The New FDI Law: Endorse it and Build on it!
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Among the important laws passed in 2018, a new one was issued by the United Arab Emirates – on 23 September 2018 – Federal Law No. 19 of 2018 on Foreign Direct Investment (“FDI Law”). This new legislation update was described by the Ministry of Economy as a “quantum leap”!

Investments in general, and foreign direct investments in specific, are generally regarded as the most important contributors to economic growth. Even though the UAE has been recently ranked No. 1 in the Arab World for the “Ease of doing business” and no. 11 globally on the “list of the world’s most attractive foreign direct investment countries”¹, it continues to create the optimal business-friendly environment in the region. As a result, the Ministry of Economy expects a total growth of 15-50% in 2019 and 2020. And while this law is expected to encourage more investment in the UAE and increase employment opportunities, all eyes are on the implementing regulations – soon to be released by the Cabinet to identify the detailed steps or directives for the execution of this new law.

Back then and how it started...

The long-standing practice rule in UAE, in relation to foreigners setting up commercial companies, is the famous “national shareholder owning 51% of the shares“. This rule progressed from UAE’s “Old” Commercial Companies Law² into the “New” Law³.

Nonetheless, striving to present the UAE as a major business hub in the Middle East – a hub that is able to attract foreign direct investments from around the world – the UAE Government has already taken the first step to pave the way for less stringent restrictions imposed on foreign investors prohibiting them from enjoying a 100% foreign ownership of their businesses (commercial companies) outside the designated free zones.

It was the amendment⁴ of the Commercial Companies Law (Federal Law No. 2 of 2015, “CCL”) – introduced in 2017 – which granted the Cabinet the authority to permit activities in which full foreign ownership may be approved.

So, what’s changed?

The provisions⁵ of the new law are applicable to all foreign direct investment projects established or licensed in the UAE only (on-shore). In other words, these same provisions do/will not apply to projects established in financial and non-financial UAE free zones. Hence, until the new Foreign Investment Law is put into application, the legal framework, in relation to setting up commercial companies in the UAE, remains the same.

However, it is only fair to note that this new law has provided a number of “certainties” that can be clearly discerned while reading through its provisions. They are:

1. The “Negative List⁶”:
   The aim of this list is to identify the business sectors in which foreign direct investment is prohibited. These sectors are:
   - Petroleum related exploration and production
   - Investigation, security, military (including manufacturing of military weapons, explosives, dress and equipment)
   - Banking and finance
   - Insurance
   - Pilgrimage and Umrah services
   - Certain recruitment activities
2. The New Authorities:

The FDI Law has established two new authorities in relation to investment. They are: the Foreign Direct Investment Unit and the Foreign Direct Investment Committee. Their respective responsibilities and competences have been laid out in articles 6 and 7 of the FDI Law.

3. The Appeal Process:

If an application for Foreign Direct Investment license is rejected, the applicants have the option to appeal the rejection, in a process that is clearly set out, before the competent authority (concerned with FDI affairs).

4. The Benefits:

Companies established under the Foreign Direct Investment Law will, to the extent legally permissible, enjoy the same treatment and benefits granted to companies based in mainland-UAE (bank transfers, international salary transfers, etc.).

In addition to the above, a Foreign Direct Investment project – established before the enactment of this law – may still benefit from the privileges the new law provides on the condition that it adjusts its status and obligations to comply with the provisions of this law.

What’s next?

A series of questions has risen regarding the issues that the new law hasn’t tackled directly, yet. The hope is that the executive regulations, and any subsequent resolution, shall help add the missing pieces to the puzzle. For instance, it is clearly noticeable that the list of business sectors that fall under the positive list has been left obscure even though a small indication to the basic criteria that may cause a business sector to be included on the positive list has been mentioned inside the law. Yet, the final decision is in the hands of the Cabinet, which is granted the authority to identify these sectors within which a 100% or a greater level foreign ownership will be allowed.

Having said that, the lookout is for any future resolution that would help understand the provisions of this law more clearly. Precisely, this resolution would need to answer, among other questions, the following:

1. Which business sectors fall under the positive list?
2. What is the exact type and/or form of entities/companies that may be established as an FDI project? And what is the minimum required capital?
3. Will there be any conditions of Emiratization?
4. Will the existing on-shore joint venture agreements be able to shift or transfer into an FDI project?

In conclusion, the UAE is certainly the economic/commercial benchmark that neighboring countries aim to meet. It has taken great steps to create an environment where people feel safe and comfortable to invest and start their businesses. The new FDI law is a milestone steps that will push the country forward. It lays out a foundation which only needs to be endorsed, nurtured with experience, and built upon for future developments and successes to take place.

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2 Article 22 of Federal Law No. 8 of 1984 (repealed by Federal Law No. 2 of 2015).
3 Article 10.1 of Federal Law No. 2 of 2015: «1. With the exception of Joint Liability Companies and Simple Commandite Companies where all the active partners of any of such companies shall be UAE nationals, any company established in the State shall have one or more UAE partners or shareholders holding at least fifty-one percent (51%) of the share capital of the company».
4 Federal Decree by Law No. 18 of 2017 amending clauses 2 and 3 of article 10 of CCL [issued on 19 September 2017 and published in Federal Official Gazette Issue No. 622(sup), dated 28 September 2017].

Amended clauses now read as follows:
2. Notwithstanding the provisions of Clause (1) of this Article, the Cabinet may, on proposal made by the Minister, in coordination with the competent authorities, issue a resolution determining the following:
   a. The activities that may be exclusively practiced by the UAE nationals;
   b. The activities and companies in which a non-UAE natural or legal person may own all or majority of the share capital. The resolution shall set out the relevant effects in the exception to Articles (9/3), (7/1/2), and (209) of this Law.

3. The exceptions set forth in the above two paragraphs shall be observed; and the violation of which shall be punishable by the penalties prescribed in Article (353) of this Law.

5 Article (3) of the FDI Law.
6 Article (7.2) of the FDI Law.
7 Article (11) of the FDI Law.
8 Article (8) of the FDI Law.
9 Article (17) of the FDI Law.
10 Article (2) of the FDI Law identifying the objectives of the Law.