

UAE Federal Cabinet Decision No. (16) of 2020 on the determination of the positive list of the economic activities and sectors in which direct foreign investment is permitted and ownership percentages thereof.

Decision issued on 17/03/2020

Subsequent to UAE Federal Law No. 1 of 1972 on the functions of Ministries and the powers of Ministers, Federal law No. 2 of 2015 on commercial companies, Federal Decree law No. 19 of 2018 on the foreign direct investment, and based on what the Minister of Economy has proposed and with the cabinet approval, the following has been decided:

It is significant to note that the term “foreign investment” in this decision targets any natural or legal person who does not possess a UAE nationality but would like to invest in the State. Additionally, the foreign direct investment project in the economic activities referred to in Article 2 of this decision shall take one of the following legal forms:

Limited Liability company, including individual person companies;

Private shareholding company, including individual person companies.

As for the percentage ownership for the foreign investor, he/she has the right to hold 100% ownership as referred to in Article 2. However, there is an exception to that which is mentioned under Federal Law No. 2 of 2015 on commercial companies. Federal Law No. 2 of 2015 states that any company that is established in the UAE, 51% of its share capital should be owned by UAE nationals. 100% of share capital shall be permissible for GCC nationals.

The UAE Federal Cabinet Decision No. 16 of 2020 indicates the following for the sectors of- Agriculture, Industrial, and Service:

The minimum capital of the foreign direct investment project in the economic activities which relies on Article 2 of this decision states that the positive list of sectors and economic activities attached to this decision is what the foreign investor shall refer to prior to investing. The positive list is attached in the official gazette which conveys the minimum capital defers for each sector. Here are a few instances:

The agriculture sector: 7.5 or 10 million Dirhams depending on the economic activities

The industrial sector: 2, 3, 15, 20, or 100 million Dirhams also depending on the economic activities.

The services sector: 70, 100 million dirhams or in accordance with the legislation in force.

The conditions and controls for foreign direct investment in the economic activities referred to in Article 2 of this decision, according to what is conveyed for each activity in the list attached to this decision, in addition to any conditions and controls determined by the licensing authority are contained in the legislation in force. Here are a few instances of the conditions and controls referred to in the list:

Both agriculture and industrial sector: To use modern technology, achieve a high-added value, contribute to research and development, and meet the requirements of licensing authorities in the country.

The services sector: The approval of the concerned authorities on the agreement to license the activity in the State shall be granted. Also, the person involved shall be a natural or legal person recognized for his/her excellence in the field. The FDI should provide a minimum of five technical staff with programming specialists by the end of the first year of the company's establishment. Only major infrastructure projects such as airports, highways, sports facilities and projects that are valued more than 450 million Dirhams are subject to foreign direct investment.

The minimum percentage of the national cadres working in the foreign direct investment project in the economic activities referred to in this decision, shall be in accordance with the system in effect in this regard with the Ministry of Human Resources and Emiratization, which shall rely on the Direct Foreign investment law's decision.

Article 7 of The Direct Foreign investment law No. 19 of 2018 stipulates the following: "Subject to this Decree-Law, the Cabinet may, at the request of the local government and based on the recommendation of the Committee and the proposal of the Minister, issue a decision to approve a Foreign Direct Investment Project that is

not included in the Positive List indicated in Clause 3 of this article.” Additionally, “The decision indicated in Clauses 3 and 4 of this article shall include the legal form to be taken by the Foreign Direct Investment Project, the ownership percentage of the Foreign Investor, whether 100% or less, the minimum capital of the Foreign Investment Company, the conditions and controls necessary in this regard and the minimum percentage of national cadres working therein as well as the Benefits granted to the Foreign Direct Investment Project. The Cabinet decision may stipulate the exemption of the foreign investment companies from certain provisions of the Companies Law and the federal laws of the United Arab Emirates in a manner consistent with the nature of the Foreign Direct Investment Projects.”¹

As for the benefits available to the foreign direct investment project, the decision includes the following:

1-The advantages available for the foreign direct investment project in the economic activities referred to in Article (2) of this decision shall be in accordance with the benefits stipulated in Decree Law No. (19) for the year 2018 regarding foreign direct investment.

2- The competent local authority may grant any additional benefits to the foreign direct investment project.

That being said, there are certain exceptions that could take place in which the decision has mentioned such as:

The foreign direct investment project in the economic activities referred to in Article (2) of the aforementioned decision is excluded from the provisions of Articles (71), (151), (209) of Federal Law No. (2) of 2015 in the matter of commercial companies and its amendments. Here’s an overview of what each article stipulates:

Article 71: Provides the definition of a Limited Liability company- a company in which the number of partners shall not be under two

¹ UAE Foreign Direct Investment Law, No.19, 2018.

individuals and not exceeding 50 persons. Each partner is held liable according to their extent of capital share.

Article 151: This article focuses on the nationality of the Board of Directors which stipulates that they shall all be UAE nationals. In the event where the board faces a deficiency in its board members, the company has three months to fill it up.

Article 209: This article focuses on the disposal of shares which is determined based on the provisions of the aforementioned law, the regulations and decisions issued by the Authority and the articles of association of the company. however, the disposal of share should never result in a decrease in the shares of UAE nationals below the applicable limit.

In the event where a provision contravenes or contradicts the provisions of this resolution, it shall be repealed.