

## Practical Issues on the Abu Dhabi and Dubai 100% FDI List

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*In the latest development in the UAE foreign investment liberalization saga, the Federal Cabinet has authorized each Emirate to determine which sectors are open to foreign investment, and Abu Dhabi and Dubai have each issued lists of commercial activities now open to 100% foreign investment.*

The 2015 Commercial Companies Law<sup>1</sup> was amended by a federal decree law<sup>2</sup> issued on 27 September 2020. In addition to changes relating to corporate governance and company administration, the law made several significant changes that are meaningful to foreign investors in the UAE:

- Article 10 was amended so that the 49% cap on foreign investment could be changed for “strategic effect sectors” to be determined by a committee appointed the Federal Cabinet.
- Article 329, which requires that all foreign companies with a branch office appoint a “national service agent” (commonly referred to as a sponsor) is abolished.
- The 2018 foreign direct investment law<sup>3</sup> and its regulations were repealed, having never been implemented in a meaningful way as only a very limited number of foreign investment licenses were issued pursuant to the law.

The changes to the Commercial Companies Law concerning foreign investment were effective as of 27 March 2021, but the implementation of the law was unclear until late May, when the Federal Cabinet authorized each Emirate to determine the sectors open to foreign investment.

### Abu Dhabi

On 25 May 2021, the Abu Dhabi Department of Economic Development (ADDED) issued a list of more than a thousand commercial and industrial activities in which foreign investors can own commercial companies with full 100% ownership. The services are largely in manufacturing, agriculture, contracting and services. Interestingly, trading activities are not included.

[https://www.adbc.gov.ae/CitizenAccess/Report/ShowReport.aspx?module=Licenses&reportID=2129&reportType=LINK\\_REPORT\\_LIST](https://www.adbc.gov.ae/CitizenAccess/Report/ShowReport.aspx?module=Licenses&reportID=2129&reportType=LINK_REPORT_LIST)

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<sup>1</sup> Federal Law No. 2 of 2015 on Commercial Companies

<sup>2</sup> Federal Decree Law No. 26 of 2020

<sup>3</sup> Federal Decree Law No. 19 of 2018 Regarding Foreign Direct Investment

## Dubai

On 3 June 2021, the Dubai Department of Economic Development (DDED) launched its own list of activities, which unlike Abu Dhabi, include a number of trading activities.

[https://ded.ae/DED\\_Files/ded\\_other/Full\\_Foreign\\_Ownership\\_Activities.pdf](https://ded.ae/DED_Files/ded_other/Full_Foreign_Ownership_Activities.pdf)

At present, the list of activities only applies to the establishment of new companies. The liberalization of foreign investment restriction does not yet automatically apply for existing companies, which at present is considered on a case-by-case basis. However, we have seen a number of companies receiving 100% foreign ownership for activities not stated on the aforementioned list. We understand from the DDED that its regulatory goal is now to make extensive use of its discretionary power to grant 100% foreign ownership.

### Removal of Existing Partners from Existing LLCs

The removal of an existing UAE national from a LLC is not yet permitted without exceptional DED approval. In the event that the DED does grant this approval, the process for a foreign investment to acquire shares from its UAE national partner are listed below.

1. First, complete a DED form to remove the UAE national as a shareholder.
2. The completed form is submitted to the DED Service Center for initial approval.
3. Subject to DED approval, the foreign investors and UAE national must sign a share transfer agreement and – optionally - an amendment to the Memorandum of Association of the company at the public notary.
4. The notarized documents are submitted to the DED service centre and the new license and amended partners list are issued.

### Dubai-Abu Dhabi Cross-Border Business

A company that is 100% foreign investment in one Emirate and seeks to do business in another Emirate where its commercial activities are not open to 100% FDI raises complications that are not yet resolved. The typical practice of registering a (trading) branch of a Dubai-based company in another Emirate may be restricted as the Emirate where the branch is registered may not grant trading licenses to branches.

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If you would like more information about this topic then please contact us.

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