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Maldives: Law & Practice and Trends & Developments
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Law and Practice

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1. LOAN MARKET PANORAMA

1.1 Impact of Regulatory Environment and Economic Cycles

The liquidity of Maldives' domestic loan market has decreased, owing to recent economic cycles resulting in a reduction in financial institutions' lending capacity.

In response, the Maldives government implemented measures to offer relief on existing loans and to facilitate and incentivise lending to those affected by the pandemic.

Both the government and private parties sought assistance from international and local financial institutions to refinance and restructure their existing debt, given the downturn in liquidity of the Maldives economy.

1.2 Impact of the COVID-19 Pandemic

The main impact of the pandemic on the Maldivian economy was a sudden reduction in foreign currency in-flows to the country. This then had a knock-on negative effect on the domestic markets' overall money supply and businesses' ability to weather the pandemic without redundancies.

In partnership with the domestic banks, the government implemented measures such as debt moratoriums, income support and specific lending to ease the effects of the pandemic. As a result of the economic relief packages offered, capital expenditure increased 7% above 2019 levels, resulting in an increase in GDP to 109.3% in 2020 from 78.4% in 2019.

The measures implemented by the government in partnership with local banks included the following.

- Debt moratoriums on existing loans taken from the Bank of Maldives, which allowed borrowers to defer principal and interest repayments for a period of six months. At the same time, the tenors of the underlying loans were extended by six months, giving borrowers more time to repay principal amounts and accrued interest under existing facilities. Following the initial six-month moratoriums, the repayment amounts were subject to controls whereby they were reduced by 20% for a further six months.
- Debt moratoriums on existing loans taken from the SME Development and Finance Corporation (SDFC), which allowed customers to defer monthly principal and interest repayments for six months as well. Interest rates for all loans were reduced to 4% during the moratorium period (the usual interest rates on these loans were between 4% and 9.5%), thereby reducing the interest accrued on the outstanding debt during the moratorium period.
- Income support was implemented to assist those whose employment was negatively affected. The government provided income support to locals who were unemployed or placed on unpaid leave, or those who had their salaries reduced or earnings negatively affected as a result of the pandemic. This measure indirectly reduced demand for individual short-term borrowing from local banks.
- Specific lending was introduced for large businesses that weathered the pandemic without having to resort to redundancies of local employees. The Ministry of Finance partnered with the Bank of Maldives to introduce a new loan scheme for eligible resorts and businesses affected by the COVID-19 pandemic. The eligibility criteria were as follows: (i) the borrower is registered in Maldives, (ii) the borrower had a minimum turnover of MVR10 million in the financial year ending on 31 December 2019, and (iii)

the borrower had not laid off local employees due to the pandemic at the time of application. The borrower was not required to provide security for this facility. The interest rate was fixed at 6% per annum for a three-year period. The borrowers were also given a five-month grace period where interest and principal payments were not payable.

- Specific lending was introduced for SMEs and self-employed individuals. The Ministry of Finance partnered with SDFC to introduce a new loan scheme for eligible SMEs and self-employed individuals who were affected by the COVID-19 pandemic. The eligibility criteria were as follows: (i) the borrower is either a self-employed individual or a business with ongoing operations, (ii) the borrower had a turnover of less than MVR10 million in the financial year ending on 31 December 2019, and (iii) in the case of a business, the borrower had not laid off local employees due to the pandemic at the time of application. Eligible SMEs and self-employed individuals could apply for loans of up to 10% of their annual sales turnover for the past year (capped at a maximum of MVR500,000) at 6% interest per annum for a three-year period. The repayment period excludes a grace period of up to six months in which no interest is charged.

1.3 The High-Yield Market

Interest rates of retail banking products targeting individuals are between 10% and 19%, which may be considered high-yield by international normative standards. Interest rates above 12% may be considered high-yield in other jurisdictions, but such interest rates are considered conventional in Maldives.

Interest rates of between 18% and 25% are considered high-yield in a Maldivian context. These loans usually relate to short-term and/or domestic/household borrowing needs. These facilities are not normally backed by security and have

relatively low eligibility requirements. Therefore, there continues to be high demand for facilities with these interest rates, as there has been for some years now.

There are no emerging trends affecting the financing terms and structures of conventional loans as a result of the high-yield market, largely because the high-yield market targets a different borrowing group and relates to different borrowing needs. The high-yield market therefore has not in any meaningful way encroached on the conventional loan market share.

1.4 Alternative Credit Providers

Maldives has not seen a significant growth in alternative credit providers.

There is a small unregulated private loan market, but the market share of these private lenders is too small for it have any meaningful impact on the financing terms and structures of conventional loans.

1.5 Banking and Finance Techniques

Local banks and financial institutions have been slow to respond and adapt to new trends in the loan market, which has led to an increase in borrowing from foreign banks or financial institutions. For instance, local banks have struggled to compete with foreign lenders in attracting financing deals from the large-scale foreign direct investments made in Maldives in tourism, real estate or infrastructure. In this regard, Maldives' local banks are a long way from catching up with their foreign counterparts in the project finance market.

In terms of evolving techniques to reflect the needs of the domestic borrower base, there has recently been an increase in Islamic finance or sharia-compliant banking products being introduced to cater for the needs of local borrowers. There are no other notable finance techniques

evolving in Maldives to reflect the investor base and needs of borrowers.

