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Investing In... 2022

Maldives: Law & Practice

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Maldives: Trends & Developments

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Law and Practice

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1. LEGAL SYSTEM AND REGULATORY FRAMEWORK

1.1 Legal System

Maldives was a British protectorate from 1887 to 1965. Unlike her many colonies, Maldives did not inherit a legal system from the British. Throughout the period in which Maldives was a British protectorate, Maldives had a self-governing sultanate, and a parliament of sorts – whose name translates to “Peoples’ Majlis” – whose ambit mostly concerned legislation. Maldives also had an independent judicial function in a manner commensurate to the society’s needs which was responsible for enforcing largely unwritten customary laws.

Through the 1950s and 1960s, the ruling class of Maldives went abroad to study, largely at British institutions, and returned to Maldives with ideas of modern statehood. This led to a period of change where Maldives started adopting modern forms of governance which culminated in the abolition of the sultanate and the establishment of a Republican system with a revised Constitution. This revised Constitution paved the way for a strong executive presidency in which the president exerted control over state administration, including the parliament and judiciary.

Following civil unrest due to the perceived increasing autocracy of the presidential system, Maldives started a difficult process of establishing a multiparty democracy for the first time and adopted a new Constitution in 2008. The new Constitution established a fully elected parliament and defined the sources of law. It also established new institutional and legal framework to restore the independence of the judiciary, and for the first time established a Supreme Court replacing the President as the highest authority to administer justice.

The new Constitution subscribed to a principle of a clear separation between the three branches of the state (the executive, legislature and the judiciary) and introduced the Judicial Service Commission as an independent constitutional body responsible for important decisions regarding the judiciary. These decisions include making recommendations regarding the appointment and removal of judges, power to investigate complaints about judges, and taking disciplinary action against judges such as recommendations for their dismissal; these decisions are finally determined by the parliament.

The new Constitution sets up a three-level court system in the Maldives. Each court is bound by the rulings of the courts above it. The Supreme Court and the High Court are the higher courts, and the courts below the High Court are the subordinate courts. The jurisdictions of the courts are defined both in the Constitution and in the Judicature Act 2010 (Law No 22/2010).

There are approximately 201 subordinate courts in the country. Of these, five are located in Male’ (the capital city), and one magistrate court is located in each inhabited island of the country. In addition to the above courts, there are quasi-judicial bodies created by specific legislation with specific jurisdiction, such as the Employment Tribunal and Tax Appeal Tribunal.

The Maldives legal system has evolved over the years and has characteristics of common law (such as stare decisis), civil law (such as codified laws) and Shari’a (in respect of family law and inheritance).

1.2 Regulatory Framework for Foreign Direct Investment (FDI)

Maldives is a unitary state, and all FDIs require government approval.

FDI in Maldives is regulated under the Foreign Investment Act (Law No 25/79) and the Foreign Direct Investment Policy (2020) (the “FDI Policy”). The Ministry of Economic Development has the mandate to approve and regulate FDI.

The FDI Policy defines “foreign investors” as:

- foreign nationals;
- foreign companies and partnerships either:
 - (a) owned 100% by foreigners; or
 - (b) joint ventures having a stake by both Maldivians and foreigners;
- partnerships and companies with foreign shareholders registered in the Maldives;
- companies re-registered in the Maldives; and
- anyone that submits a foreign investment proposal.

The two FDI approval routes are the following.

- Automatic route – guaranteed approval for applications that meet the shareholding percentage, investment requirement or investment threshold in the first five years as stated in the FDI Policy. For instance, automatic approval is granted to businesses in the tourism sector to operate tourist resorts which allow a 100% foreign shareholding and a negotiable five-year investment value.
- Government discretionary route – which refers to the approval process for applications in respect of which an automatic approval may not be guaranteed due to certain sensitivities in the sector, industry or proposed investment, and approval of stakeholder agencies of the government may be obtained to grant FDI approval. For instance, where the FDI is in relation to obtaining approval to conduct business in the education sector, sea and air transport services and specialised construction activities to name a few.

