FDI in the UAE:
foreign investors and 100% ownership

1. Introduction

The current emergency related to the spread of the covid-19 virus has highlighted some critical issues that have been afflicting the global economic system for several years now, such as, among all, the over-reliance on a volatile and unpredictable market such as the oil one. This situation has made it even more urgent for the main stakeholders in the "fossil fuel" sector the need to re-plan their growth strategies by **diversifying their domestic economies** to encourage foreign investment.

In accordance with this policy, the resolution no. 16, issued on 17th March, 2020 [1] ("**Resolution**") by the Cabinet of the United Arab Emirates ("**UAE**"), aims to attract foreign direct investments through an appreciable relaxation of certain regulatory restrictions currently in force in this sector. This Resolution provides that **foreign investors**, should they meet certain requirements, may be authorised by the **UAE government to hold up to 100 % of the corporate capital of newly incorporated or of already established companies** that are transformed into foreign direct investment companies ("**FDI**"), thus being able to operate with their local partners under equal conditions.

2. FDI Legislation

Pursuant to section 10 of the Federal Law No. 2 of 2015 on Commercial Company Law ("**CCL**"), any company incorporated in the UAE must provide for the participation of one or more UAE citizens holding at least 51% of the share capital. The only exceptions concern the so-called free trade zones ("**Free Zones**") where foreign investors are generally allowed to hold a participation higher than 49%.

Since September 2018, with the enactment of Federal Legislative Decree No. 19 ("Foreign Direct Investment Law" or, more briefly, "FDI Law"), the Emirate government had already permitted some exceptions to the provisions of the CCL, providing a regulatory

[1] The full text of the resolution can be consulted at the following address: https://www.gccfintax.com/files/21363226_cabinet_resolution_no_16_of_2020.pdf

framework that would allow foreign shareholders to own up to 100% of UAE companies incorporated outside the designated Free Zones (known as "Onshore" zones). The same legislation also identified a "negative" list of sectors where such exemptions were not allowed.
Later, in July 2019, on the basis of the recommendations of the FDI Committee, the Council of Ministers of the United Arab Emirates definitively approved a so-called "**Positive List**" (while delegating its application to local governments), which identified **122 economic activities** with respect to which the incorporation, or transformation, of companies in the form of FDI was permitted, with all the related benefits and facilities. However, since this provision was not published in the Official Gazette, it never came into force.

Resolution no. 16, published in the Official Gazette on 12th April 2020 with the "positive list" attached and therefore in force from the following day, finally accomplished a legislative process that seemed destined to remain deadlocked.

3. Positive list and benefits

The determination of the positive list of sectors was made in consideration of the objectives of the FDI Law, which include *"the increase of foreign direct investment flows in priority sectors so as to achieve balanced and sustainable development, new employment opportunities in various sectors"* as well as *"the expansion of the base of productive activities and the transfer and attraction of advanced technologies, know-how and training*".

The FDI Law has opened the internal market to foreign investment by identifying 122 activities and economic sectors in which foreign investors may participate in full, classified into three macro-categories: agriculture, industry, and services.
These include, just to name a few, **renewable energy**, space, **agriculture** and **manufacturing**, **transport and storage**, hospitality and catering services, information and communication, professional, scientific and **technical activities**, administrative and support services, educational activities, **health**, **art and entertainment**, and construction.

In addition to the aforementioned right to legally own the majority of the investment, the Resolution prescribes a number of further advantages for the foreign investor. In fact, once **the FDI Company** has received authorisation under the FDI Law, **will be considered as a local company**, to the extent permitted by the laws and treaties applicable in the UAE. Moreover, the requirement under the CCL that the Chairman and the majority of the members of the Board of Directors of such companies must necessarily be composed by UAE citizens is also excluded.

Furthermore, the FDI Company will be free to "repatriate" dividends and revenues deriving from any sale, liquidation or decision taken in connection with the investment. Finally, FDI Company employees will be free to transfer their salaries and/or allowances received for any reason whatsoever to their home-country.

Another innovative development worthy of note concerns the **protection of private property**. Indeed, prior to the FDI Law, foreign investors, except for specific protections deriving from bilateral investment treaties or international conventions, could not rely on UAE national laws to protect themselves from the risk of nationalisation or expropriation (except for invoking the general principle of protection of private property enshrined in art. 21 of the UAE Constitution).

