



## **The Potential Impact of the new UAE Foreign Direct Investment Law**

**UAE Federal Law No. 19 of 2018** on Foreign Direct Investment (“the FDI Law”) came into force in 2019, allowing 100% foreign ownership of UAE companies in certain sectors. The Commercial Companies Law no. 2 of 2015 (“the Companies Law”) has stated that UAE nationals must own at least 51% shareholding in Commercial Companies based outside of the Free Zones. The Mars group became one of the first companies to take advantage of this new law in late August 2019<sup>1</sup>.

As part of this law a Foreign Direct Investment Committee (the “Committee”) and a Foreign Direct Investment Unit (the “Unit”) were established in the UAE to oversee the implementation of the FDI Law<sup>2</sup>.

### **Positive and Negative lists of activities:**

Article 6(2) of the FDI law stipulates that the Committee’s responsibilities shall include the maintenance of the negative list of activities contained in the law, which shall not be open to completely foreign ownership, as well as the issuance of a positive list of activities which shall be. The negative list, as per Article 7(2) of the FDI law, includes:

- A. Exploration and production of petroleum materials.*
- B. Investigations, security, military sectors, manufacturing of arms, explosives and military equipment, devices and clothing.*
- C. Banking and financing activities, payment systems and dealing with cash.*
- D. Insurance services.*
- E. Hajj (pilgrimage) and Umrah services, providing employment and recruitment services for staff and servants.*
- F. Water and electricity services.*
- G. Services related to fisheries.*
- H. Postal services, telecommunications services and audio and video services.*
- I. Land and air transport services.*
- J. Printing and publishing services.*
- K. Commercial agents’ services.*
- L. Medical retail such as private pharmacies.*
- M. Blood banks, venom and quarantine centres.”*<sup>3</sup>

So far, the positive list of activities, which has been approved by the UAE cabinet<sup>4</sup>, includes:

- Transport and storage;

<sup>1</sup> <https://gulfbusiness.com/food-chain-mars-buys-100-dubai-unit-following-new-uae-foreign-ownership-law/>

<sup>2</sup> Articles 5 and 6 of the FDI law (<https://jjac.it/wp-content/uploads/2018/12/Federal-Law-Regarding-Foreign-Direct-Investment.pdf>)

<sup>3</sup> Art 7(2) of the law

<sup>4</sup> Resolution issued by the UAE Cabinet on 2 July 2019

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

**At this stage, the following further requirements (as set out in Schedules 1, 2 and 3) have been released for the below sectors in order to qualify to be considered as an FDI Company:**

1. **For the Agricultural Sector**, a minimum capital of AED 7.5 Million or AED 10 Million depending on the activity (as set out in **Schedule 1**) is required, and the Company must:
  - Use new technology;
  - Realise a high added value;
  - Contribute to Research and Development; and
  - Meet the requirements of UAE licensing activities.
2. **For the Industrial Sector**, a minimum capital of AED 2 Million to AED 100 Million depending on the activity (as set out in **Schedule 2**) is required, and the Company must:
  - Use new technology;
  - Realise a high added value;
  - Contribute to Research and Development; and
  - Meet the requirements of UAE licensing activities.
3. **For the Services Sector**, a minimum capital from the minimum statutory requirement for the relevant activity under the Companies' law, if applicable, up to AED 100 Million depending on the activity (as set out in **Schedule 3**) is required, and there are further restrictions placed on certain activities, such as Building and Construction activities which are only permitted for infrastructure projects of a large scale, such as airports, high roads, sports facilities, and projects worth more than AED 450 million.

### **Application process and requirements**

Under Article 10 of the FDI Law, the relevant licensing authorities and competent authorities shall be free to specify their own processes and documents requirements relating to applications of increased foreign ownership in UAE companies. Following the submission of documents as per the relevant authorities' procedures, the competent authority shall issue a decision five (5) working days after all its requirements and document requests have been met. In case of a refusal, Article 11 of the FDI law stipulates that any refusal regarding an activity outlined in the positive list may be appealed by the applicant within fifteen (15) business days from the date of the refusal.