2. ECONOMIC/POLITICAL/ BUSINESS CLIMATE

2.1 Outlook and FDI Developments

The Maldives government has maintained its policy of encouraging and promoting FDI. The Ministry of Economic Development did not implement any significant changes to the FDI Policy, and no such changes are expected in the short term. The foreign investment market in Maldives showed resilience despite the pandemic and has increased over the last year, especially in the tourism sector.

3. MERGERS AND ACQUISITIONS

3.1 Transaction Structures

At present, the most common foreign investment in Maldives is in tourism-related assets and businesses. Tourism is by far the most lucrative industry in Maldives, which provides a pay-back period which continues to be very competitive compared to any industry anywhere in the world. The local legal framework and court system largely protects foreign investment in this sector. As noted at **1.2 Regulatory Framework for Foreign Direct Investment (FDI)**, investment in this sector can be 100% foreign owned and there is no restriction on repatriation of profits. There continue to be flexible labour market policies, which allow investors access to the best talent across the world for their needs.

Maldives commonly has a one-island-one-resort practice which makes the product unique both for investors and for tourists. Legal ownership of islands is vested in the government. The government places these islands on long-term leases to investors.

Investors in resorts often prefer to acquire leasehold rights over an asset rather than buying an

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entity. This is so that the investor may limit exposure to existing and contingent liabilities, particularly because the Ministry of Tourism novates leasehold agreements, which provides a clear satisfaction to the buyer that it is purchasing an asset to which the seller has guaranteed title and is not subject to any surprise undisclosed liabilities.

Investors in Maldives are largely interested in an asset and not necessarily interested in the underlying entity operating the asset. Nevertheless, investors do sometimes opt for a share purchase in exceptional circumstances where the investor is looking to start operations quickly.

There is no statute of limitations in Maldives for civil claims in general and acquiring assets comes with all accrued rights and claims in rem. This risk is mitigated by way of representations, warranties and indemnities, and investors have to a large extent preferred a “clean” asset sale structure.

In share purchases (irrespective of whether the sale/purchase occurs offshore) tax law requires the seller to make an upfront declaration and effect payment of capital gains tax. The buyer is required to withhold a certain percentage of the share price where the seller is based offshore. This has in practice resulted in investors’ increased preference for asset purchases.

3.2 Regulation of Domestic M&A Transactions

There are no regimes applicable to domestic M&A transactions that a foreign investor would need to consider.

Once an investor has obtained FDI approval, they can engage in the approved sector (such as acquire additional assets) as freely as any domestic party. The sole difference arises where a corporate foreign investor looks to introduce

a new foreign shareholder, whose appointment will be subject to the FDI approval process set out at **1.2 Regulatory Framework for Foreign Direct Investment (FDI)**.

4. CORPORATE GOVERNANCE AND DISCLOSURE/REPORTING

4.1 Corporate Governance Framework

The Companies Act and regulations pursuant to the Act provides a basic legal framework for corporate governance in Maldives. Public listed companies are subject to the Corporate Governance Code (the “CG Code”) published by the Capital Market Development Authority (CMDA). The CG Code has mandatory provisions and recommendations. Further, Maldives Monetary Authority regulates banks and financial institutions. A company (private or public) may provide for the internal governance rules in its memorandum and articles of association.

The most common type of corporate entity is a limited liability company.

Foreign investors have the choice of incorporating a new entity in Maldives or choosing to re-register an existing entity incorporated in a country other than Maldives as a “foreign entity registered to do business in Maldives”. The latter process is called “re-registration”.

Re-registered foreign entities are non-resident for certain tax purposes and re-registration is less tax efficient. There are no other significant differences between a local entity and a re-registered foreign entity. As a result of the tax implications, fewer investors are choosing to re-register foreign entities.

4.2 Relationship between Companies and Minority Investors

There are no special minority investor protections in law for both private or public companies. The options available for minority investors are to negotiate minority shareholder provisions during the acquisition stage and to have protections built into a shareholders' agreement or a company's constitutive documents.

4.3 Disclosure and Reporting Obligations

If disposal is made by way of sale of shares, provided that the purchaser is a foreign entity or foreign national, then the seller and the purchaser must follow the process required to get foreign investment approval for the transfer of the shares which must be obtained prior to the disposal.

