

Foreign Direct Investment under the UAE and Kuwaiti Legislation: A Comparative Study

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Abstract

Foreign direct investment (FDI) is a key driver of economic diversification and competitiveness in Gulf economies, making its legal regulation increasingly significant. This study is motivated by the UAE's legislative shift following Federal Decree-Law No. 26 of 2020, which repealed the Foreign Direct Investment Law and integrated FDI regulation into the Commercial Companies Law. Despite these reforms, a gap remains in the literature regarding the adequacy and clarity of investor protection under a unified legal framework, particularly when compared with jurisdictions maintaining independent investment legislation such as Kuwait. The study aims to analyze and compare the legal rules, guarantees, and incentives governing FDI in the UAE and Kuwait. Adopting a comparative analytical legal methodology, the research examines statutory provisions, executive regulations, and investment treaties. The findings indicate that the UAE has liberalized foreign ownership but relies on dispersed guarantees, while Kuwait adopts a more coherent statutory framework. Comparatively, the Kuwaiti model offers greater legal certainty, enhancing its effectiveness in attracting foreign direct investment. This study contributes to comparative investment law scholarship by identifying legislative strengths and gaps in both systems and by providing policy-oriented insights aimed at enhancing investor protection and regulatory certainty in the UAE.

Keywords: FDI, Law, Commercial, Company, Legal, Analysis

Introduction

Foreign direct investment (FDI) has multiple effects that are positively reflected in the economies of host countries (Abdel-Sadek, 2018; Oweidat, 2011). Foreign investment has therefore attracted increasing attention and importance, particularly among developing countries seeking to achieve economic development. Foreign direct investment contributes to enabling developing countries to benefit from their natural wealth and helps to bridge financial gaps from which such countries may suffer. Accordingly, foreign investment has become a strategic objective for host countries to attract and localize, given its substantial financial capacity to finance projects and support the national economy.

In addition, foreign direct investment offers other advantages, including the transfer of advanced technology across productive, technical, administrative, and marketing fields, which contributes to advancing the development process of the host country's economy (Awadallah, 2003; Abdel Hadi & Nawasra, 2020). Consequently, host countries strive to create an attractive environment for foreign direct investment by adopting measures that stimulate investment, such as introducing legal amendments that provide protection and guarantees for investment projects, concluding treaties aimed at encouraging and protecting investment, and granting foreign investors tax, customs, and governmental fee exemptions or reductions. These efforts are essential, as such elements are considered influential factors for foreign investors, whose primary objective is to achieve the highest possible level of profit.

In this context, the United Arab Emirates (UAE) is regarded as one of the leading countries in attracting foreign direct investment in the Middle East, particularly in the Gulf region. The UAE enjoys a prominent economic position among foreign investors and within the region, owing to its strong economic fundamentals and the continuous development of its legal system. Moreover, the UAE has concluded a large number of bilateral investment treaties aimed at protecting and encouraging investment (United Nations Conference on Trade and Development [UNCTAD], n.d.). Foreign direct investment inflows into the UAE recorded significant growth in 2020 despite the repercussions of the COVID-19 pandemic, which negatively affected global trade and investment (UAE Ministry of Economy, n.d.). The UAE also ranked first in West Asia in terms of foreign direct investment inflows, capturing 54.4% of total inflows into the region.

Based on these developments, and in light of the recent amendments introduced by Federal Decree-Law No. 26 of 2020 amending certain provisions of Federal Law No. 2 of 2015 on Commercial Companies, and their implications for foreign direct investment—particularly those provisions that directly affect foreign investment—the importance of this study becomes evident. The study focuses on recent legislative amendments related to the UAE Commercial Companies Law and their impact on the legal framework governing foreign direct investment, including guarantees and incentives granted to foreign investors, in comparison with the legal system regulating direct investment in the State of Kuwait as a competing destination for foreign investment.

