



# THE NEW UAE FOREIGN DIRECT INVESTMENT LAW – A GAME CHANGER

**AHMED IBRAHIM**  
Managing Partner  
Matouk Bassiouny & Ibrahim



[dynamicdubai.com](http://dynamicdubai.com)

The legal infrastructure of the UAE witnessed a series of “face lifts” over the past two years or so, beginning with the Companies Law in 2015, continued by the Bankruptcy Law in 2017 and followed the recently issued Arbitration Law in 2018. These developments culminated in the recent promulgation of the new Foreign Direct Investment Law which marks a complete makeover to the legal infrastructure and foreign direct investment (“**FDI**”) climate of the UAE.

Coinciding with Flag Day in the UAE, and after many years of media speculations, His Highness Sheikh Khalifa Bin Zayed Al Nahyan finally promulgated the long awaited Foreign Direct Investment Law (“Law”) on 1 November.

This article identifies primary and key changes implemented by the new Law that will material effect investments into the UAE.

Despite public discussions and speculations to the contrary, the Law touches upon one of the most (if not actually the most) never-ending debate about the liberalization of foreign ownership restrictions embedded in the existing legal system of the UAE. Foreign ownership restrictions have been grounded in the DNA of all GCC’s corporate legislations. In its scope of application, the Law explicitly indicates that the incentives and benefits of the Law applies to “*all business sectors and activities*”, except for the activities and business segments set out in the “*negative list*”.

The Law prudently sets out a list of activities and business sectors that will remain under their respective specific legal regime and regulations. The key activities included in the “negative list” where the Law does not apply to them are:

- Exploration of petroleum materials and the production of the same;
- Insurance services;
- Banking and financing, as well as, money/currency related activities;
- Arrangement of Hajj and Umra, as well as, supply of labour;
- Water and electricity services;
- Agency activities;
- Blood banks; and
- Air and road transportation.

The above is not an exhaustive list and, by Law, the Council of Ministers may add more activities or business sectors to the “*negative list*”. The “negative list” as it stands appears to be reasonable and not uncommon.

Even with the plain statement that the benefits and incentives will apply to “*all business sectors and activities*”, the Law continues to elaborate that the Council of Ministers, in conjunction with the Minister of Economy, will issue a “*positive list*” of the foreign investment activities and business sectors to which the Law will apply. Further, the Council of Ministers may point out a specific emirate(s) in which a particular foreign direct investment project can be established. Also, the conditions and procedures to be followed by foreign investors to apply for a foreign direct investment license are yet to be issued.

This means that there will still be more criteria and measures to be considered by foreign investors. We believe that there may be key and fundamental objective standards and requirements implemented in order for foreign direct investment projects to satisfy the requirements of the Law. For example, there would be minimum capital requirements, business track records of the applicant, number of employees to be employed and the level of Emiratization, sector specific requirements such as number of beds in hospitals and healthcare sectors, number of rooms or hotel rating in the hospitality sector ... etc. All these details should be unveiled by the issuance of the “*positive list*”.

The Law introduces certain incremental elements of reform and modernization. For example:

- Foreign investment companies established under the Law will be treated as national UAE companies. It will be interesting to see how this will influence the ownership of property/real estate rights outside the investment zones in the Emirate of Abu Dhabi and mainland properties in the Emirate of Dubai;
- Free repatriation of profits and dividends, including proceeds of liquidation, outside the UAE. The absence of material restrictions on repatriation of profits on companies these days arguably makes this benefit redundant, though investors will not doubt be reassured by this explicit provision confirming that no new restrictions will be introduced under the Law;
- Properties of foreign investment companies may not be confiscated for public benefit without fair compensation to be determined on the date of confiscation;
- In the absence of any breach by foreign investment companies, there will be no cancellation or suspension of companies’ right to use its properties designated for the establishment of the underlying project. Once concern in this respect might be the lack of definition of what constitutes a breach. Would a breach in an employee’s residency renewal be considered a breach? Will there be a remedy period? Practice will answer these questions;
- Even if the foreign investment project in question does not fall within the “*positive list*”, the relevant authority may present the matter to the Minister of Economy or to the relevant emirate to reconsider the investor’s application; and
- Existing foreign investment companies have the right to benefit from the privileges and incentives provided for under the Law, such right being conditional upon reconciling and adhering to the provisions of the Law.

The Law also introduces dispute a resolution mechanism, whereby foreign investment disputes may be resolved through alternative dispute resolution forums..

Penalties under the Law are quite hefty. Any breach of the Law triggers imprisonment penalties and/or a fine of not less than 50 thousand Dirhams and not more than 10 million Dirhams.

Last but not least, we believe that the Law may not necessarily liberalize the foreign ownership restrictions to the fullest extent. There may still be minimum local ownership requirements (of course below 51 per cent.) in particular sectors or activities within the “*positive list*”. The complete elimination of all local ownership requirements will materially affect the business of the free zones and challenge the underlying rationale behind their existence.

The promulgation of the Law is a significant step towards a better future for doing business in the UAE and will most likely have a positive impact on FDI and inbound investments to the UAE. We will eagerly stay tuned until the “*positive list*” is issued.

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About Matouk Bassiouny & Ibrahim

Matouk Bassiouny & Ibrahim is a top-tier regional and independent full-service business law firm based in Dubai and is part of Matouk Bassiouny Law firm, a regional MENA law firm with over 200 lawyers and partners. We serve our clients through our offices in Cairo, UAE, and Sudan covering the MENA region. The firm also has specialized country desks covering Libya and Algeria.

We have the most active local equity capital markets team in the region in terms of number of IPOs the team advised on. For more information, please contact Ahmed Ibrahim – Managing Partner at [ahmed.ibrahim@matoukbassiouny.com](mailto:ahmed.ibrahim@matoukbassiouny.com).