1.6 Legal, Tax, Regulatory or Other Developments

The Public Health Emergency Act (Law No 20/2020) places a restriction on foreclosures (or the commencement of any enforcement steps) on defaulting residential mortgages. The banks are to wait 60 days after the State of Public Health Emergency is lifted before taking such enforcement steps.

Under the new Income Tax Act (Law No 25/2019) introduced in 2020, all banks are subject to income tax at a rate of 25%. Furthermore, Non-Resident Withholding Tax is now payable on payments to foreign banks or institutions that are not approved by the Commissioner General of the Maldives Inland Revenue Authority (MIRA). A full list of the approved banks and institutions is available at www.mira.gov.mv/IncomeTax.aspx. These taxes were not payable under the old Business Profit Tax Act, which was repealed with the introduction of the new Income Tax Act.

1.7 Developments in Environmental, Social and Governance (ESG) or Sustainability Lending

Maldives' ESG Credit Impact Score is profoundly negative (CIS-4) and reflects the jurisdiction's susceptibility to natural and social dangers. For many years, the nascent legal framework around financial administration had meant that the government could not exercise effective oversight and control over corruption, money laundering and other financial crimes. Recent enhancements have been made to broaden the range of control of corruption. However, tackling financial crimes and money laundering remains unresolved and of concern.

Maldives' susceptibility to natural dangers is highly negative (E-5), and natural phenomena

continue to threaten lives and vocations. As Maldives is highly susceptible to climate change and rising sea levels, the government is investing in large land reclamation projects such as the construction of the artificial Hulhumalé island to move people most threatened by rising sea levels.

Maldives' exposure to social risks is highly negative (S-4). Given the low and scattered population, logistical challenges are a predominant concern, demonstrated by a shortage of gifted labour and specialised capacity. This contributes to raised levels of youth unemployment and low rates of female participation. The government continues to invest in educational opportunities in order to address these concerns.

Maldives accordingly continues to receive development and conservation assistance, in terms of grants and loans from several international institutions, including the Asian Development Bank, for conservation of the environment and awareness programmes funded by the United Nations Development Programme, to name a few.

2. AUTHORISATION

2.1 Authorisation to Provide Financing to a Company

The Banking Act (Law No 24/2010) is the primary law regulating banks, financial institutions and banking services in Maldives. All activities of banks and financial institutions are overseen and regulated by the central bank – ie, the Maldives Monetary Authority (MMA).

Providing Banking Services in Maldives

A licence issued by the MMA must be obtained prior to commencing any of the following activities:

- engaging in banking business outside Maldives through the use of a company that is organised under the laws of Maldives or operates from offices located in Maldives;
- opening a branch or a subsidiary in Maldives of a domestic or foreign bank;
- opening a branch or representative office outside Maldives of a domestic bank or of any bank operating from offices located in Maldives; and
- operating a representative office in Maldives of a foreign bank.

In the case of domestic entities, licences are only granted to companies that are registered under the Companies Act (Law No 10/96); in the case of branches or representative offices of foreign banks, licences can be granted to companies that are registered under the respective companies acts of their jurisdiction of incorporation. Previously, all foreign investment applications were reviewed on a case-by-case basis. However, following the new Foreign Direct Investment Policy, which came into effect in 2020, express provision has been created for 100% foreign held companies to be allowed to incorporate and provide banking and related services. There continues to be a requirement for at least two shareholders and at least one resident to sit on the board of directors.

Licences are granted in writing and can be valid for an indefinite period of time. Licences are not assignable or transferable. The licence or its attachments shall specify the conditions under which it is issued, and compliance with all conditions of licensing is a continuing requirement for all licensees, unless such conditions are later modified.

Licences are applied for in writing to the MMA. Said application has to be in the form prescribed by the MMA from time to time, and must contain all requested information. The MMA prescribes

different application forms and different informational requirements for the various categories of licences available. Under the Banking Act (Law No 24/2010), the MMA has discretion to determine the procedures that it will use to evaluate applications for licences.

The information submitted with the application for a licence must include at least the following.

- An authenticated copy of the charter and corporate governance documents of the applicant, and of its audited annual balance sheets and profit and loss statements for the last three years.
- A description of the proposed capital funds of the applicant, the sources of such funds and the amount that has been paid in. The MMA has discretion to require that the intended capital funds be deposited with the MMA, or another depository approved by the MMA, together with a certification that there is no encumbrance on such funds.
- The premises and the addresses at which the applicant proposes to do business, and the name under which the applicant intends to conduct its banking business.
- The names, places of permanent residence, business and professional backgrounds, and other biographical and financial data to be determined by the MMA, of each proposed major shareholder and administrator of the applicant.
- For each major shareholder and administrator, an affidavit duly signed by the individual stating any convictions for crimes or no conviction, and any involvement in a managerial function in an insolvent company or a company subject to insolvency proceedings, if any. The standard text for such affidavit may be determined by the MMA.
- A business plan describing the objectives and business activities intended for the proposed entity, including a description of its organisa-

tional structure and internal controls, including measures appropriate to counter money laundering and the financing of terrorism, together with projected balance sheets, profit and loss accounts and cash flow statements for the first three years of operations.

- In the case of an application by a foreign bank or bank holding company, or the subsidiary of such foreign bank or bank holding company, a statement from the foreign supervisory authority responsible for the prudential supervision of the foreign entity to the effect that it has no objection to the proposed establishment of operations in Maldives by the applicant. This statement shall also state that such authority will exercise consolidated supervision over the applicant.

