

United Arab Emirates

Federal Law by Decree No. (19) of 2018 Regarding Foreign Direct Investment (2018)

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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Publication and Application of this Law by Decree

Khalifa Bin Zayed Al Nahyan

President of the United Arab Emirates

Federal Law by Decree No. (19) of 2018 Regarding Foreign Direct Investment

We Khalifa bin Zayed Al Nahyan, President of the United Arab Emirates,
Having perused the Constitution;

- Federal Law No. (1) of 1972 Regarding Jurisdictions of Ministries and Powers of Ministers, and amendments thereto;
- Federal Law No. (6) of 1973 Regarding the Entry and Residence of Foreigners and amendments thereto; □ Federal Law No. (5) of 1975 Regarding the Commercial Register;
- Federal Law No. (1) of 1979 Regarding the Regulation of Industry Affairs and amendments thereto;
- Federal Law No. (8) of 1980 Regarding the Regulations of Labour Relations and amendments thereto;
- Federal Law No. (18) of 1981 Regarding the Regulation of Commercial Agencies and amendments thereto;
- Federal Law No. (5) of 1985 Promulgating the UAE Civil Transactions Law and amendments thereto;
- Federal Law No. (3) of 1987 Promulgating the UAE Penal Code and amendments thereto;
- Federal Law No. (11) of 1992 Promulgating the Civil Procedures Law and amendments thereto;
- Federal Law No. (35) of 1992 Promulgating the Criminal Procedures Law and amendments thereto;
- Federal Law No. (37) of 1992 Regarding Trademarks and amendments thereto;
- Federal Law No. (18) of 1993 Promulgating the Commercial Transactions Law and amendments thereto;
- Federal Law No. (24) of 1999 Regarding the Protection and Development of the Environment and amendments thereto;
- Federal Law No. (4) of 2000 Regarding the UAE Securities and Commodities Authority and Market and amendments thereto;
- Federal Law No. (4) of 2002 Regarding Criminalisation of Money Laundering and amendments thereto;
- Federal Law No. (7) of 2002 Regarding Copyright and Related Rights;
- Federal Law No. (17) of 2002, Regarding the Regulation and Protection of Industrial Property of Patents, Designs and Industrial Designs;
- Federal Law No. (8) of 2004, Regarding Financial Free Zones;
- Federal Law No. (17) of 2004 Regarding Anti-Fronting in Commercial Transactions;
- Federal Law No. (1) of 2006 Regarding Electronic Transactions and Commerce;
- Federal Law No. (24) of 2006 Regarding Consumer Protection and amendments thereto;
- Federal Law No. (6) of 2007 Regarding the Insurance Authority and the Organisation of Insurance Business and amendments thereto;
- Federal Law No. (6) of 2010 Regarding Credit Information; - Federal Law No. (4) of 2012 Regarding Regulating Competition;
- Federal Law No. (2) of 2014 Regarding Small Projects and Enterprises;
- Federal Law No. (12) of 2014 Regarding Reorganisation of Accounts Auditors Profession;
- Federal Law No. (2) of 2015 Regarding Commercial Companies and amendments thereto;
- Federal Law by Decree No. (9) of 2016 Regarding Bankruptcy; - Federal Law No. (14) of 2016 Regarding Breaches and Administrative Sanctions in the Federal Government;
- Federal Law No. (17) of 2016 Establishing Mediation and Conciliation Centres in Civil and Commercial Disputes;
- Federal Law No. (19) of 2016 Regarding Combating Commercial Fraud;
- Federal Law No. (20) of 2016 Regarding Pledge of Movable Properties in Guarantee of Debt; - Federal Law No. (7) of 2017 Regarding Tax Procedures;
- Federal Law No. (8) of 2017 Regarding Value Added Tax;
- Federal Law No. (6) of 2018 Regarding Arbitration;
- Decretal Federal Law No. (14) of 2018 Regarding the Central Bank and Organisation of Financial Institutions and Activities,

And based on the proposal of the Minister of Economy and approval of the Council of Ministers,

We have issued this Law by Decree:

Article (1)

Definitions

In the application of this Law by Decree, the following terms shall have the meanings set forth opposite each of them, unless otherwise indicated by the context:

Article (2)

Objectives of this Law by Decree

This Law by Decree aims to promote and develop the investment environment and promote attracting foreign direct investment in line with the developmental policies of the State, in particular:

1. Asserting the position of the State as a major attraction hub for foreign direct investment both regionally and globally.
2. Attracting and encouraging foreign direct investment.
3. Expanding the production base, diversifying it, and transferring and attracting advanced technology, knowledge and training.
4. Increasing the flow of foreign direct investment in the priority sectors to achieve balanced and sustainable development and create job opportunities in various fields.
5. Achieving the best return with the available resources and securing high added values for the State's economy.