This study aims to analyze the legal framework governing foreign direct investment and to clarify the guarantees and incentives granted under Federal Commercial Companies Law No. 2 of 2015 and its amendments, as well as Law No. 116 of 2013 concerning the Promotion of Direct Investment in the State of Kuwait, while highlighting similarities and differences between the two systems.

The purpose of the study is addressed through several questions arising from the amendments introduced to Commercial Companies Law No. 2 of 2015 by Decree-Law No. 26 of 2020, which resulted in the abolition of the Foreign Direct Investment Law. The most significant questions include: - What is the legal framework governing foreign direct investment following the repeal of Law No. 19 of 2018 on Foreign Direct Investment? - What rules govern foreign direct investment after the recent amendments to the Federal Commercial Companies Law? - What guarantees and incentives are provided by the UAE

legislator for foreign direct investment? - To what extent are these guarantees and incentives adequate for attracting foreign direct investment?

In preparing this research, the researcher adopted the comparative analytical method in order to analyze the legal texts related to foreign direct investment and to assess them critically, with the aim of reaching accurate conclusions regarding the research problem.

II. Legal Rules Governing Foreign Direct Investment in the UAE and Kuwait

This section examines the legal rules governing foreign direct investment in both the UAE and Kuwait under Federal Commercial Companies Law No. 2 of 2015 and its amendments, and Law No. 116 of 2013 concerning the Promotion of Direct Investment in the State of Kuwait.

A. Legal Rules Governing Foreign Direct Investment in the UAE

Foreign direct investment in the UAE was previously subject to the provisions of Foreign Direct Investment Law No. 19 of 2018, which was repealed by Federal Decree-Law No. 26 of 2020 amending certain provisions of Federal Law No. 2 of 2015 on Commercial Companies. The repealed Foreign Direct Investment Law constituted an independent legal framework separate from the Commercial Companies Law (Al-Mansoori, 2021). However, the UAE legislator chose to abolish this separate framework and instead amend specific provisions of the Commercial Companies Law to align it with the requirements of foreign direct investment. Accordingly, this section highlights the most significant amendments introduced by Decree-Law No. 26 of 2020 that relate to foreign direct investment and examines their impact on the regulation of commercial companies in the UAE.

1. Article 10 of Decree-Law No. 26 of 2020: Activities of Strategic Impact

One of the most prominent amendments concerned the removal of the requirement that UAE nationals hold at least 51% of a company's capital. This requirement was replaced by a new provision addressing activities with strategic impact. Under the amended text, the national shareholding requirement was abolished for all activities except those classified as having strategic impact. The legislator authorized the Council of Ministers to issue a decision identifying such activities and determining the controls for licensing companies engaged in them.

Pursuant to this authority, Cabinet Resolution No. 55 of 2021 was issued, specifying the list of activities with strategic impact and the regulatory authorities responsible for establishing the necessary conditions and controls (Cabinet Resolution No. 55 of 2021). These activities include security and defense activities, banking and financial services, insurance, currency printing, telecommunications, Hajj and Umrah services, and centers for memorizing the Holy Quran. The resolution also prohibits foreign investors from engaging in fishing trap services, reserving such activities exclusively for UAE nationals with 100% national ownership.

By contrast, the Kuwaiti legislator allows foreign investors to own the full capital of certain investment entities under the investment promotion framework applicable in Kuwait (Law No. 116 of 2013; Al-Wawan, 2019). However, the Kuwaiti Council of Ministers issued Resolution No. 75 of 2015 identifying activities excluded from the scope of direct investment, including crude oil and natural gas extraction, fertilizer industries, real estate activities, and security services.

These findings indicate that both Emirati and Kuwaiti legislators adopt a similar substantive approach regarding foreign ownership, allowing full foreign ownership while reserving specific strategic sectors for national control.