Steps for Licensing a new FDI Project specified under the Positive List are as follows:

1. Submission of an Initial approval request, which should specify the Business Activity in the Positive List and the FDI capital (which shall not be less than the minimum required for the relevant activity) and Legal Form, permissible forms being:
  - Limited Liability Company (LLC); and
  - Private joint Stock Company (including Sole Proprietorship Companies);
2. Submission a foreign direct investment license application after obtaining the initial approval;
3. Reservation of the Trade Name. The name shall be followed by an indication of the legal form of the company and then the expression "Foreign Direct Investment (FDI)";
4. Obtaining of approvals of relevant entities and authorities concerned with FDI Company Activity where required;
5. Joining Tawteen Partners Club and presenting proof thereof to the relevant authorities;
6. Obtaining approval and receiving FDI License After Paying the Fees;
7. Open a Bank Account on behalf of the company (under incorporation) and depositing at least 20% of the capital; and
8. Registration of the License with the Ministry of Economy (MOE).

An existing company may change into an FDI company provided that the following is provided:

- The legal form of the existing company shall be one of the forms specified for FDI Companies.
- If the legal form of the existing company is different from those forms specified for the FDI Companies.

Steps for the conversion of an Existing Company to an FDI Company are as follows:

1. Obtaining the approval of the organization organizing the activity;
2. Joining Tawteen Partners Club and presenting proof thereof to the relevant authorities;
3. Obtaining approval and receiving the license after paying the fees;
4. Deposit at least 20% of the capital; and
5. Registration of the license with the Ministry of Economy.

Documents requested to support any applications under the law to allow a company to be entirely under foreign ownership shall be at the discretion of the relevant authorities and could potentially include information regarding the company's global presence, any subsidiaries and projected offices and number of staff in the UAE and worldwide. At this stage, it looks as if the law will likely (at the very least initially) focus on the larger international companies rather than SMEs. As mentioned above, if a Company is approved to be registered as an FDI company, it will need to deposit at least twenty percent (20%) of its capital before the licence is issued.

Additionally, the UAE Cabinet could still impose restrictions, which may be sector specific, for example:

- There may be minimum capital or projected staff numbers imposed in order for Companies to be able to apply to the authorities under the FDI law;
  - They may cap the maximum threshold of foreign ownership allowed in specific sectors;
  - Emiratisation requirements may still be imposed in certain sectors; and
- The form of legal entity which may apply for a higher percentage of foreign ownership in certain sectors may be restricted.

Currently, one may lodge project license application whose activity is not specified under the positive list by means of the following steps:

1. The foreign investor should submit the application for approval of the project license to the Competent Authority of foreign direct investment, which has the right to not approve the application, or to submit the request to the FDI Committee for consideration, after coordination with the Licensing Authority, and after consultation with the local government in the concerned Emirate;
2. If the request is submitted to the FDI Committee for consideration, the Committee's recommendation shall be submitted to the UAE Cabinet. In the event of a decision by the UAE Cabinet approving the request, the investor shall be notified through the competent Authority upon completing the necessary data and documents; and
3. The competent authority may, in the event if a decision of the Council of Ministers approving the request, notify the applicant of the completion of what it deems necessary to provide data, information and documents, and the competent authority shall issue approval of the license within (5) working days from the date of meeting the required documents and procedures.<sup>5</sup>

The decision of the Competent Authority to reject the license request that is not included in the positive list is final, and not subject to appeal.

Disputes that may arise from any FDI project may be settled through all alternative means of dispute resolution. If it is not settled, the cases may be referred to the competent courts.

### **Potential impact on the UAE market and conclusions**

The advantages of increased foreign ownership to foreign companies and individuals include the potential circumvention of needing a local sponsor, which would reduce costs of maintaining a company, as well as provide guaranteed control over the company in question, which would in turn increase foreign investors' confidence. However, at this stage only a few companies have garnered approval for complete foreign ownership under the FDI law, and the extent of its application to smaller enterprises and individual investors remains to be seen.

In the long run, if applications under the FDI law for complete foreign ownership were to be readily granted to SMEs, this may make certain free zones, with the exclusion of the common-law ADGM and DIFC, effectively redundant. However, at this stage, as mentioned above, it remains to be seen how the FDI law shall translate into practice regarding its wider application, and at this stage it is likely that only the larger international corporations will succeed in their applications initially.