Article (3)

Scope of Application

1. Without prejudice to the agreements concluded between the federal government, any local government or any entity relating thereto and Foreign Direct Investment Projects, the provisions of this Law by Decree shall apply to all Foreign Direct Investment Projects established and licensed in the State following the implementation of this Law by Decree.
2. This Law by Decree shall not apply to projects established in the financial and non-financial free zones in the State.

Article (4)

Foreign Capital

1. Foreign Capital shall include the following:
 - A. Funds transferred to the State through banks and financial companies licensed in the State which are used in a Foreign Direct Investment Project in accordance with the provisions of this Law by Decree and in accordance with the conditions and restrictions to be determined by a Council of Ministers resolution to be issued in this regard.
 - B. The profits and returns of a foreign direct investment in the State being employed in establishing new investment projects or increasing the capital of an existing Foreign Direct Investment Project:

C. Local or foreign securities and commercial paper in accordance with the conditions and restrictions as shall be specified by a Council of Ministers resolution issued in this regard.

2. For the purposes of this Law by Decree, the following assets associated with a Foreign Direct Investment Project shall be deemed to be Foreign Capital:

A. Fixed Assets.

B. Intangible rights, such as patents, concession rights, trademarks and trade names owned or registered in accordance with the laws and regulations in force in the State.

Article (5)

Investment Unit

1. A unit called the “Foreign Direct Investment Unit” shall be established at the Ministry and shall have the following jurisdiction:

A. Proposing foreign direct investment policies in the State, determining the priorities, plans and related programmes, and proceed to implementing those that have been presented to the Committee and approved by the Council of Ministers.

B. Establishing a comprehensive database of investment data and information in the State, including data on existing Foreign Direct Investment Projects and periodically updating such database. The Competent Authorities shall provide the Investment Unit with data on licensed investment projects in accordance with the provisions of this Law by Decree.

C. Creating an attractive environment for foreign direct investment and seeking to consolidate and facilitate the procedures for registering and licensing Foreign Direct Investment Projects.

D. Monitoring, following-up and evaluating the performance of foreign direct investments in the State.

E. Promoting the investment environment by all means of advertising and promotion.

F. Making recommendations to the Committee with respect to the incentives to be provided to Foreign Direct Investment Projects.

G. Preparing periodic reports on the investment environment in the State, monitor and evaluate the volume of foreign direct investment and the annual flow of foreign direct investment with a view to presentation to the Council of Ministers.

H. Attracting foreign direct investment for vital and strategic sectors.

2. Foreign Investment Companies licensed in accordance with the provisions of this Law by Decree shall be registered in a special register at the Investment Unit called “Register of Foreign Direct Investment”. The Minister shall issue a resolution specifying the procedures for registering and renewing the registration of Foreign Investment Companies.

Article (6)

Foreign Direct Investment Committee

1. A committee called the “Foreign Direct Investment Committee” shall be established by a resolution of the Council of Ministers. It shall be chaired by the Minister and include representatives of the Competent Authorities as members. The Committee may also include representatives of some of the Licensing Authorities and concerned authorities in the State. The resolution forming the Committee shall specify the duration of membership and its mode of operation.

2. The Committee shall be responsible for studying and submitting recommendations to the Council of Ministers following coordination with the local governments, concerned authorities and the Competent Authority in relation to the following matters:

A. The Positive List which includes the economic sectors and activities, and associated parts, which are permitted to be carried out through a Foreign Direct Investment Project in the State.

B. Adding some sectors and activities to the Negative List referred to in Article 7.2 of this Law by Decree.

C. Recommendations received from the Competent Authorities regarding approving licensing applications for Foreign Direct Investment Projects in sectors and economic activities, and their respective parts, which are not included in the Positive List.

D. Incentives granted in the State to Foreign Direct Investment Projects.

E. Any other responsibility assigned to it by the Council of Ministers in accordance with the provisions of this Law by Decree.

3. The Committee shall, when exercising its jurisdiction referred to in paragraph 2 of this Article, consider the following:

A. Integration with strategic plans in the State.

B. Achieving a better return and added value to the national economy.

C. Raising the level of innovation in the national economy.

D. Creating job opportunities and training for the national cadres.

E. Limiting the impact on national companies that engage in a similar activity.

F. Availability of a degree of competence, expertise and international recognition of the Foreign Investor.

G. The best use of modern technology.

H. Achieving a positive impact on the environment.

4. The Committee may seek the assistance of experienced persons who have relevant expertise and knowledge for the purpose of assisting it to carry out its functions, as the Committee considers appropriate.