Investments in certain industries such as the tourism industry, where shares are being disposed locally, have additional disclosure and approvals (at the Ministry of Tourism) which form part of the foreign investment approval process stated above.

For disclosure and reporting obligations in relation to capital gains when disposing/acquiring of shares or an entity based abroad, please refer to **9. Tax**.

5. CAPITAL MARKETS

5.1 Capital Markets

The Maldives Stock Exchange was established and was initially operated by the CMDA for two years, under the name Interim Securities Trading Facility. The Maldives Stock Exchange Company Pvt Ltd (MSE) obtained a licence to operate the Maldives Stock Exchange from CMDA in January 2008.

MSE was incorporated primarily to facilitate businesses raising capital through issuance of new securities, and for the purpose of establishing a market mechanism for trading and settling securities in Maldives. MSE also establishes a framework to regulate, streamline and monitor securities trading and traders.

Maldives Securities Depository – a subsidiary of MSE – carries out clearing, settlement and depository services.

CMDA is the formal independent statutory body responsible for developing and regulating securities and capital markets of Maldives.

There are currently ten companies listed in the MSE. It therefore comes as no surprise that equity financing and debt finance via onshore or offshore banks or financial institutions is the primary source of funding for business activities in Maldives.

5.2 Securities Regulation

Maldives Securities Act (“the Act”) is the primary legislation that governs the securities trading and capital market activities. Licences to traders/dealers, dealer’s representatives and investment advisors are issued pursuant to the Act in relation to regulated securities trading and other regulated capital market activities. The Act also sets out the duties of licence holders, which are further elaborated in subordinate legislation. Separate regulations under the Act also control:

- issuance of securities;
- issuance of sukuk;
- issuance of sukuks and securities (continuing disclosure obligations of issuers);
- stock exchange company licensing;
- licensing and conduct of central depository;
- dealers and dealers’ representative licensing;
- conduct of securities business;

- securities institutions on prevention of money laundering and financing of terrorism;
- securities (compensation fund);
- Islamic capital markets;
- capital market Shari'a advisory council;
- Shari'a advisers; and
- Shari'a screening of equity services.

CMDA as the regulator imposes penalties and revokes trading licences if traders engage in prohibited activities (such as entering into unauthorised transactions or making improper disclosures) or if companies and/or traders commit securities fraud.

Unless a foreign investor is directly involved in regulated trading activities, none of the specific regulations listed above would be applicable as a result of being a foreign investor.

5.3 Investment Funds

There are no specific rules or regulations from a foreign investment approval perspective in Maldives for foreign investors structured as investment funds. The investors would not necessarily have to comply with additional or other requirements or approvals due to the nature of their structure.

The foreign investment regulatory framework is based more on the perspective of approving the business activity itself rather than regulating the way in which the investor is organised or structured.

6. ANTITRUST / COMPETITION

6.1 Applicable Regulator and Process Overview

There are no merger control regimes in Maldives.

6.2 Criteria for Review

This question is not applicable as Maldives does not have a merger control regime.

6.3 Remedies and Commitments

This question is not applicable as there is no merger control regime in Maldives.

6.4 Enforcement

Please refer to the response provided in **7.4 Enforcement**.

7. FOREIGN INVESTMENT / NATIONAL SECURITY

7.1 Applicable Regulator and Process Overview

In its FDI Policy, the Ministry of Economic Development published a list of industries and activities in which 100% foreign ownership is allowed. There are other activities and industries in which a foreign investor may be involved through a joint venture with a local. The foreign ownership stakes in such industries and activities are subject to different caps.

The list of activities that a foreign investor can carry out in the Maldives (either through 100% ownership or partial ownership) is an exhaustive list subject to periodic policy review. This list is published after the government considers a general national security. A detailed national security review is therefore not part of the foreign investment approval process specifically since foreign investors can only apply for approval in selected business areas.

All FDI are required to enter into a Foreign Investment Agreement with the government prior to commencing their investment activities. This agreement contains non-negotiable provisions which give the government a right to suspend

business licences where national security issues arise.

7.2 Criteria for Review

Please refer to **7.4 Enforcement**.