Therefore, SMEs are likely to continue to operate as they have been so far under the Companies Law at this stage. Also, it remains to be seen which restrictions the UAE government shall impose in relation to the specific activities and sectors.

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<sup>5</sup> UAE Ministry of Economy foreign Trade Sector Investment Department Circular

## Schedule 1: Agricultural Sector

### Conditions and Requirements:

1. Use new technology;
2. Realize a high-added value;
3. Contribute into research & Development;
4. Meet the requirements of UAE licensing entities; and
5. Join Tawteen Partners Club with the Ministry of Human Resources & Emiratization (MHRE).

### Sectors and Activities which minimum capital 7.5 Million/AED

01111	Grain cultivation (wheat, maize, barley, etc)	0125	Cultivation of fruits trees and seedlings and nuts
01112	Pulses cultivation	0126	Oleaginous fruits cultivation
01113	Cultivation of legumes, melon, roots and seeds	0127	Beverage production cultivation
01114	Sugar cane cultivation	01289	Cultivation of aromatic, drug and pharmaceutical products
01116	Fiber crop cultivation	0162	Support activities for animal production
0119001	Shoots and flowers plantation	0163	Post-harvest crop activities
0121	Grapes cultivation	0164	Seed treatment for reproduction
0123001	Fruits and citrus cultivation	0210	Silviculture and other forestry activities
0124	Pome and stone fruit cultivation	0240	Forestry support services

### Sectors and Activities which minimum capital 10 Million/AED

0161	Support activities for crop production
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## Schedule 2 Industrial Sector

### Conditions and Requirements:

1. Use new technology;
2. Realize a high-added value;
3. Contribute into research & Development;
4. Meet the requirements of UAE licensing entities; and
5. Join Tawteen Partners Club with the Ministry of Human Resources & Emiratization (MHRE).

### Sectors and Activities which minimum capital 15 Million/AED

10	Production of products (except for 1071 production of bakery products, 105 production of dairy products, 108 production of processed animal feed)	2029023	Aromatic distilled water Production
11	Beverage industry (except for 1101 alcoholic beverages distillation, purification and mixture, 1102 wine production, 1103 production of alcoholic beverages from barley)	2029024	Matchstick production
14	Garment industry (except for 14109 ready garment tailoring, 1410122 military uniform industry)	2029025	Pastes or Powders Production
15	Manufacture of leather and associated products	2030	Production of man-made fiber production
16	Manufacture of woods, woods products and cork, except for furniture, manufacture of articles of straw and plaiting materials	2100	Production of Pharmaceutical Products and Plant and Chemical Medicinal Products
2012002	Manufacture of straight or mixed fertilizers	22	Production of rubber and plastic products
2013	Manufacture of plastic products and synthetic rubber in their elementary forms	23	Production of other non-metallic minerals
2021	Manufacture of pesticide and other agricultural chemical	25	Manufacture of structural metal products except for machinery and equipment (except for 252

	products		Manufacture of Weapons and Ammunition)
2022	Production of paints, varnishes and other coats, and printing inks and pastes	26	Manufacture of Computers, electronic and visual products
2023	Production of soap and detergent, cleaning and polishing products, perfumes and cosmetics	3012	Construction of pleasure or sports boats
2029006	Processed adhesives and glues industry	31	Production of furniture
2029008	Writing and painting ink industry	3312001	Repair and maintenance of train engines
2029009	Industry of textile and leather finishing chemical materials		
2029013	Photographic Films and slides industry	3312002	Repair and maintenance of ship engines
2029019	Production of Gelatin and derivative products	3315001	Ship repair and maintenance
2029021	Base Oil (concentrate fragrance) Industry	3315004	Repair and maintenance of trains and railway equipment
2029022	Natural aromatic extracts production	3315005	Aircraft repair and maintenance

Sectors and Activities which minimum capital 100 Million/AED

28	Manufacture of machinery and equipment not classified in other place (except for 28259 Manufacture of Tobacco Processing Machinery)
29	Manufacture of motor vehicles, trailers and semitrailers
3011101	Construction of commercial vessels
3011103	Manufacture of vessel parts and floating installations
3011105	Construction of floating or submersible drilling platforms
3011906	Construction of floating installations
3011907	Construction of hovercrafts
3030	Manufacture of aerospace vehicles and associated machinery (except for 3030006 manufacture of Ballistic and Guided Military Missiles)

