SQUIRE PATTON BOGGS

The United Arab Emirates Opens Its Doors to Unrestricted Foreign Investment

Background

Foreign ownership restrictions have traditionally been the greatest single impediment to foreign direct investment (FDI) in the Gulf region. That legislative picture has been changing over the course of the past decade with some GCC (Gulf Cooperation Council) countries – notably Saudi Arabia, Bahrain, Kuwait and Oman – allowing ever greater possibilities for unrestricted foreign investment in an ever-increasing range of economic sectors.

In many respects, the United Arab Emirates (UAE) had appeared to have fallen behind somewhat in the race to liberalise the economies in the Gulf despite offering a zero-tax environment and superb infrastructure. Though foreign companies were entitled to establish branches for some activities, there was no simple structure for the creation of a local limited liability company to ring-fence local liabilities and potentially ameliorate the effects of domestic taxation in the investor's home jurisdiction.

Foreign ownership in the UAE in most fields of endeavour was limited to a 49% equity interest, with foreign investors required to partner with a local Emirati or GCC partner who would hold the remaining 51% interest. Full foreign ownership of companies was allowed only in designated areas, known as free zones, designed to encourage foreign investment in designated industries, with their activities largely restricted to that free zone.

New Opportunities

That situation changed in dramatic fashion on 2 July 2019 with the announcement of a decision of the Federal UAE Cabinet (the Decision) to permit up to 100% foreign ownership for 122 economic activities across 13 industry sectors in the UAE. The affected sectors include:

- Transport and storage
- Agriculture
- Space
- Manufacturing
- Renewable energy
- Hospitality and food services
- Information and communication
- Professional, scientific and technical activities
- Administrative and support services
- Educational activities
- Healthcare
- Art and entertainment
- Construction

The Decision was made pursuant to the provisions of Federal Decree Law No. 19 of 2018 (the Foreign Investment Law), which came into force in November of last year. That law stipulated that Cabinet would, by resolution, establish a "Positive List" of areas in which increased foreign ownership would be permitted. The Decision represents the first iteration of the Positive List.

Among other things, the Foreign Investment Law also established a Negative List, spelling out those areas in which increased foreign investment would not be permitted. These areas include petroleum exploration and production; fisheries; investigation, security and military sectors; banking and financing activities, payments and funds management systems; land and air transport services; insurance services; commercial agencies services; and a handful of other designated sectors.

What It Means to Foreign Investors

The Decision offers a great deal of promise to foreign parties seeking to invest in the UAE and foreign companies wishing to make investments in those areas covered by the Decision will certainly enjoy some new benefits and protections under the Foreign Investment Law. There are many positive signs here, as well as some that will trigger caution or perhaps even concern.

The Pluses

In terms of the positives, these include:

- Foreign investors will certainly be encouraged by the wide range of new activities – 122 in all – in which they can enjoy investment up to a 100% interest.
- Companies licenced under the Foreign Investment Law (FDI Companies) will be treated as national companies, subject to other legislative restrictions.
- Existing limited liability companies established by foreign investors under the old 49%/51% principle will be given the opportunity to convert their companies into up to 100% foreign ownership in industry sectors specified in the Decision.
- FDI Companies will be entitled to transfer their locally generated profits, proceeds of liquidation and monies obtained through the settling of disputes out of the UAE without restriction. This right had previously been guaranteed by practice but not by express law.
- Employees of such companies will also be entitled to freely and unrestrictedly transfer their wages and other paid entitlements out of the UAE.

- Subject to approval from the competent legislative authority, an FDI company can admit new partners, amend its Articles of Association or sell its business or assets. This latter term should have a positive effect on M&A in the country.
- FDI Companies are granted express special guarantees against the seizure of their ownership or assets except in the case of public interest and then only for fair compensation.
- The approvals process for FDI companies will be a streamlined one with the competent authority required to approve qualified applicants for FDI Company status within five days of their satisfaction of the approval requirements.

Outstanding Matters

There are some remaining questions and potential issues concerning these fundamental changes that will need to be addressed, including:

- Neither the Foreign Investment Committee nor the Foreign Direct Investment unit of the Ministry of Economy, charged under the Foreign Investment Law with the oversight and the implementation of foreign investment respectively, has been formed to date. The formal procedures for the approval of FDI Company status have yet to be established.
- General government announcements accompanying the Decision have suggested that implementation as regards the Positive List will be left to the local governments of each of the seven Emirates comprising the UAE. This has raised some concern as to whether, for example, different investment requirements or even investment thresholds will be created in different Emirates. It also creates some uncertainty as to precisely when and where the changes will be implemented and how they will look.
- FDI Companies will be required to employ and train Emirati nationals in accordance with a Cabinet Resolution which has yet to be promulgated.

Conclusion

The advent of the Decision, taken together with the Foreign Investment Law, amounts to a radical and positive change in direction for the UAE. While we regard this as a significant development, which is highly likely to lead to substantiality increased levels of foreign investment in the UAE, we are monitoring developments closely, as these changes are implemented and will issue further alerts as to specifics and potential opportunities as they arise.

Contact

Douglas Smith
Partner
T +971 4 447 8737
E douglas.smith@squirepb.com

34937/07/19