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inBrief

UAE FDI: the doors are open to foreign investors but what are the practical considerations?

By Danielle Lobo and Saurbh Kothari | 4 July 2021

As most readers will now know either via the press or through other legal publications, the requirement for a limited liability company (**LLC**) to have at least 51 per cent UAE national ownership was removed on 30 March 2021 pursuant to Federal Decree-Law 26 of 2020 (**Decree Law**).

Under the Decree Law, local licensing authorities (i.e., the relevant economic departments) of each Emirate were granted the authority to determine a list of activities for which up to 100 per cent foreign ownership is permitted (**FDI Activities**).

The Department of Economic Development in Abu Dhabi and the Dubai Department of Economic Development have already published their list of FDI Activities. We understand that the Department of Economic Development in Sharjah will publish its list imminently.

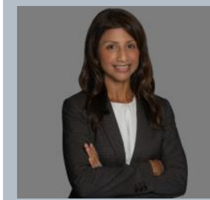
No conditions/restrictions on 100 per cent foreign owned LLCs?

What has changed since September 2018 when Federal Decree-Law 19 of 2018 regarding Foreign Direct Investment (the **2018 FDI Law**) was enacted?

Pursuant to the 2018 FDI Law, Cabinet Resolution 16 of 2020 was issued which contained a positive list of 122 activities wherein a 100 per cent foreign owned company could be established with certain conditions and/or restrictions. The key conditions and/or restrictions were the requirement to have a specified minimum share capital and a minimum level of Emiratisation of the workforce (to be determined by the Ministry of Human Resources and Emiratisation).

The 2018 FDI Law was repealed with effect from 2 January 2021.

The Authors



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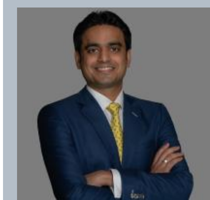

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While the 2018 FDI Law did impose some conditions/restrictions on 100 per cent foreign owned companies, as of now, no special conditions/ restrictions have been imposed by the Economic Departments of Abu Dhabi and Dubai.

Other Considerations

While a 100 per cent foreign owned LLC in mainland UAE is an attractive option, there are various other matters to be considered before deciding on an ownership structure for an LLC.

1. **GCC Customs Exemptions**

   Goods manufactured in the UAE by 100 per cent foreign owned LLCs under the current customs regime, will not be able to avail the benefit of the 5 per cent GCC customs duty exemption offered to entities which are owned at least 51 per cent by GCC nationals. Exports by a 100 per cent foreign owned company, would not be eligible for national treatment when exported to another GCC member state.

2. **Tax holiday offered by free zones**

   Most free zones in the UAE offer a guaranteed tax holiday. For example, the Dubai Airport Free Zone offers a 50-year exemption from all tax (including income tax).

   If an investor can conduct its business from one of the free zones of the UAE, even if a 100 per cent foreign owned company can be established in mainland Dubai or Abu Dhabi, such an investor may still wish to establish within a free zone in order to benefit from the guaranteed tax exemption.

Restructuring of existing LLCs

In addition to the issues raised above, the following points should also be kept in mind while restructuring ownership of existing LLCs:

1. **Arrangements with local partners**

   The terms of any existing arrangements with local partners should be reviewed in advance of triggering any proposed restructuring to ensure that the arrangements permit the foreign partner to request the transfer of the interest in the LLC held by the local partner.

2. **A UAE LLC with branches in other Emirates**

   To the extent that there are variances among the Emirates in relation to the permitted FDI Activities, it will be interesting to see if a wholly foreign owned LLC will be permitted to register a branch in a different Emirate even if that Emirate does not have the LLC's licensed activity on its list of permitted FDI Activities.

3. **Name of the LLC**

   If the shares of an LLC are being transferred so that the LLC becomes a 100 per cent owned subsidiary of a foreign investor, note that as per Article 72 of the Companies Law, the name of the LLC will be required to be amended to reflect that the LLC is a single shareholder company. The phrase (One Person Company) must also be added to the LLC's name. The implications of this change of name on the business operations of the LLC should be considered in advance of any restructuring. It is also worth noting, that under the Decree-Law, it is expected that the Cabinet will issue a Decision determining the procedures for the management of single shareholder LLCs. Once this decision is issued, foreign investors will be required to consider the effects of the decision on the running of their business.

Whilst the issues discussed in this inBrief are not an exhaustive list of matters to be considered, before incorporating a 100 per cent foreign-owned LLC or restructuring an existing LLC, they represent some useful and important considerations. For each type of business, careful analysis and planning will be required to determine the most suitable structuring option(s). ■

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Afridi & Angell's corporate department has extensive experience in advising on foreign direct investment and corporate restructuring matters. Should you have any questions, please contact the authors or your usual Afridi & Angell contact.

Afridi & Angell

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