In the case of an application by a bank holding company or bank to organise a domestic bank, the MMA must obtain detailed financial and operational information regarding the prospective licensee, in addition to the information listed above. This information must also include details of the major shareholders and administrators of the applicant bank or bank holding company. The MMA may use this information to determine the following:

- that the ownership by the bank holding company or bank will not weaken the subsidiary bank but will bring financial and managerial resources that will benefit the domestic subsidiary bank; and
- that the major shareholders and administrators of the bank holding company or bank are fit and proper persons.

In the case of an application by a foreign bank to open a branch or representative office in Maldives, the MMA may request any additional information that it believes to be pertinent to the proposal. It can also request the applicant to provide financial and biographical informa-

tion regarding the persons to be designated as branch manager or representative office manager, as the case may be.

Applications for licences are to be accompanied by an application fee payable to the MMA in such amounts as the MMA may prescribe from time to time.

Applicants applying for a licence are required to act expeditiously in providing the required information, as well as any other information requested by the MMA for the purposes of processing the application. If an applicant fails to complete their application filing requirements within three months of applying for the licence, the MMA has the discretion to deem the application to have been abandoned and the application fee forfeited.

Providing Cross-Border Services

Cross-border lending is not regulated by the MMA, so foreign banks, financial institutions or non-banks do not require any permits or licences to provide financing to a company or party in Maldives. Licences may be granted to foreign banks only if they are subject to consolidated supervision by a supervisory authority in the country in which the foreign bank maintains its head office, and which the MMA determines to be adequate.

3. STRUCTURING AND DOCUMENTATION CONSIDERATIONS

3.1 Restrictions on Foreign Lenders Granting Loans

There are no restrictions on foreign lenders granting loans to borrowers in Maldives. There are no requirements to obtain registrations or licences, as cross-border lending is not regulated by the MMA.

Borrowers who may wish to remit proceeds from Maldives to service their debts will need to consider the taxation implications they may face if they wish to borrow from a foreign lender that is a bank or non-bank financial institution not approved by the Commissioner General of MIRA. This is because payments made in relation to interest or to a payment that is economically equivalent to interest (excluding principal amount), including any commitment, guarantee or service fee, are liable for Non-Resident Withholding Tax (NWT) if they are paid to a bank or non-bank financial institution that is not approved by the Commissioner General. Therefore, NWT may act to disincentivise borrowers from taking loans from foreign lenders that are not approved by the Commissioner General, which may act as an indirect restriction on such unapproved lenders. As the NWT is relatively recent, whether this taxation will have an effect on foreign lending is yet to be determined.

3.2 Restrictions on Foreign Lenders Granting Security

There are no restrictions or impediments on the granting of security or guarantees to foreign lenders per se, but mortgages on tourist developments are subject to obtaining a written mortgage approval from the Ministry of Tourism, as required under the Grant of Rights Regulation (Regulation No 2010/R-14). Once the mortgage agreement has been executed, the mortgage must then be registered with the Ministry of Tourism and a mortgage registration fee of MVR10,000 shall be payable to MIRA.

Securities over residential land do not require prior approval, but there is a formality to register the mortgage with the relevant authorities – ie, the city or local council, depending on the location of the residential land over which the mortgage has been created.

3.3 Restrictions and Controls on Foreign Currency Exchange

There are no restrictions, controls or other concerns with respect to foreign currency exchange in Maldives. Parties wishing to engage in the business of foreign currency exchange can do so by obtaining a licence from the MMA, pursuant to the relevant regulations, including the Money Changers Regulation (1987).

3.4 Restrictions on the Borrower's Use of Proceeds

There are no restrictions on the borrower's use of proceeds from loans or debt securities, although general requirements under the Prevention of Money Laundering and Financing of Terrorism Act (Law No 10/2014) must be complied with.

Restrictions may also be imposed under the contract governing the underlying loan or debt securities, wherein the borrower's use of proceeds should be in line with the conditions or purpose of financing set out in the loan agreement.

3.5 Agent and Trust Concepts

There are no statutes or regulations governing trusts or agency law in Maldives.

The agency principle has been in practice for quite some time and is governed largely under the respective contractual arrangements between the parties.

Trusts were only recognised through a precedent-setting Supreme Court judgment in the context of a failed mortgage, where the Supreme Court recognised the existence of an implied trust. Distinctions were not drawn between resulting and constructive trusts. Trust structures have therefore not been heavily utilised locally.

The treatment of beneficial ownership as being distinct and separate to legal ownership has

not sufficiently matured in Maldives. Notwithstanding the aforementioned Supreme Court judgment, the long-standing practice has been that only legal ownership is strictly recognised in Maldives. Trust structures, if one were to arise at all, are likely to arise out of usually unwritten, implicit and likely unwitting understandings between parties and through operation of law as established in the recent Supreme Court judgment.

Offshore trusts are being utilised in transactions.

Despite the absence of a specific statute governing trusts in Maldives, the Banking Act allows the provision of trust services as a banking service.

Lenders should approach trust instruments in Maldives with caution as the principles and parameters of trust and agency law are not clearly defined and are not contained in a governing statute. It would be ideal for all rights and obligations with respect to trust and/or agency concepts to be expressly included in the deed/contract in order to guarantee protection.

3.6 Loan Transfer Mechanisms

There are neither statutory requirements nor any precedent-setting case law on loan transfer mechanisms.

