

Update on the UAE Foreign Direct Investment Law: Part 1

UAE Federal Cabinet approves Positive List of activities eligible for up to 100% foreign ownership.

WAM, the Emirates News Agency, reported on 2 July 2019 (the WAM Report) that the UAE Federal Cabinet has approved 122 economic activities across 13 sectors that will be eligible for up to 100% foreign investment (the July 2019 Cabinet Decision). This approval is the latest development in the UAE's move towards encouraging foreign direct investment in priority sectors in the country, within the framework of the Federal Law No. 19 of 2018 Concerning Foreign Direct Investment (the FDI Law).

The full list of economic activities and sectors (the Positive List) will be confirmed when the July 2019 Cabinet Decision is published in the Official Gazette — expected around 30 July 2019.

The FDI Law

The FDI Law contemplates relaxing the 51% UAE national shareholding requirement under Federal Law No. 2 of 2015 Concerning Commercial Companies in respect of companies licensed, pursuant to the FDI Law, to conduct economic activities through which foreign capital is directly invested in the UAE (a Foreign Direct Investment Project). The July 2019 Cabinet Decision, and/or further UAE Federal Cabinet decisions and Emirate-level regulations, will likely specify the scope of, and conditions for, such relaxation in the relevant sectors and activities, including but not limited to:

- The permitted legal form(s) of the Foreign Direct Investment Project
- The maximum percentage of foreign ownership that will be permitted (whether 100% or lower)
- The minimum share capital of the licensed company
- Conditions relating to the minimum percentage of UAE nationals employed

The FDI Law does not impact the 100% foreign ownership permitted for companies established in free zones. It is as yet unclear whether companies existing “onshore” (*i.e.*, outside of a free zone) prior to the FDI Law coming into force may apply for a license under the FDI Law (a Foreign Direct Investment License), or whether Foreign Direct Investment Licenses will only be granted to companies established after the enactment of the FDI Law.

The Negative List

The FDI Law sets out a negative list of sectors in which the relaxation of the 51% UAE national shareholding requirement will not apply (the Negative List). These sectors are:

- Exploration, prospecting, and production of petroleum
- Investigation, security, military sectors, manufacturing of weapons, explosives and military equipment, devices, and uniforms
- Banking and financing activities, payment systems, and dealing with cash
- Insurance services
- Hajj and Umrah services, labor, servant services and personnel recruitment
- Water and electricity services
- Services related to fisheries
- Postal services, telecommunications services, and audio-visual services
- Land and air transport services
- Printing and publishing services
- Commercial agency
- Medical retail such as private pharmacies
- Poison centers, blood banks, and quarantine services

No Foreign Direct Investment License will be granted in respect of sectors and activities in the Negative List.

The Positive List

The full Positive List of sectors and activities, including the relevant percentage of foreign ownership permitted and applicable conditions, is expected to be confirmed in the July 2019 Cabinet Decision and pending Emirate-level regulations.

However, the following sectors are cited in the WAM Report:

- Renewable energy
- Space
- Agriculture
- Manufacturing
- Transport and storage
- Hospitality and food services
- Information and communications

- Professional, scientific, and technical activities
- Administrative and support services
- Educational activities
- Healthcare
- Art and entertainment
- Construction

The FDI Law provides that the UAE Federal Cabinet may, upon a request by an Emirate-level government and recommendation of the Foreign Direct Investment Committee, issue a resolution to approve a Foreign Direct Investment Project not included in the Positive List (and not in the Negative List) — see below for further detail.

Applying for a Foreign Direct Investment License

Companies will require a Foreign Direct Investment License in respect of a proposed Foreign Direct Investment Project in order to benefit from the foreign ownership benefits introduced by the FDI Law. Whether a Foreign Direct Investment License will be issued as an alternative to, or in addition to, the commercial, industrial, or professional licenses currently issued by the Emirate-level Departments of Economic Development is not yet clear.

