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UAE Foreign Investment Liberalization to Drive Investment

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Corporate

This alert highlights recent foreign ownership law reforms opening large segments of the UAE economy to increased foreign ownership, bringing to an end a decades-long regime requiring local majority shareholding in UAE onshore commercial companies.

Key sectors subject to these reforms are: Energy, Infrastructure, Petrochemicals, Pharmaceuticals, Healthcare, Tech, Defense, Security and Aerospace.

The change in law may create an opportunity for international businesses to revisit both their UAE corporate structures and operating models.

Background

The UAE Federal Government recently enacted a law (Decree-Law No. 26 of 2020) introducing important amendments to the UAE companies law and repealing previously issued Foreign Direct Investments (FDI) law. The most significant amendment is the removal of the 51 percent local ownership requirement for UAE 'onshore' businesses (the "51/49 Rule").

The new foreign ownership regime distinguishes between restricted "strategic impact" activities regulated at Federal level, and non-strategic activities regulated at Emirate level.

- **Strategic activities**—Substantial foreign ownership restrictions are expected to be retained for a limited list of strategic activities (mainly security, defense, financial services and telecoms), subject to the ability of specified UAE Federal authorities to grant waivers on a company-by-company basis. See Annex 1.
- **Other activities**—For other activities, the door is now open to expansion of foreign ownership opportunities at the discretion of each Emirate. Several Emirates (Abu Dhabi, Dubai, Ajman and Sharjah) have issued extensive lists of activities potentially open to full foreign ownership, effective June 1, 2021. See Annex 2.

These changes align with policy reforms of recent years aimed at improving the ease of doing business in the UAE and aligning UAE laws with international standards. There is a growing consensus in the market that the latest reforms are a more substantive step towards opening the UAE economy to increased FDI than previous initiatives.

Improvements

Substantial Economic Opening

This legislative reform is a major development. The 51/49 Rule has long complicated or impeded FDI in the UAE. The market has adopted structures that seek to deliver majority economic and governance rights to foreign investors within the bounds of UAE law. However, the associated complexity and underlying enforcement risk have limited the utility and unattractiveness of these structures for many potential businesses, investors and lenders.

The number of activities identified as open for full foreign ownership is substantial and economically significant:

- The relevant sectors include: Energy, Infrastructure, Petrochemicals, Pharmaceuticals, Healthcare, Tech, Defense, Security and Aerospace. See Annex 2 for a more detailed summary list.
- Abu Dhabi, Dubai, Ajman and Sharjah represent the large majority of the UAE's population and economic activity, and each has selected over 1,000 specific economic activities for increased foreign ownership.
- Each Emirate may further expand the scope of activities available for increased foreign ownership—UAE Federal law has reserved only a narrow scope of strategic activities which remain subject to federally mandated foreign ownership restrictions. See Annex 2.

Opportunities in the UAE

This economic opening is expected to create significant opportunities in the UAE:

- *Companies without presence in the UAE:* Market entry opportunities on terms less challenging from an ownership, governance and economic perspective.
- *Companies without legal presence but sales activity:* Opportunity to recalibrate relationships with local partners and distributors, including moving to direct trading models.
- *Companies with existing operations in the UAE:* Simplification and consolidation, e.g. through termination of 'nominee' shareholder arrangements or other structures.
- *Borrowers & Lenders:* Potentially improved bankability, including with respect to security enforcement options, and therefore improved availability of finance.
- *M&A parties:* Simplified acquisition structures for buyers and wider bidder pools for sellers, as well as simplified structures and improved access to acquisition finance.
- *Regulated businesses:* The ability to operate under simpler, wholly-owned models without the third party involvement and associated complexities and restrictions.
- *Joint venture partners* - New scope to increase equity ownership, including true 50/50 joint ventures and greater flexibility to buy-out partners in exit and default situations.

Limitations

Lack of Regulations - Non-Strategic Activities

While the new law eliminates the 51/49 Rule, the Federal or Emirati governments may still impose local ownership, investment, employment or other conditions on the operation of onshore businesses.

The individual Emirates have published lists of foreign ownership activities without accompanying regulations or guidance setting out procedures or conditions. Unofficially, however, we understand from the Dubai Department of Economic Activities that:

- those activities are all eligible to 100 percent foreign ownership;
- there are no minimum of levels of cash investments (although some activities will require LLCs with minimum capital thresholds that apply equally to locals and foreigners);
- there are no minimum Emirati workforce requirements; and
- the licensing process will remain discretionary, but for the usual reasons (i.e. not related to foreign or local ownership).

Still, an official confirmation of the positions above will require an approach of the local authorities on a case-by-case basis and the submission of applications for the relevant activities.

Lack of Regulations - Strategic Activities

Foreign ownership in strategic activities identified by the Federal government is subject to controls and conditions yet to be issued by the relevant Ministries, including the minimum level of Emirati ownership required, the number of directors the foreign investors may appoint and other conditions or controls as the relevant regulator may determine.

Commercial Agencies

The new foreign ownership regime does not affect the UAE commercial agencies regime, under which only UAE nationals (or 100 percent UAE owned companies) may be engaged as "commercial agents".

Land Ownership

The reforms do not relax land ownership restrictions whereby title to land is reserved to UAE nationals (with the exception of certain designated areas).

Regulatory Licensing

Local regulatory authorities may continue to impose foreign ownership restrictions on certain regulated activities through the UAE commercial licensing regime. Accordingly, some degree of de-facto foreign investment restriction may remain, which will have to be investigated on a case-by-case basis.