Loan transfers can be done contractually through assignment, sale and novation of the loans. The lender may include an express provision in the underlying contract allowing such a transfer, and incorporate the requirements and protections into the contract.

Securities granted to the original lender may be released after terminating existing agreements and the borrower entering into new agreements with the new lender (or a tripartite agreement with the original and new lender where the secu-

rities are transferred to the favour of the new lender).

3.7 Debt Buy-Back

Debt buy-back is not regulated nor commonly practised in Maldives. However, it is common for debt buy-back and the relevant procedure/mechanisms to be subject to the requirements contractually agreed between the parties.

3.8 Public Acquisition Finance

There is no requirement under Maldivian law for the buyer to show that it has “certain funds” in order to acquire a target. Much like most M&A activities in Maldives, this is unregulated.

However, parties are free to agree conditions precedent, and lenders may therefore include certain funds provisions as part of the conditions precedent required from a buyer. A seller’s existing lender may also impose such a requirement as part of the refinancing conditions precedent prior to completion. Ultimately, certain funds protection is one which the lenders ought to acquire from the seller/buyer of a transaction as appropriate. Lenders must independently make an assessment as to the level of certain funds evidence and comfort they require for any transaction, and must obtain and review such documentation ahead of completion as there is no statutory protection to rely on.

In terms of documentation, local Maldivian banks provide debt financing on the basis of in-house standard documentations (consisting of general terms and conditions). This should be considered “short form”. International banks in the Maldivian loan market generally refer to the “long form” documentation that is usually structured and drafted in line with the standards of the Loan Market Association. Upon execution, these documents do not normally need to be filed publicly, save for any securities such as mortgages over tourist developments or residential land,

which need to be filed with the Ministry of Tourism and relevant city/island council, respectively.

4. TAX

4.1 Withholding Tax

From 1 January 2020, payments made in relation to interest or a payment that is economically equivalent to interest (excluding principal amount), including any commitment, guarantee or service fee, are liable for NWT if they are paid to a bank or non-bank financial institution that is not approved by the Commissioner General of MIRA. The term “interest” also includes any discounts, premiums, passive interest and profit in respect of any Islamic financial instrument.

Any bank or non-bank financial institution that is licensed by the central bank of its respective jurisdiction is considered an approved bank or non-bank financial institution; selected international financial institutions are also considered to be approved entities for this purpose. A full list of approved banks or non-bank financial institutions is available from www.mira.gov.mv/IncomeTax.aspx.

Any interest payment made to a party other than those approved by the Commissioner General of MIRA is liable for NWT at the rate of 10% on the gross amount, from 1 January 2020. Furthermore, it is important to note that the NWT is payable on a monthly basis to MIRA and, in order to determine the period in which the NWT is to be settled, the earlier of the paid or payable date (determined as per the relevant accounting standard) is to be considered.

4.2 Other Taxes, Duties, Charges or Tax Considerations

All businesses are currently taxed under the Income Tax Act, including banks. Maldives currently has a worldwide tax system, where the tax

base is calculated based on the tax residency of the entity. Where a lender is tax resident in Maldives in a given tax year, then its tax base is its worldwide income after deduction of the allowable expenses. If the lender is a non-tax resident in Maldives in a given tax year, then the tax base of the lender is only income sourced in Maldives. Under the Income Tax Act, banks are charged a flat rate of 25% on their taxable income.

Lenders who have obtained a licence from the MMA are not required to register or charge Goods and Service Tax (GST) as the service falls within the definition of “financial services”, which is exempted for the purpose of the Goods and Services Tax Act (Law No 10/2011).

4.3 Usury Laws

There are no usury laws limiting the amount of interest that can be charged.

Usury is a controversial topic in Maldives. The Constitution of Maldives requires that “tenets of Islam” shall be maintained in all dealings. Under this broad constitutional provision, inordinately high-yield loans could be challenged as usurious. However, this has not yet been regulated through statute and there has not been any precedent-setting case law on this point. This observation should give any lender comfort as loans charging compound interest of up to 25% per annum interest have not been challenged as usurious.

While there are no defined limits of how much a lender may charge as interest, it should be noted that the tax legislation of Maldives allows a deduction of only 6% of interest as “deductible expenses” in computing taxable profit where the bank or financial institution is not approved by MIRA.

Furthermore, in applying the thin capitalisation rule, only 30% of the tax EBITDA may be deducted as interest in computing taxable profits.

5. GUARANTEES AND SECURITY

5.1 Assets and Forms of Security

The assets commonly made available as collateral to lenders include:

- first- or second-ranking mortgage(s) over a borrower's real estate assets, including islands leased for tourism development and residential land;
- pledge(s) over the shares of the borrower or its subsidiaries;
- assignment of the borrower's bank accounts (over both the bank account balance and the banking account);
- assignment of insurance policies;
- assignment of proceeds or credit rights derived from income-producing agreements entered into by the borrower, such as hotel management agreements;
- personal guarantees by directors or shareholders; and
- sovereign guarantees by the government.

Mortgages over Tourist Resorts and Residential Land

Mortgages created over the leasehold rights of tourism developments would require prior approval from the Ministry of Tourism and subsequent registration with the Ministry after payment of a mortgage registration fee of MVR10,000. The approval and registration process generally takes five to seven working days per step.

Mortgages over residential land do not require prior approval, but there is a formal requirement to register the mortgage with the relevant

authorities – ie, the city or local council, depending on the location of the residential land.

