

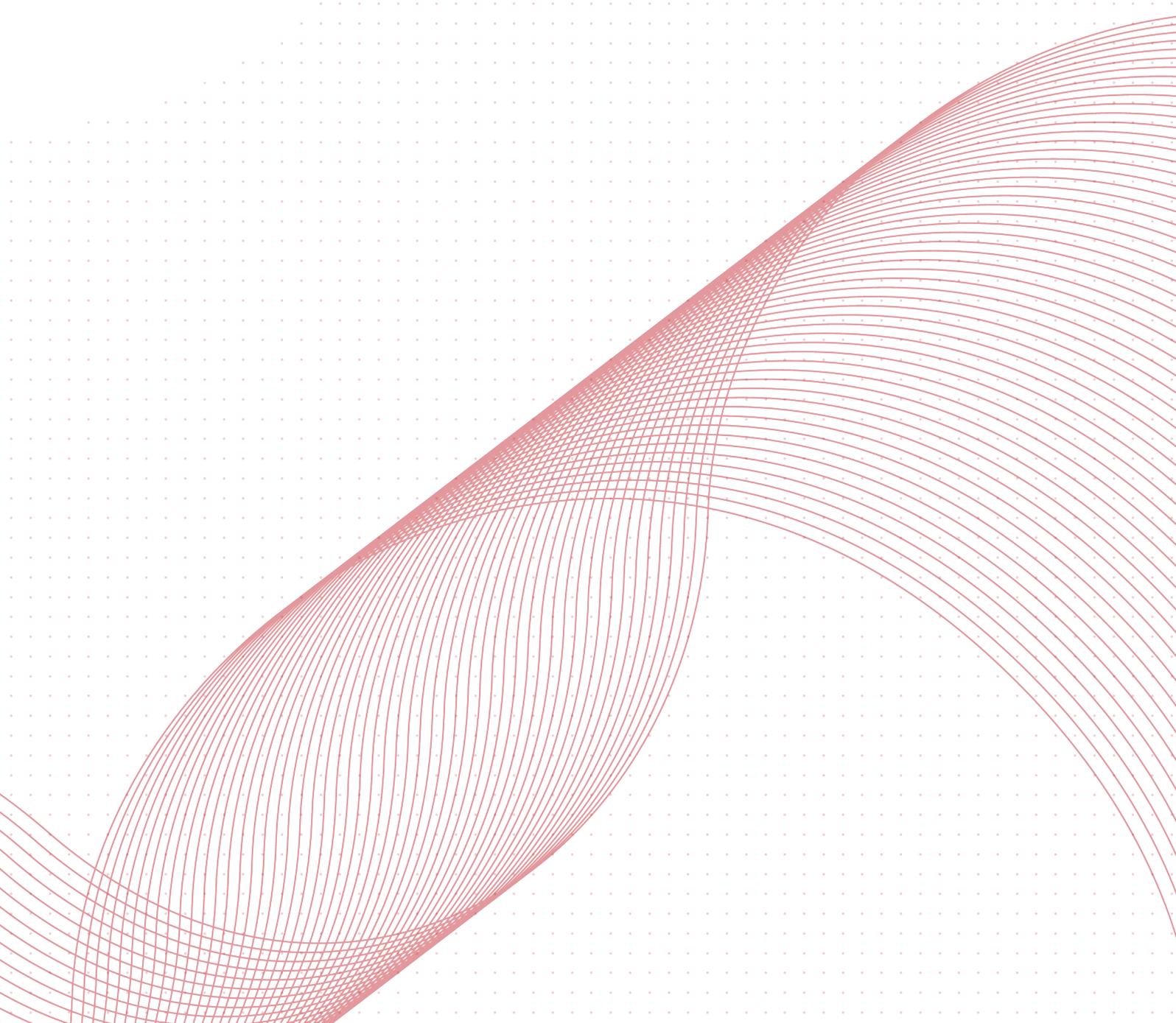
**S&A** LAWYERS

Advisory Memo

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# **1<sup>st</sup> Amendment to the Cross Subsidy Regulation**

26 December 2022



# 1 Introduction

The 1<sup>st</sup> Amendment to the Cross Subsidy Regulation (Regulation No: 2022/R-247) came into force on 21<sup>st</sup> December 2022. This amendment has been brought into effect to change the position in the existing regulation regarding projects which have been partially funded under cross-subsidy.

# 2 Cross Subsidy Regulation

The Government published the regulation on leasing islands, plots of land or lagoons for tourism-related purposes (hereafter referred as “land”) as cross-subsidy (Regulation No: 2022/R-125) (“Cross Subsidy Regulation”) on 14<sup>th</sup> August 2022. This regulation repeals the previous cross subsidy regulation (Regulation No: 2021/R-114). Proposals submitted under the previous regulation will be accepted under the new one.

The regulation allows the State to utilize subsidised lease rent as an incentive for parties to partake in state welfare projects. Intended recipients are either EPC contractors (for construction of projects) and/or financial institutions (for funding).

The President’s Office will annually announce projects which qualify for cross-subsidisation under the regulation. This publication will contain the minimum threshold of investment/commitment required from potential beneficiaries of the cross subsidy. Such projects will be awarded under normal public tender rules under the Public Finance Regulation (Regulation No: 2017/R-20).

Financiers can benefit from cross subsidies even if they do not cover the full cost of a project as long as the minimum investment threshold is met. In addition, the following requirements must be met: -

- Party must pass a financial capacity assessment;
- Post subsidisation, the acquisition cost should not fall below the minimum acquisition cost rate for the relevant atoll; and
- The subsidy/project must be approved by the Cabinet.

# 3 The cross subsidy

Once the project is approved, land which is the subject of a cross-subsidy will be announced in the Gazette. Subsequently, the Tourism Ministry will sign a lease agreement (“Lease Agreement”) with the contractor/financier. This Lease Agreement is separate from the agreement that will be signed in awarding the project (“Project Agreement”).

The Lease Agreement must stipulate how the lease acquisition cost and the lease rent will be set-off as a subsidy. The Regulation envisages that this set-off would be a dollar-for-dollar offset of amount invested.

Parties will also be subject to the following:

## Contractors

A tourism operating license will be issued once the project is completed or when a contractor fully finances the project in lieu of completion.

Lease Agreement will be terminated if the Project Agreement has been terminated owing to a breach. In termination, article 8 of Maldives Tourism Act (Law No: 2/99) will be followed.

## Financiers

Financier must invest the total amount for the project within a time period not exceeding 60 days.

If an extension of time has been granted, it must not exceed 180 days.

Lease Agreement will be executed once the project financing is completed.\*

# 4

## \*The Amendment

Notwithstanding the above, even before the project financing is complete, the Lease Agreement can be signed if a minimum of one million USD has been paid to the Government under the project. Following which, the stipulations below should be included in the Lease Agreement;

- Agreement will be terminated if the total amount has not been paid within the specified time period
- In a circumstance where the agreement has been terminated, the Government does not have to give compensation and the funds invested till date shall not be returned.

The funds for the project will be deposited into a trust account and will only be used for the project. If there are funds remaining, it can be invested in another project subject to this scheme.

# 5

## Completed projects

Before the 10th Amendment to the Maldives Tourism Act came into force, if an agreement was made with the Government for the contractor/financier to receive land on lease as consideration for a completed project, then it can be leased so under this regulation. The project's information and the land to be leased must be first published in the Government's Gazette. For such projects, with respect to the initial Project Agreement, lease acquisition cost and lease rent can be offset with the investment amount.

# S&A LAWYERS

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