Sectors and Activities which minimum capital 20 Million/AED

24	Manufacture of Base Metals (except for 242 Manufacture of Precious and Non-ferrous Base Metals, 2432 non-ferrous metal casting)
27	Manufacture of Electrical Equipment
3020	Manufacture of Train Wagons and locomotives
3090	Manufacture of Transportation equipment not classified otherwise
3250	Manufacture of medical supplies and equipment for dental treatment

Sectors and Activities which minimum capital 3 Million/AED

3230	Manufacture of sports equipment
3240	Manufacture of games and toys
3290	Manufacture of other products not classified in other place

Sectors and Activities which minimum capital 2 Million/AED

3220	Manufacture of Musical Instruments
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**Schedule 3  
Service Sector**

Must join Tawteen Partners Club with the Ministry of Human Resources & Emiratization (MHRE).

Sectors and Activities which minimum capital in accordance with the legislation in force

		<b>Conditions and Requirements</b>
6910002	Legal Consultancy Firm	(Not to plead before UAE Courts act before any officials authorities or perform notarization and authentication task) and get the approval of the concerned entities in the UAE

692	Accounting, Bookkeeping, Audit and tax consultancies
711	Architectural and engineering activities and related technical consultancy services
862	Medical and dental clinics
75	Veterinary activities

		<b>Conditions and Requirements</b>
620	Computer programming, consultancy expertise and associated activities	Provide a technical team of no less than 5 programming professionals by the end of the first year of the Company

72	Research and Development in Scientific Field
-7730	Lease of Machinery and other Equipment
77300	and Real Commodity (except for Car Rental and Leasing Services)
731	Advertising
732	Market Research and Polls
702	Consultancy Expertise Activities in Management Field
712	Technical Analysis and Tests
331	Repair of structured metals and machinery and equipment (except for ships, aircrafts and other means of transport)
-8292	Buildings General Cleaning
81210	

742	Photographing Activities
-8292 82920	Packing activities
823	Commercial exhibitions and conferences organizations
741	Specialized design activities
749005	Legal translation services
7490006	Film and TV Show Subtitling and Dubbing Services
74990012	Printed Materials Translation Services
8299002	Interpretation Services

		Conditions and Requirements
620	Computer programming, consultancy expertise and associated activities	Permitted only for infrastructure projects of large scale such as airports, high roads, sports facilities and projects worth more than AED 450M
41	Buildings Construction	
42	Civil Engineering	
432	Electrical, Plumbing and other Structural Activities	
433	Buildings Completion & Finishing	
431	Demolition and Site Preparation Works	
439	Other Specialized Construction Activities	
7730009	Leasing of Construction or Demolition Machinery and Equipment	

		Conditions and Requirements
851	Pre-school and Primary Education	Excluding public education and subject to approval of the competent authorities for establishment and guiding of educational institution, and also to the conditions of suitability of school facilities and a high level of education quality.
852	Secondary School Education	
853	Higher Education	
854	Other types of education	

370	Sewage
382	Waste treatment and disposal
3900001	Effects of Pollution and Environment Protection Services
8211004	Restaurant Management
90009	Creative Activities and Dramatic Arts (Theater)
9000104	Musical Band

		<b>Conditions and Requirements</b>
9000110	Circus	Only Theater activities, live bands and Circus Activities allowed.

8130002	Park and resort landscaping
-9103 91030	Botanical Gardens, Zoos and Natural Reserves Activities
-5012 50120	Sea and Coastal Commodity Water Transport
5022001	Inland Freight Water Transport
7730016	Commercial Ship Leasing
5222002	Vessel Pilotage and Towage
5222007	Ferryboat and Bike and Jet-Ski Tug Services
New	Holding company activities in intellectual property

Sectors and Activities which minimum capital 100 Million/AED

471	Retail Trading in Non-socialized Shops (except for cooperative societies 4711001)
861	Hospital Activities (Subject to approval of competent authorities, based on economic test taking into account the number of hospitals and medical centers in a specific area, in Dubai Healthcare City such test is not required.

Sectors and Activities which minimum capital 70 Million/AED

869	Other activities in Human Health Field
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