Share Pledge

With respect to pledges over shares of a borrower or its subsidiaries, there is no legal requirement for a share pledge to be registered in favour of the lender with any authorities in Maldives. However, it is the general market practice for the same to be communicated to the Registrar of Companies, which maintains a record of the charges. This usually takes three to four working days, and no costs are involved.

Assignment of Bank Accounts and Insurance Policies

The general practice is for notice of assignment to be given to the respective banks in which the accounts are held and to the insurers from which the respective policies have been procured, and to obtain their signed acknowledgment as a condition subsequent to the completion of the transaction. The period in which this must be satisfied will be governed contractually. However, in recent financing transactions, local banks have been much more hesitant to allow the creation of a charge over the bank accounts.

Sovereign Guarantees

The Public Finance Act (Law No 3/2006) regulates the provision of guarantees backed by the state or state-owned companies, or the mortgage of assets, rights or other interests held by the state, or the giving of undertakings and covenants affecting state assets or funds. This is with respect to loans or debt finance obtained by the state or by state-owned companies using the government as an intermediary, or with respect to transactions entered into on behalf of the state.

The Public Finance Act provides that such activities shall be carried out only after a proposal to do so is made by a Minister and approved

by the President. Parliamentary consent by a simple majority of Members present and voting must be obtained.

5.2 Floating Charges or Other Universal or Similar Security Interests

Floating charges are commonly used in Maldives, especially as project finance securities.

The crystallisation moment of such a charge generally occurs when the borrowing company defaults on its financial covenants or enters into insolvency.

5.3 Downstream, Upstream and Cross-Stream Guarantees

Entities in Maldives are allowed to give downstream, upstream and cross-stream guarantees without restriction or limitation. There are therefore no issues relating to the adequacy of credit support in relation to these guarantees.

5.4 Restrictions on Target

A target is restricted from granting guarantees, securities or financial assistance for the acquisition of its own shares. There are no limitations on the seller involved in an asset sale providing such guarantees, securities or financial assistance.

5.5 Other Restrictions

There is a requirement to obtain prior approval from the Ministry of Tourism where the leasehold rights to a tourism development are being mortgaged. No costs are incurred in obtaining this approval.

5.6 Release of Typical Forms of Security

Securities may be released upon the borrower fulfilling its obligations and/or the parties agreeing for the security to be released.

In the instance of securities that are registered with the governmental authorities, the bank or

the lender will execute a deed of discharge and communicate the same to the relevant authorities, which will then release the security from their records and communicate the discharge/de-registration in writing.

5.7 Rules Governing the Priority of Competing Security Interests

There are no specific statutes (such as insolvency laws) governing the priority of competing security interests in Maldives. There is, however, an established practice whereby reference is generally made to Section 91 of the Companies Act to assume that the same order of settling debts (where the company enters a winding-up process) shall apply when a borrower goes into insolvency. In this regard, after paying the expenses incurred for winding-up and remunerating the person(s) appointed to wind up the company, the assets of the company are to be used in the following order:

- money due to the government/government bodies;
- wages due to the employees of the company except directors for three months from the date the court issued the winding-up order or the company passed the special resolution to wind-up the company; and
- the balance, if any, after settling the above, if not sufficient to discharge all debts of the company, shall be applied in satisfaction of the company's liabilities *pari passu*.

However, this means that, in a liquidation scenario, competing security interests may not have priority despite being perfected and registered with the authorities. It is ultimately a matter for a court to decide. Courts may take an approach that the security interest shall be ranked according to the time of creation or perfection.

In this regard, courts have followed the following ranking where such priority can be estab-

lished through the contractual agreements of the debtor and creditors. Courts have also referred to the laws of developed jurisdiction to assist their assessment of the appropriate order to rank debts. The commonly utilised ranking is as follows:

- first priority mortgages;
- fixed charges and secondary mortgages;
- floating charges; and
- unsecured debt (including judgment debts).

6. ENFORCEMENT

6.1 Enforcement of Collateral by Secured Lenders

A secured lender may enforce its collateral where there is an event of default under the underlying loan or security agreements.

The secured lender would have to file a claim at the Civil Court of Maldives to obtain a judgment debt against the borrower in default, through which they can request permission to sell the mortgaged asset.

Concerns to be taken into account are delays attributable to the court and any subsequent appeal processes, which may cause further delays in enforcing the collateral. Recent developments through case law indicate that the enforcement of an order (eg, for sale of a mortgage) shall not be stayed unless the appellate court issues a stay order on enforcement proceedings.

It should also be noted that, with the implementation of the Public Health Emergency Act, an order of sale for residential land may not be made until 60 days have passed after the State of Public Health Emergency is lifted.

6.2 Foreign Law and Jurisdiction

Section 18(d) of the Contracts Act (Law No 4/1991) allows parties to decide on the governing law of the contract, whether it is foreign law or Maldivian law. It is usual practice in Maldives for loan and financing agreements to be governed under foreign law, especially in cross-border lending transactions.

The choice of foreign law as the governing law of a contract and a waiver of immunity will be upheld by the courts in Maldives.

6.3 A Judgment Given by a Foreign Court

Judgments given by a foreign court would not be enforceable without a retrial of the merits of the case.

Arbitral awards issued pursuant to a foreign-seated arbitration shall be recognised and enforced in Maldives, without a retrial of the merits of the case, pursuant to section 72 of the Arbitration Act (Law No 10/2013) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), unless the award has been set aside in the courts of the seat or in Maldives, or recognition of the arbitral award is refused by the High Court of the Maldives upon such an application being made.