2. Article 71 of Decree-Law No. 26 of 2020: Definition of the Company

Article 71(2) was amended by removing the term “citizen,” thereby allowing any natural or legal person, whether a citizen or a foreigner, to establish and own a limited liability company. This amendment aligns with the provisions of the repealed Foreign Direct Investment Law, which permitted foreign direct investment projects to take the legal form of limited liability companies or private joint-stock companies, including one-person companies.

Similarly, Kuwaiti legislation specifies, under Article 8 of Ministerial Resolution No. 502 of 2014, that foreign investors may own 100% of the capital in joint-stock companies, limited liability companies, and one-person companies.

3. Cancellations under Article Six of Decree-Law No. 26 of 2020

Article 6 of Decree-Law No. 26 of 2020 repealed Article 329 of the Commercial Companies Law, which previously required foreign investors to appoint a UAE national agent. The repeal eliminates this obligation. Additionally, the repeal of Foreign Direct Investment Law No. 19 of 2018 means that foreign investments are now governed entirely by the Commercial Companies Law and its amendments.

As a result, foreign investors engaging in commercial activities in the UAE are subject to the provisions of the Commercial Companies Law, including Chapter Nine concerning foreign companies. Judicial interpretation has confirmed that foreign companies fall under the scope of this law, as affirmed by the Dubai Court of Cassation.

These amendments aim to modernize economic legislation, address economic challenges and global competition, and establish a fair and competitive investment environment.

B. Legal Rules Governing Foreign Direct Investment in Kuwait

The legal framework governing foreign direct investment in Kuwait has undergone several stages of reform, culminating in Law No. 116 of 2013 on the Promotion of Direct Investment. This law establishes an independent legal framework governing foreign investment, separate from the Commercial Companies Law.

Article 12 of Law No. 116 of 2013 outlines the forms of direct investment, including Kuwaiti companies with foreign ownership up to 100%, branches of foreign companies licensed to operate in Kuwait, and representative offices limited to market studies. The executive regulations further specify permissible company forms and licensing requirements.

Accordingly, foreign direct investment in Kuwait is regulated through a comprehensive and independent legal framework that provides clarity regarding rights, obligations, and procedures.

III. Guarantees and Incentives for Foreign Direct Investment in the UAE and Kuwait

A. Guarantees for Foreign Direct Investment

Legal protection provided by the host state plays a crucial role in shaping the investment climate and influencing foreign investors’ confidence (Al-Deljawi, 2019). Although the UAE repealed its Foreign Direct Investment Law, general legal principles and bilateral investment

treaties continue to provide protection against expropriation and confiscation, subject to public interest and fair compensation. Similar guarantees are explicitly stipulated in Kuwaiti Law No. 116 of 2013.

The concept of legislative stability, although not expressly regulated in UAE legislation, remains an important guarantee for foreign investors and is recognized through contractual, legislative, and international mechanisms (Baji & Alami, 2015; Kassal, 2016).

B. Incentives for Foreign Direct Investment

Incentives include equal treatment between foreign and national investors, freedom to conduct legal transactions, the right to transfer funds abroad, confidentiality of information, access to alternative dispute resolution mechanisms, and tax and customs exemptions. While UAE legislation relies more heavily on general principles and international agreements, Kuwaiti legislation provides detailed and explicit incentives, including tax and customs exemptions for up to ten years.

Conclusion

This study demonstrates that the amendments to Federal Commercial Companies Law No. 2 of 2015 have significantly reshaped the legal framework governing foreign direct investment in the UAE. The repeal of the national ownership requirement, the abolition of the Foreign Direct Investment Law, and the integration of foreign investment rules into the Commercial Companies Law confirm that foreign investment now falls under a unified legal regime. However, the absence of a consolidated set of guarantees and incentives may create uncertainty for foreign investors.

Recommendations

The study recommends incorporating explicit guarantees and incentives for foreign investors within the Commercial Companies Law, introducing legislative stability clauses, establishing mechanisms for tax and customs exemptions, and aligning incentives with national development objectives, drawing on comparative experiences such as that of Kuwait.

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