In this regard, the FDI Law finally provides certain guarantees to foreign investors by specifically prohibiting the confiscation or expropriation of the foreign direct investment object, limiting the legitimacy of such measures to the existence of a strong public interest and subject to fair compensation. This is tantamount to stating that the licence issued to the FDI Company in respect of land assigned to the foreign direct investment or the underlying project cannot generally be revoked or restricted unless the FDI Company is acting in breach of the law and/or the terms of the licence. Furthermore, it should be noted that the FDI Company's assets may only be seized or confiscated in execution of a court order.

Further guarantees are established within the jurisdictional framework: the FDI Law allows disputes arising from a foreign direct investment to be settled by alternative dispute resolution methods ("**ADR**"), also ensuring that claims before the competent courts of the UAE are considered urgent matters and therefore treated with priority and speed.

4. Negative list and restrictions

Besides the positive list, the FDI Law has drawn up a negative list, consisting of 13 activities and economic sectors considered strategic and on which the government has deemed essential to maintain its domain, expressly excluding to foreign investors' holdings exceeding 49%. These restrictions include, *inter alia*, the entire sector related to the production and export of oil products as well as the military, banking, financial and insurance sectors. The same law has also granted the Cabinet, subject to the recommendation of the Commission and approval by the Ministry of Economy, the power to amend, through its own resolution, both lists, implementing or reducing the number of sectors included therein.

Further formal restrictions require that the economic activity must be carried out in the legal form of a limited liability company or private joint stock company, including in the form of a one-person company. In addition, the minimum investment capital thresholds according to economic sector must also be respected, as well as other terms and conditions applicable in relation to each eligible activity, in compliance with the provisions imposed from time to time by the regulatory authorities or applicable legislation[2].

Indeed, by observing in more detail the framework of this discipline, a certain reluctance on the part of the Emirate government appears to emerge in relation to the worthy and asserted intention to implement a complete liberalisation of the internal market.

[2] For a deeper examination of the procedure and the requirements laid down by law to obtain authorisation to carry out activities in the form of an FDI company, please refer to the explanatory protocol issued by the UAE Ministry of the Economy, at the following address:
https://www.economy.gov.ae/Documents/FDI%20Highlights_En.pdf

5. How to become an FDI company

The Foreign Investment Department of the Ministry of Economy has issued a protocol in which it provides a detailed description of all the formalities required by Emirates legislation in order to obtain the license for the investment project from the competent authorities and thus become an "FDI" company.

- First of all, it is necessary to identify within the positive list the sector and the activity in which the investor intends to invest, also taking into account that the legal form of the company as well as the amount of the share capital must fall within the thresholds established in the Resolution.
- Subsequently, the investor will be required to file an application to obtain the license for the foreign direct investment with the Competent Authority based on the activity and sector of investment. The regulations also specify that, in the company name, the abbreviation "FDI" must be indicated after the legal form.

On the other hand, the application must also provide evidence that the application for membership of the "Emiratization Partners Club" (a strategic plan devised by the Ministry of Human Resources and Emiratization to promote the development of the labour market) has been filed.

- Once the authorisation has been obtained and the relevant licence has been received -following payment of a specific fee- at least 20% of the invested capital must be deposited in a current account with an UAE bank. In this respect, it should be reminded that, by virtue of a subsequent resolution, no. 20/2020, the Cabinet has significantly reduced the amounts of the fees due[3]. Finally, the licence will have to be registered with the Emirates Ministry of Economy.

[3] Resolution n. 20/20 containing the list of tax reductions can be consulted at the following address: https://www.economy.gov.ae/Documents/List%20of%20services%20whose%20fees%20have%20been%20reduced%20in%20the%20Ministry%20of%20Economy.pdf

For completeness, it should be noted that **companies already incorporated** abroad or in the UAE and intending to become "FDI" companies may also benefit from the same procedure.

6. Conclusion

By virtue of the main changes described above, we can affirm that, although the new regulation still seems calibrated to promote the industrial policy of the United Arab Emirates, undoubtedly the FDI Law and the Cabinet Resolution are in line with the UAE's objective to increase capital flows to the country and stimulate its growth, providing a **transparent legal framework** within which foreign investors can invest directly, without the need to rely on local partners.

Eventually, it should be underlined that, given the recent entry into force of Resolutions no. 16 and 20 described above, for a more complete and precise analysis of the regulations in force, the adoption of subsequent implementing measures by the individual UAE states is expected.