Article (7)

Economic Sectors and Activities

1. Subject to the provisions of paragraph (3) of this Article, as an exception to certain provisions of the Companies Law and other federal laws of the State, foreign direct investment may invest, in accordance with the provisions of this Law by Decree, in all sectors and economic activities in the State in accordance with the resolutions of the Council of Ministers.

2. The following Negative List, in which the sectors and activities are subject to the laws regulating them in the State, shall be excluded from the provisions of paragraph 1 of this Article:

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. The Council of Ministers may, by resolution it issues, add to or remove from the Negative List, specified in this paragraph, any sectors or activities.

3. Subject to the provisions and restrictions referred to in Article 6.3 of this Law by Decree, the Council of Ministers shall, upon the proposal of the Minister and the recommendation of the Committee, issue a resolution specifying a Positive List; such resolution shall specify the Emirate or Emirates within which a Foreign Direct Investment Project may be established.

4. Subject to this Law by Decree, the Council of Ministers may, at the request of the local government, the recommendation of the Committee and upon presentation by the Minister, issue a resolution approving a Foreign Direct Investment Project not included in the Positive List referred to in paragraph (3) of this Article.

5. A resolution issued pursuant to paragraphs (3) and (4) of this Article shall include the legal form of the Foreign Direct Investment Project, the percentage of ownership by the Foreign Investor, whether 100% or lower percentage, the minimum share capital of the Foreign Investment Company, any restrictions and conditions relating thereto including the minimum percentage of nationals employed, available incentives to the Foreign Direct Investment Project. The resolution of the Council of Ministers may exclude Foreign Investment Companies from certain provisions of the Companies Law and the federal laws of the State as shall be consistent with the nature of Foreign Direct Investment Projects.

Article (8)

Incentives for a Foreign Direct Investment Project

1. Foreign Investment Companies licensed pursuant to the provisions of this Law by Decree shall be treated as national companies to the extent permitted by legislation in force in the State and international agreements to which the State is a party.

2. Subject to all legislation in force in the State, a Foreign Investment Company may repatriate, outside the State, the returns of a Foreign Direct Investment Project including:

A. annual net profit;

B. the proceeds of the liquidation of the investment or the sale of all or part of the Foreign Direct Investment Project; and

C. proceeds derived as a result of settlement of disputes relating to the Foreign Direct Investment Project.

3. Employees of a Foreign Investment Company shall have the right to repatriate their salaries,

compensations and entitlements outside the State, in accordance with the provisions of this Law by Decree and legislation in force in the State.

4. Foreign Investment Companies shall, by virtue of this Law by Decree, be afforded confidentiality of technical, economic, financial and investment information provided to the Competent Authority or the Licensing Authority in accordance with the provisions of this Law by Decree, in a manner that is not inconsistent with the State's legislation and the international agreements to which the State is a party.

5. Subject to the provisions of this Law by Decree and the provisions of the Companies Law, a Foreign Investment Company may, after obtaining the written approval of the Licensing Authority, the Competent Authority and the Investment Unit, each within its jurisdiction, carry out any of the following actions:

A. Add a partner or partners.

B. Transfer of ownership of the Foreign Investment Company to a new investor.

C. Amend the Memorandum of Association or Articles of Association or change the legal form of the Foreign Investment Company.

D. Merger or acquisition.

In all cases, the incentives granted to the Foreign Direct Investment Project shall continue provided that the licensed activity continues to be carried out.

Article (9)

Guarantees Provided to a Foreign Direct Investment Project

1. A Foreign Direct Investment Project may not be expropriated in whole or part except for public interest and in exchange for fair compensation calculated at time of expropriation.

2. Without prejudice to the provisions of Article 14 and other provisions of this Law by Decree, the right to benefit from any real estate allocated to the Foreign Direct Investment Project may not be cancelled, suspended or restricted except in event of a violation of the Licence conditions. A decision to cancel, suspend or restrict such right shall be issued by the Competent Authority in coordination with the Licensing Authority with notification to the Investment Unit. Such decision may be appealed to the competent court within 30 days from the date of notification of such decision.

3. The funds of the Foreign Direct Investment Project may not be seized, confiscated, frozen or restricted except pursuant to a court judgement in accordance with the provisions of the legislation in force in the State.