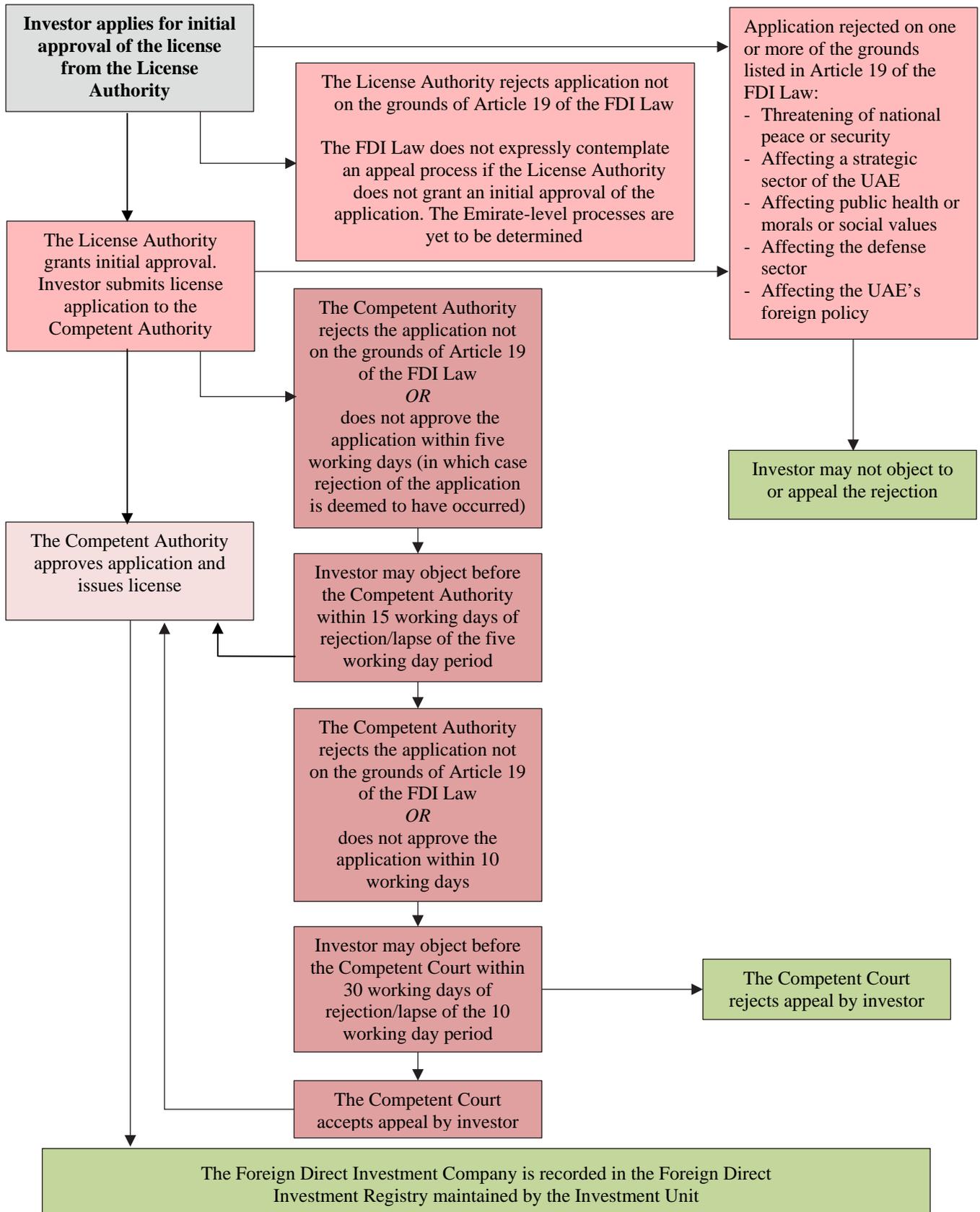
The Foreign Direct Investment License application processes set out in the FDI Law distinguish between sectors and activities in the Positive List, and those that are not included in the Positive List or in the Negative List. The high-level license application steps contemplated by the FDI Law are set out below in Chart 1 (in respect of activities on the Positive List) and in Chart 2 (in respect of activities neither on the Positive List nor on the Negative List). However, Emirate-level authorities are yet to clarify the final license application procedures and conditions, and certain governmental authorities mandated by the FDI Law as part of the license application process are yet to be formally created or appointed.