6.4 A Foreign Lender's Ability to Enforce Its Rights

Save for any restrictions in the underlying loan or security agreement, there are no particular legal or regulatory provisions that may specifically impact a foreign lender's ability to enforce its respective rights.

7. BANKRUPTCY AND INSOLVENCY

7.1 Company Rescue or Reorganisation Procedures Outside of Insolvency

In practice, companies are free to set internal procedures in relation to company rescues or reorganisations.

According to the Banking Act, the MMA shall appoint a conservator for a bank when it determines that:

- the bank has failed to pay its financial obligations as they fall due, including but not limited to deposit liabilities;
- the capital of the bank is less than 50% of the minimum capital required by the Banking Act or by regulation of the MMA issued pursuant to Chapter 4 of the Banking Act;
- a petition has been submitted for initiating bankruptcy proceedings against the bank; or
- the board of directors is unable or unwilling to properly manage the affairs of the bank.

Additionally, the MMA may appoint a conservator for a bank when it determines that:

- the bank has failed to carry out an order given to it by the MMA, including an order for payment of civil monetary penalties;
- the capital of the bank is too low to support safe and sound banking operations;
- there is evidence that the bank or any of its administrators have engaged in criminal activities punishable by imprisonment of one year or more or there is evidence or reasonable cause to believe that the bank or any of its administrators is engaging in criminal activities; or
- there is reasonable cause to believe that the board of directors is unwilling or unable to properly manage the affairs of the bank.

The above provisions shall apply to the domestic branch offices and domestic representative offices in Maldives of a foreign bank as if all these offices together were to form a single legal entity. All assets, liabilities, acts and omissions of the foreign bank resulting from or otherwise relating to the business of any such office shall be attributed to that single entity in applying the provisions. The conservator of a foreign bank shall be authorised to take all actions with respect to such foreign bank as could be taken by the authorised manager or by shareholders at the general meeting of shareholders of a domestic bank.

Parties are generally also free to enter into voluntary creditor arrangements to come into agreement outside of insolvency proceedings. There have been instances where the government has also intervened to rescue or reorganise companies in which it is a stakeholder.

7.2 Impact of Insolvency Processes

There are no insolvency laws in Maldives.

However, assuming a similar procedure to the winding-up of a company applies, where insolvency proceedings commence, the onus is on the lender make a claim for the debt and prove the existence of such.

If the debt is secured and the securities can cover the value of the debt, there should not be any impediments on the lenders' rights to enforce their loans or security or guarantee, subject to the order of priority with respect to creditors.

7.3 The Order Creditors Are Paid on Insolvency

Insolvency laws do not exist in Maldives and, with reference to Section 91 of the Companies Act, after paying the expenses incurred for winding-up and remunerating the person(s) appointed to wind up the company, the assets of the

company are used in the order set in **5.7 Rules Governing the Priority of Competing Security Interests.**

One could argue that, according to this order, no priority is given to secured creditors over unsecured creditors and that they stand on an equal footing.

This is largely an untested area in Maldivian courts, which generally take a prudent approach in such instances and make reference to the laws of developed jurisdictions. In this regard, with reference to the insolvency laws applicable in other competent jurisdictions, the courts would most likely give priority to secured creditors over unsecured creditors. In terms of priority over securities, it is reasonable to assume that mortgages would rank first, followed by fixed charges and floating charges, in that order. The proceeds of a sale of a company's assets would only be paid to unsecured creditors (such as judgment debtors and trade creditors) after the debts to secured creditors are cleared.

7.4 Concept of Equitable Subordination

There is neither a concept of equitable subordination nor any similar concepts in Maldives.

7.5 Risk Areas for Lenders

There is a risk that the lender may not recover the value of debt if the dues payable to the government or government authorities and employees are excessive, as the lenders would only come third in terms of priority, despite having a perfected and registered security.

8. PROJECT FINANCE

8.1 Introduction to Project Finance

Project finance has been used in Maldives for the past few decades, mostly for the financing of

tourism development projects and government infrastructure projects.

In the absence of a specific legal framework in Maldives for project finance, the applicable rules will be found under the respective project finance documents.

8.2 Overview of Public-Private Partnership Transactions

Since 2008, the government has made efforts to promote developmental projects, through public-private partnerships, especially infrastructure development projects. As such, an international airport project (the Malé International Airport) was tendered out on a public-private partnership basis and became the subject of political and social debate, which led to the public-private partnership being terminated by the following government; in turn, this resulted in a prolonged arbitration against the government, which the government ultimately lost.

Since then, the appetite for major public-private partnership projects has been low.

8.3 Government Approvals, Taxes, Fees or Other Charges

It is not necessary for project finance documents to be registered or filed with any governmental body, nor for any taxes, fees or charges to be paid, save for the prior approval required by the Ministry of Tourism (in the event of a mortgage being created over a tourist resort/island) and registration of the mortgage with the Ministry after the payment of a MVR10,000 fee.

8.4 The Responsible Government Body

There are no oil and gas, power and mining sectors in Maldives. Although there are no detailed laws or regulations to regulate these sectors, as such, the Ministry of Economic Development has the legal mandate to do so.

8.5 The Main Issues when Structuring Deals

There are no specific laws or restrictions that are relevant to project companies, although the primary consideration that needs to be made in structuring a deal may be tax-related.

