 2018 ('Decree') permitting 100% foreign ownership by global investors in the UAE.

The news of a new foreign direct investment law was communicated earlier in 2018 in a series of Twitter posts by the UAE Prime Minister, His Highness Sheikh Mohammed bin Rashid Al Maktoum. The news raised much speculation amongst legal professionals and businessmen alike with regards to the possible effect of such a new foreign direct investment law.

In this article, we aim to shed some light on the new Decree and its application in practice.

Recognition of the value of Foreign Direct Investment ('FDI')

The Decree, in its first few articles, recognises the positive influence that FDI can have on the economic growth of the UAE.

The Decree states that it aims to:

1. assert the position of the UAE as a major attraction hub for foreign direct investment both regionally and globally;
2. attract and encourage foreign direct investment;
3. expand the production base, diversify it, transfer and attract advanced technology, knowledge and training;
4. increase the flow of foreign direct investment in the priority sectors to achieve balanced and sustainable development and create job opportunities in various fields; and
5. achieve the best return with the available resources and secure high added value for the UAE's economy.

In achieving these aims, the Decree has substantially departed from the general rule under the UAE Commercial Companies Law no. 2 of 2015, whereby, the majority of foreign investors wanting to do business in the mainland UAE must have a UAE partner holding at least 51 percent of the shares. The Decree provides an exemption to this general rule allowing certain investors up to 100 percent foreign ownership in a range of sectors.

The Decree introduces a Foreign Direct Investment Committee ("Committee") which will be formed pursuant to a resolution by the UAE Cabinet ('Cabinet') and chaired by the Minister of Economy ('Minister'). The Committee will be responsible for referring recommendations to the Cabinet in connection with sectors, activities and benefits to be granted to the FDI Projects

What constitutes Foreign Capital under the Decree?

One of the main points of debate regarding the new Decree is the value of capital that the foreign investor will have to bring to the UAE in order to be entitled to the exemption under the Decree.

The Decree defines foreign capital as fixed assets and intangible rights, such as patents, concession rights, trademarks and trade names owned or registered in accordance with the laws and regulations in force in the UAE.

It is understood that the Decree is not looking for a specific value of capital, but rather evidence of the foreign investors' financial capabilities in its country of origin and globally. As such, investors may be asked to submit financial statements and auditors reports for itself and its group of companies as part of the application process.

Who should apply for an Exemption under the Decree?

While this may be unfortunate news for small-medium sized businesses, it is evident that the Decree aims to target large companies which are able to positively influence the UAE's economy. Factors that may be taken into account by the Committee in reviewing applications can include the projected number of staff that the company will have once incorporated in the UAE as well as the number of subsidiaries that the applicant has worldwide.

In which Sectors can an Application be Made?

The Decree provides a negative list for sectors in which an application cannot be made. The negative list includes:

1. banking activities;
2. financing;
3. payment systems and dealing in cash;
4. insurance services;
5. land and air transport services;
6. commercial agent services; and
7. medical retail services such as private pharmacies etc.

Sectors in the negative list may be amended and replaced by the Cabinet.

The Decree also provides certain leeway for the issuance of a positive list of recommended sectors in which applications may be submitted. The Cabinet has been authorised to issue a positive list of sectors in which FDI would be welcomed. The Cabinet may also amend such positive lists to include or exclude certain sectors or activities.

The Decree also requires the Cabinet to specify any requirements in relation to the legal form of a foreign investment company, the permissible percentage of foreign ownership, the minimum share capital amount and the Emiratisation quota, if any, with regards to sectors/activities that are part of the positive list.

While no positive list has been issued by the Cabinet as of yet, we understand that this does not preclude investors from submitting applications in a sector which is not included in the negative list.

How can Application be made?

As of now, an application can be made to an interim committee (currently sitting in the Dubai Department of Economic Development and consisting of four members) alongside any supporting documentation that the committee may request such as company profile, feasibility study, and future investment plans etc.

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Licensing Mechanism

The committee will review the application. Where it meets all the conditions and procedures set out in the Decree, if the company is existing, the foreign investor will be able to amend the licence according to the percentage approved (up to 100%) or, if it is a new company, the foreign investor will be able to incorporate the company based on the approval.

Specific requirements related to Foreign Investment Companies

The name of a foreign investment company should be accompanied by its legal form and the phrase ‘foreign direct investment’.

Foreign investment companies are also required to comply with special criteria relating to Emiratisation and may be required to employ a certain percentage of local UAE staff.

The Verdict

We find that the Decree lives up to our expectations and is everything we had hoped for.

However, as expected, the Decree does not target small to medium businesses so as to avoid any negative impact on commercial agents and free zones for example.

Al Tamimi & Company's [Corporate Structuring team](#) regularly advises on structuring matters. For further

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