The FDI Law designates the following governmental authorities as part of the license application process:

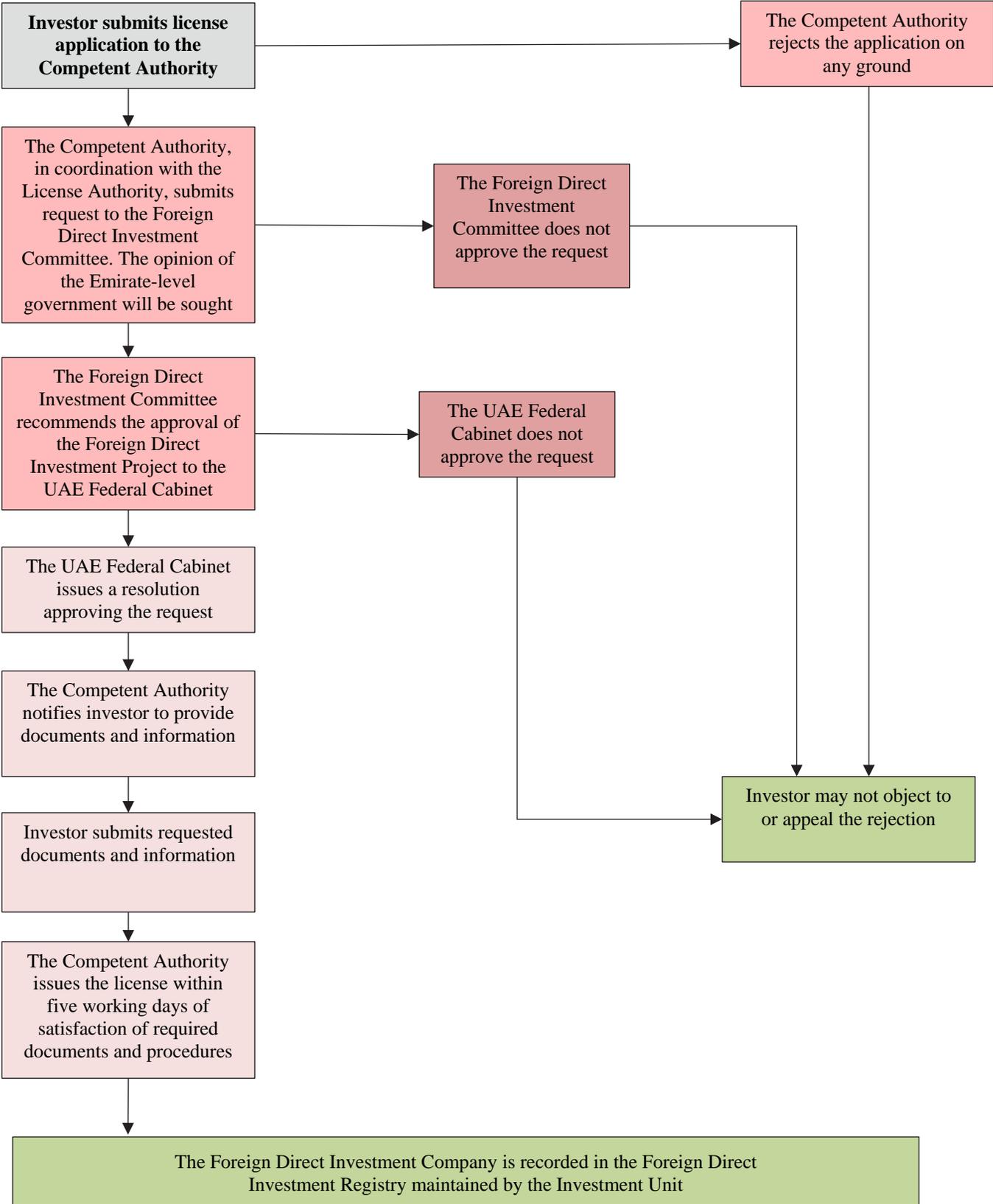
- At the Federal level:
 - The *Foreign Direct Investment Committee*
 - The *Ministry of Economy and Minister of Economy*
 - The *Investment Unit*, to be formed within the Ministry of Economy
- In each Emirate:
 - The *License Authority*, which likely will be:
 - In Dubai, the Dubai Department of Economic Development
 - In Abu Dhabi, the Abu Dhabi Department of Economic Development
 - The *Competent Authority* to be established or appointed in each Emirate, which may be:

- In Abu Dhabi, the *Abu Dhabi Investment Office*
- In Dubai, the *Dubai Investment Development Agency*

**CHART 1:
LICENSE APPLICATION FOR ACTIVITY ON THE POSITIVE LIST**



**CHART 2:
LICENSE APPLICATION FOR ACTIVITY NEITHER ON THE POSITIVE LIST NOR THE NEGATIVE LIST**



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