In terms of foreign investment, the Foreign Direct Investment Policy reiterates the activities that are open for foreign investment, with the maximum foreign shareholding percentage and maximum period of investment that would be allowed for the activity, and the minimum investment requirement.

8.6 Typical Financing Sources and Structures for Project Financings

Typical financing sources include term loans from commercial banks or financial institutions. Project bonds have also gained momentum in Maldives, with the government seeking additional financing to meet their working capital requirements.

8.7 The Acquisition and Export of Natural Resources

There are no oil and gas, power or mining sectors in Maldives, so any acquisition or export in relation to these sectors is not regulated.

The acquisition and export of natural resources are governed under the respective environmental laws in Maldives, with the Environmental Protection Agency regulating its compliance under the mandate issued to the Agency by the Ministry of Environment, Climate Change and Technology.

8.8 Environmental, Health and Safety (EHS) Laws

The Environment Protection and Preservation Act (Law No 4/93) sets out the basic framework for environmental protection. The relevant ministry (now the Ministry of Environment, Climate Change and Technology) is mandated under this Act to further develop regulations and policies to ensure environment protection.

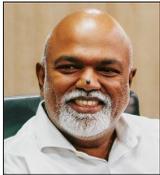
The Environment Protection Agency is a regulatory entity, affiliated to the Ministry, that is responsible for regulatory activities relating to the protection, conservation and management of the environment and biodiversity, as well as waste management and pollution prevention under the above-mentioned Act.

There are no laws on health and safety requirements that are applicable to projects. However, the Employment Act (Law No 2/2008) contains provisions on workplace safety and employee health, which shall apply to persons employed under the project. There are no mechanisms or procedures to oversee this, but employees may file a complaint at the Labour Relations Authority or Employment Tribunal for any breach of the general health and safety standards imposed under the Employment Act.

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Trends and Developments

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S&A Lawyers LLP see p.23*

The Impact of COVID-19 on the Maldivian Economy

A reactionary and sudden closure of the country's border was implemented in March 2020 as the government's response to the discovery of the first COVID-19 infection in the capital city, Malé. With the benefit of hindsight, one might consider this measure to be disproportionate to the levels of infection present at the time, but it was implemented largely due to public pressure and in order to try and curb spikes in COVID-19 infections in Maldives.

The knock-on economic impacts of this border closure, particularly to tourists (on an economy that was heavily dependent on tourism), caused the economy to destabilise for months on end, just like it did for many countries across the globe. However, the border closure and subsequent health safety measures implemented to reduce infection rates did not prevent waves of variant strains of the COVID-19 virus from hitting the shores of Maldives, which resulted in further partial lockdowns and economic slow-downs, from which Maldives is continuing to recover.

Inflation entered negative territory in 2020, mainly due to declines in exports and tourist arrivals, which heavily contribute to economic stability in Maldives. Said reduction caused supply shortages of US dollars in the domestic foreign exchange market. In response to this, the central bank of Maldives (the Maldives Monetary Authority – MMA) increased US dollar sales to the domestic market, causing a dilution of the country's foreign currency reserves. A resultant fall in demand from within Maldives' economy and the domestic market's reactionary price

reduction measures taken to alleviate the fall in demand further exacerbated the negative impacts on inflation in 2020, causing the inflation rate to fall to a low of -1.4%.

The fiscal deficit as a percentage of gross domestic product (GDP) widened due to two main reasons. Firstly, the economic de-stability attributed to the COVID-19 global pandemic caused significant falls in the total revenue of the market, which resulted in a 32% contraction in real economic output in 2020. Secondly, increases in capital expenditure by the government on health, social and economic relief measures increased the fiscal deficit. As a result, the Maldivian government became heavily dependent on the international community for support through both bilateral and multilateral financing to compensate for their loss of revenue and manage their cashflow requirements. Similarly, many private parties in their capacity as borrowers faced difficulties in the performance of their obligations under financing agreements, as their businesses were at a standstill during these unprecedented times.

The Response of Stakeholders to the Pandemic

The MMA and the Ministry of Finance were active in reacting to the effects of the pandemic on the local economy, focusing their efforts on alleviating the immediate financial and economic effects of the pandemic on the population. As such, in partnership with the Bank of Maldives and SME Development Finance Corporation, loan schemes were introduced and made available to large, small and medium enterprises, with a grace period of up to six months in which

no fees were charged, with interest accruing and payable after the moratorium period. The European Investment Bank, moreover, entered into a EUR20 million loan facility with the Ministry of Finance to contribute to the support given to small and medium enterprises operating in Maldives. This support was implemented by offering new loans through the Bank of Maldives to parties that were negatively affected by the pandemic.

In April 2020, the MMA reduced the minimum reserve requirement from 10% to 7.5% in order to assist commercial banks in mitigating risks and to alleviate the effects of the problems they were facing owing to the downturn in foreign and local currency liquidity. Continued downward pressure on money supply resulted in the MMA further reducing the minimum reserve requirement to 5% in July 2020.

Regulatory measures were additionally taken to offer debt moratoriums on existing loans taken from the Bank of Maldives, which allowed borrowers to defer principal and interest repayments for a period of six months on their personal, business and housing loans. The period was extended by a further six months to 31 March 2021, and the tenor of the underlying facilities were extended by an additional six months. Furthermore, the repayment amount during the second extended period was reduced by 20%. This gave borrowers temporary relief from their liquidity pressures and bought them time to restructure financing arrangements in order to maintain compliance with their obligations under the facilities (repayment obligations in particular). The Bank of Maldives' loan moratorium, however, did not extend to overdraft facilities, credit cards and Islamic Murabaha products.