Article (10)

Licensing Terms and Conditions

1. Conditions and procedures for licensing a Foreign Direct Investment Project listed in the Positive List are as follows:

A. The Licensing Authority and the Competent Authority, each within its jurisdiction, shall specify the conditions and procedures required to establish and licence Foreign Direct Investment Projects listed in the Positive List and the documents required in accordance with the provisions of this Law by Decree, legislation in force in the State, local laws in force in the Emirate concerned and implementing resolutions thereto. Such conditions and procedure should be made available for review.

B. Following obtaining a preliminary approval from the Licensing Authority, the Foreign Investor shall submit to the Competent Authority an application for approval to licence the Foreign Direct Investment Project in the sectors listed in the Positive List.

C. Where a licence application meets all the conditions and procedures specified in paragraph 1(A) of this Article, the Competent Authority shall, within a maximum period of five (5) Business Days of the date of the application or completion of the supporting documents or information or the date of introducing any amendments it may have requested, issue its approval with respect to such application. The Foreign Investment Company shall consequently be registered in the register of Foreign Direct Investment and be issued with a Licence at the Competent Authority, and the Investment Unit shall be notified for registration at the register of Foreign Investment Companies.

D. The name of a Foreign Investment Company shall be accompanied by its legal form and the words "foreign direct investment".

E. An application for a Licence shall be deemed to have been rejected if the period referred to in paragraph 1(C) of this Article has elapsed without a decision by the Competent Authority in this regard.

2. Conditions and Procedures of Foreign Direct Investment Project not included in the Positive List:

A. The Foreign Investor shall submit to the Competent Authority a request for approval to licence the Foreign Direct Investment Project not listed in the Positive List.

B. The Competent Authority may refuse granting an approval to licence the Foreign Direct Investment Project not included in the Positive List. It may also, following coordination with the Licensing Authority and after consultation with the local government in the concerned Emirate, present the request to the Committee for consideration. The Minister shall make a recommendation to the Council of Ministers in

Committee for consideration. The Minister shall make a recommendation to the Council of Ministers in this regard. Where the Council of Ministers approve the request, the Competent Authority shall, within five Business Days from the date of completion of the required documents, information and procedures as may be requested by the Competent Authority, issue the Licence.

Article (11)

Appealing the Refusal Decision

1. If the Competent Authority refuses to approve an application to licence a Foreign Direct Investment Project in the sectors listed in the Positive List or if the period referred to in Article 10.1 (C) has expired, the applicant may lodge a grievance with the Competent Authority within fifteen (15) Business Days from the date of the refusal decision or the expiry of the said period, if the grievance is denied or has not been considered within ten (10) Business Days of its submission, the applicant may appeal this to the competent court within thirty (30) days from the date of notification of the rejection or the expiration of such period, as the case may be.
2. The decision of the Competent Authority to reject the application submitted to it for approval of a Foreign Direct Investment Project not included in the Positive List shall be final and irrevocable and may not be challenged in any manner of appeal.

Article (12)

Settlement of Disputes

1. Without prejudice to the right to litigation, disputes and disputes that may arise from the Foreign Direct Investment Project may be settled by all alternative means of dispute settlement.
2. Cases relating to Foreign Direct Investment Projects shall be dealt with on an urgent basis by the competent courts of the State.

Article (13)

Obligations of Foreign Investment Company

The Foreign Investment Company shall abide by the following:

1. Adhering to the federal and local laws of the State, including the protection of the environment from pollution and everything related to the maintenance of public health and security.
2. Conducting the activity specified in the Licence.
3. Employing and training national cadres and providing them with the necessary skills, provided the adherence to percentages and special criteria relating to the emiratization as shall be specified in a Council Resolution issued pursuant to this Law by Decree.
4. Maintaining regular accounts for the Foreign Direct Investment Project.
5. Appointing one or more of the licensed auditors in the State for a renewable period of one year provided that such appointment does not exceed six consecutive years.
6. Providing information, statistics and documents required by the Committee, the Investment Unit, the Competent Authority or the Licensing Authority relating to the Foreign Direct Investment Project.
7. Notifying the Competent Authority and the Licensing Authority in writing of the date scheduled for commencement of work or actual production within five (5) Business Days from the completion of the installation of Fixed Assets and the preparation thereof for the purposes of the project.