Intra-Emirates Business

Because each Emirate is sovereign in legislating on the list of activities and related requirements, the same activity may be subject to different foreign ownership limitations in different Emirates. Therefore, the new framework may potentially add another layer of complexity for foreign investors operating the same business across several Emirates. However, given the concentration of the UAE's population and economic activity in Abu Dhabi and Dubai, the position in other Emirates may be a less material concern for many operating businesses.

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Annex 1: Strategic Impact Sectors

Security, defense and activities of a military nature

- Regulated by Ministry of Defence and Ministry of Interior

Banks, exchange houses, finance companies and insurance activities

- Regulated by UAE Central Bank

Money printing

- Regulated by UAE Central Bank

Telecommunications

- Regulated by Public Authority for the Regulation of the Telecommunications Sector and the Digital Government

Pilgrimage (Hajj) and Umra activities

- Regulated by Public Authority for Islamic Affairs and Endowments

Quran memorization centers

- Regulated by Public Authority for Islamic Affairs and Endowments

Services related to fisheries

- Not regulated. 100% Emirati ownership required.

Annex 2: Other Selected Sectors

1. Energy/Infrastructure

- **Electricity**
  - Power generation
  - Contracting of power stations, electric power lines
  - Manufacturing of power generators, transformers, turbines, solar panels, energy storage units
  - Trading of solar energy systems
- **Water**
  - Water production
  - Contracting of desalination plants, water pipelines and stations, sewage and drainage, district cooling plants
  - Purification of potable water
  - Manufacturing and trading of water treatment equipment
- **Oil & Gas**
  - Production and distribution of gas and waste-derived fuel
  - Manufacturing of liquefied gases, green hydrogen
  - Contracting of oil & gas structural and mechanical works, central gas distribution networks
  - Sea transport of oil and petroleum products by oil tankers
  - Trading of crude oil abroad, refined oil products, diesel fuel, compressed natural gas, industrial gas and LNG
  - Domestic gas distribution
  - Gas stations
- **Infrastructure**
  - Contracting of road, tunnels, railways
  - In Abu Dhabi only: contracting of airports

2. Petrochemicals

- Manufacturing of petrochemicals, sulfur, ammonia, acid, oilfield chemicals, industrial solvents, lubricants, grease, crude plastic, plastic pipes, bags and bottle, rubber
- Trading of petrochemicals, industrial chemicals and solvents, lubricants, grease, plastic raw materials, plastic sheets, rubber

3. Pharmaceuticals

- Manufacturing: medicine, vaccines, medical and surgical devices
- Trading: medicinal chemicals, para-pharma products, medical and surgical equipment and instruments, drug store, pharmacy,
- In Abu Dhabi only: promotion of pharma products

4. Healthcare

- In Abu Dhabi only: general hospital and selected specialists hospitals (ophthalmologic, pediatric, plastic surgery)

5. Tech

- Trading of selected hardware and software
- In AD only: e-commerce, quantum computing services, IT network services, cyber risk management, manufacturing of hardware, robot and simulation devices

6. Defense/Security*

- Manufacturing and trading of security systems and equipment, radar and detection equipment
- Warships building
- In Abu Dhabi only: guns and weapons repair and maintenance, development of systems of missile technology and weapons, development of control and command systems; manufacture and maintenance of security and surveillance equipment

7. Aerospace*

- Manufacturing and/or trading of satellites, heavy aircrafts, helicopters, 'remote-controlled' airplanes, drones, satellite components and receiving equipment.
- In Abu Dhabi only: repair and maintenance of aircraft and aircraft engines; development of aircraft internal systems, leasing of unmanned aerial systems

8. Automotive

- Manufacturing and assembly of motor vehicles and trading of used automobiles, new automobiles (for export only), auto spare parts and tires;
- In Abu Dhabi only: manufacturing of rubber tires, inner tubes, tire rebuilding and retreading

9. Construction

- Building contracting, manufacturing and trading of building materials

10. Consumer/White Goods

- In Abu Dhabi only: manufacturing of TVs, speakers, video games consoles, DVD players

11. Cosmetics

- Manufacturing and trading of cosmetics, soap, hair products

12. Fertilizers

- Production and trading of chemical and organic fertilizers

13. Food & Beverages

- Manufacturing, processing, canning, packaging and trading of selected food products
- Trading of soft drinks, juices, bottle water
- Manufacturing of soft drinks, carbonated water, fruit flavored drinks
- Supermarkets

14. Transportation/Logistics/Postal Services

- Operation of taxi and urban, international and school buses
- Transport of water, specialized trucks, cargo transport
- Transportation of airlines passengers and cargo
- Air and sea cargo services, freight brokerage
- Letters and post items delivery
- Documents and parcels delivery

15. Hospitality

- Hotel management

16. Metals

- Iron, steel and aluminum smelters, manufacturing and trading of metal ores selected metal finished products, manufacturing of steel tubes and pipes and structural steel
- In Abu Dhabi only: repair and maintenance of pipelines, metal coating

17. Telecommunications*

- Contracting of wireless communication
- Trading of GPS, telecom equipment, antennas, fiber optic and telecom optic cables

18. Tobacco

- Manufacturing of cigarettes and treated tobacco, trading of tobacco, cigarettes, e-cigarettes

19. Real Estate

- Buying and selling of real estate
- In Abu Dhabi only: real estate development construction

* May be subject to the new Federal FDI regime for strategic activities.

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

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