Developments to the Legal Framework

In the absence of a legal framework that regulates borrowing from foreign financial institu-

tions, foreign banks have always had an advantage when it comes to cross-border financing in Maldives. Foreign banks are able to offer financing to the domestic market without the need to procure approvals from the relevant governmental authorities. Unlike in some other jurisdictions, foreign banks do not need a physical presence in Maldives in order to provide their services. Furthermore, foreign banks will not become or be deemed to become resident or subject to taxation in Maldives solely by their provision of a facility with a party resident in Maldives.

In February 2020, the Ministry of Economic Development released a new foreign direct investment policy that creates an express provision for foreign banking and financial service providers (except insurance and pension funding providers) to incorporate foreign investment companies in Maldives that can be wholly owned by foreign shareholders. Prior to this, foreign investment applications were reviewed on a case-by-case basis, with no express provision in the law, which resulted in procedural uncertainty in terms of both the timeline for approval and the eligibility requirements. This change was brought in to incentivise foreign banks to set up shop in Maldives and to open their doors for businesses in Maldives.

With the enactment of the Maldives Income Tax Act in 2020, residential borrowers who are party to facility arrangements with foreign lenders are required to withhold 10% from any payment (inclusive of interest, fees or other amounts, and exclusive of the principal amount) made to a bank or a non-banking financial institution that is not approved by the Commissioner General of the Maldives Inland Revenue Authority (MIRA). Any bank that has been granted a banking licence by the central bank of the country of operation is automatically approved by the Commissioner General of MIRA; most foreign banks and/or financial institutions will fall under

this broad criterion. Under the new income tax regime, local banks that are licensed under the Maldives Banking Act (2010) are also charged with income tax at the rate of 25% of taxable income.

Separately, pursuant to the Public Health Emergency Act enacted in 2020, an express provision was created for moratoriums on the enforcement against defaulting mortgages created over residential property. Accordingly, during the state of public health emergency declared in Maldives (which is still in place since its declaration on 12 March 2020) and for 60 days thereafter, foreclosures on mortgage over residential property have been halted and mortgagees are not allowed to take any steps towards enforcement despite defaults. Therefore, at present, where a mortgage has been created in favour of a local or foreign bank, the respective bank will not be able to enforce their rights under a mortgage created over residential property. Other than this, there have been no significant legal or regulatory developments that would affect the rights of a foreign bank to exercise their rights of enforcement in the event of default by a local borrower.

The Response of Foreign Lenders

Whilst lawyers in several jurisdictions argued the possibility of invoking COVID-19 as a force majeure event that may excuse borrowers from non-performance of their financial covenants, this was not a loud discussion in Maldives. A market consensus had been reached that lenders should not be taking aggressive measures to enforce borrowers' performance of their financial obligations in light of a pandemic and the continued macro-economic impact thereof on Maldives and the rest of the world.

This has been apparent over the past year in financing arrangements entered into by local borrowers with foreign lenders, with lenders generally adopting an amicable approach.

Lenders were willing to negotiate and agree on payment deferrals, waivers and extensions of maturity dates as necessary. This approach was preferred over termination of the facility arrangement or enforcement of their rights to any securities under the facility. Amendments to payment deferrals, waivers and extensions are not required to be filed or registered with any authority in Maldives generally (unless there is an enhancement of the facility amount). Therefore, these were measures that could be implemented entirely through a renegotiation between a lender and borrower, and thereby offered a relatively expeditious and practical solution to many lenders and borrowers.

A plethora of restructuring and refinancing transactions occurred in Maldives in 2020, especially in relation to financing for the development of tourist establishments and infrastructure projects. Businesses in the tourism and construction industry approached foreign lenders to refinance their existing loans to meet their capital working requirements to keep their businesses afloat and this was generally open for discussion, with several deals making it across the finish line.

Conclusion

The economy has slightly expanded in 2021 following the drastic shrinking in 2020. This upward trend is expected to continue as lockdown measures slowly ease and tourist arrivals increase. Bullish investors are now taking an active interest in sweeping up distressed assets (such as operational tourist resorts and islands leased out for tourism purposes, which are ongoing development and construction), and there has been a positive reaction in the tourism market to acquisitions and project financing transactions working in parallel following the enactment of the Tenth Amendment to the Maldives Tourism Act in December 2020. The amendment opened up the possibility for parties (both local and foreign)

MALDIVES TRENDS AND DEVELOPMENTS

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to acquire long-term leases over private islands and villas or rooms under a strata title scheme.

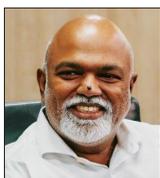
Economic activity has not yet returned to pre-pandemic levels but there is an increase in activity, with investors with a long-term view taking advantage of the low prices of distressed properties presently in the market. Negotiations for financing arrangements that had been interrupted due to the pandemic are also steadily picking back up. Maldives' economy is therefore expect-

ed to make a slow but steady recovery. The time such recovery would take to reach pre-pandemic levels is difficult to ascertain, given the present uncertainty caused by the variant strains of the COVID-19 virus. However, with vaccination of the local population now above 53% and with restrictions easing as the population adjusts to the new normal, it is only a matter of time before economic activity, asset valuations and business operations return to pre-pandemic levels.

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