Article (14)

Administrative Sanctions

1. If the Foreign Investment Company breaches its obligations described in the provisions of this Law by Decree or if it violates the conditions and activity of the Licence granted to it or if the Foreign Direct Investment Project has been suspended for no legitimate reason, the Licensing Authority or the Competent Authority may apply one or more of the following sanctions:
 - A. Warning.
 - B. Denial of Incentives granted in whole or in part;
 - C. Administrative fine which should not exceed one million dirhams.
 - D. Suspension of the project until the reasons for the violation has been removed; or suspension for a period specified by the Competent Authority or the Licensing Authority, as applicable.
2. The Competent Authority may, after the coordination with the Licensing Authority and notifying the Investment Unit, cancel the Licence in either of the following two cases: A. The Foreign Investment Company fails to remedy the violation after it has been notified in writing to remedy such a violation. B. The same violation has been repeated by the Foreign Investment Company.
3. The Foreign Investment Company may lodge a written grievance with the head of the authority which imposed any of the penalties mentioned in this Article within fifteen (15) Business Days being notified of such penalty. The head of the Licensing Authority or the Competent Authority to whom a grievance was

submitted, must resolve on such a grievance within twenty (20) Business Days of the date of its submission, or otherwise the grievance will be deemed to have been rejected. The Foreign Investment Company may appeal any related decision to the competent court within thirty (30) days from the date of notification of the decision or the date on which the grievance was deemed rejected.

Article (15)

Capacity of Law Enforcement

1. Employees of the Ministry, the Licensing Authority and the Competent Authority who are appointed by a decision of the Minister of Justice in an agreement with the Minister, the Head of the Licensing Authority or the Head of the Competent Authority, shall have the capacity of law enforcement officers to establish the violations of the provision of this Law by Decree and its implementing resolutions.
2. The heads of the local judicial authorities, in agreement with the head of the Licensing Authority or the head of the Competent Authority in the Emirate, may grant the status of law enforcement officers to establish the violations of the provisions of this Law by Decree and its implementing resolutions.
3. Law enforcement officers may enter the offices of the Foreign Investment Company to perform the duties assigned to them and to verify the data and information provided in order to ensure that there is no violation of the provisions of this Law by Decree and its implementing resolutions.

Article (16)

Penalties

Without prejudice to any other penalty provided for in any other law, anyone who discloses, other than as otherwise permitted by the applicable legislation in the State, any information relating to technical, economic or financial aspects of a Foreign Direct Investment Project which came to his knowledge while performing his employment duties, shall be punished by imprisonment for a term not less than one year and a fine not less fifty thousand (50,000) Dirhams and not exceeding ten million (10,000,000) Dirhams, or by either of these two punishments.

Article (17)

Existing Foreign Direct Investment Projects

1. The Foreign Direct Investment Project existing before the implementation of this Law by Decree shall retain all its Incentives, in accordance with the legislations, agreements and contracts derived therefrom, within the period specified in such legislations, agreements or contracts.
2. Notwithstanding the provisions of paragraph (1) of Article (3) of this Law by Decree, existing Foreign Investment Companies shall benefit from the Incentives and guarantees specified in Articles (8) and (9) of this Law by Decree, provided they reconcile their positions and obligations in accordance with the conditions and requirements specified in this Law by Decree and its implementing resolutions.

Article (18)

Fees

The Council of Ministers shall issue, upon the proposal of the Minister and in coordination with the Ministry of Finance, a resolution specifying the federal fees payable by Foreign Investment Companies for work carried out by the Ministry in the context of implementing the provisions of this Law by Decree.

Article (19)

Events of Refusal or Imposing Ownership Restriction

1. The Licensing Authority and the Competent Authority shall reject the Foreign Direct Investment Project in whole or in part in the following cases:
 - A. Threat to national security or peace.
 - B. Negative impact on a strategic sector in the State.
 - C. Influence on public health or morals and the values of society.
 - D. Impact on the defence sector.
 - E. Influencing the foreign policy of the State.
2. Notwithstanding the provisions of Article 11.1 of this Law by Decree, the decision issued by the Licensing Authority or the Competent Authority in the cases referred to in paragraph 1 of this Article, shall be final and may not be appealed or challenged in any manner of appeal.

Article (20)

Repeal of Conflicting Provisions

Any provision contravening or conflicting with the provisions of this Law by Decree shall be annulled.

Article (21)

Publication and Application of this Law by Decree

This Law by Decree shall be published in the Official Gazette, and shall come into force on the day following the date of its publication.

Khalifa Bin Zayed Al Nahyan

President of the United Arab Emirates

Issued by us at the Presidential Palace in Abu Dhabi

On: 13 Muharram, 1440 Hijri

23 September, 2018 Gregorian