7.3 Remedies and Commitments

Please refer to **7.4 Enforcement**.

7.4 Enforcement

The government may, with or without notice, suspend an investment before expiry of the agreement, if a foreign investor engages in an activity detrimental to the national security of the country or where a temporary closure is necessary in the government's opinion in the interests of national security.

A foreign investor is owed fair compensation from the government and will be allowed to resume the investment following a temporary closure if it cannot be determined within 60 days of such closure that a foreign investor had in fact attempted to or engaged in an activity detrimental to Maldives' national security interest.

If, however, the foreign investor has breached the applicable laws, and if the breach persists following a notice of compliance, the government can, at its sole discretion, terminate the foreign investment agreement and terminate all agreements relating to the investment.

If such action is taken by the government, investors have access to redress through the relevant dispute resolution mechanism negotiated and agreed between the parties in the foreign investment agreement. In high value infrastructure investments, the usual choice is international arbitration, while foreign investment agreements for tourist operations are often subject to dispute resolution through local courts.

8. OTHER REVIEW / APPROVALS

8.1 Other Regimes

The regime applicable in effecting FDIs in Maldives is not subject to laws other than the Foreign Investment Act and the FDI Policy (discussed in **1.2 Regulatory Framework for Foreign Direct Investment (FDI)**).

Foreign investors are otherwise subject to the laws and regulations of Maldives to the same manner and to the same extent as any local business.

9. TAX

9.1 Taxation of Business Activities

From 2011-19, taxes on business income were imposed under the Business Profit Tax Act (BPT) and goods and service taxes (GST) on qualifying businesses under the Goods and Service Tax Act.

The BPT was replaced in 2019 with the Income Tax Act (ITA), which took effect as of 1 January 2020. The ITA extended the tax base to personal income. It also introduced taxation for capital gains and broadened the incomes which are within the scope of non-resident withholding taxes (NWT).

The tax system in the ITA is designed as a worldwide tax system. A taxpayer's tax base is therefore calculated based on their residency status.

A resident is taxed on their worldwide income and a tax credit is provided if any of the income has been subject to similar taxes in any other jurisdiction. A non-resident is taxed on income from the Maldives only. The tax rate applicable for companies, partnerships and trusts is 15% for any profit exceeding MVR500,000 (USD32,425).

A temporary resident is subject to income tax on income sourced in the Maldives. The ITA defines a “temporary resident” as those individuals who are permitted to stay in the Maldives under the Maldives Immigration Act (Law No 1/2007) where such person is not married to a Maldivian. The applicable tax rates are on a progressive basis.

A flat tax rate of 25% is applicable on all commercial banks operating in the Maldives.

The ITA introduces taxes on remuneration, which are collected using a withholding tax mechanism – EWT or “Employee Withholding Tax”. Taxes on remuneration were effective from 1 April 2020 and are paid by the employer to the Maldives Inland Revenue Authority (MIRA) after deduction of the relevant taxes from the employee’s monthly remuneration. The employee is required to submit a final tax return on 30 June of the following tax year, where the accumulation of the monthly taxes withheld varies with the final tax payable on the yearly income.

Capital gains arise on disposal of any asset or interest in an entity and if such assets or interests are not allowed a capital allowance. The term “entity” includes any legal entity including partnerships and trusts. The capital gains are usually included as part of taxable income in the annual submission. However, in order to protect the tax base and ensure taxes are collected in Maldives, a withholding tax mechanism was introduced via an amendment to the ITA on 20 July 2021, where the seller of the asset or interest is a non-resident. These are referred to as “Withholding Taxes on Offshore Indirect Transfers”. In brief, the buyer is required to withhold 10% of the purchase price and settle this amount to MIRA via a special submission and the seller is required to submit a special circumstances final return and adjust for any excess taxes paid on this transaction.

As for NWT, the incomes subject to NWT is broadened from 1 January 2020 by including dividends, interest (if paid to a non-bank), insurance premiums and royalties. NWT is subjected on any payment if paid or payable to a non-resident by a business operating in the Maldives on specified transactions. A flat rate of 10% applies to the gross payment sum. The payee is required to settle these with MIRA on a monthly basis. A reduced rate of 5% applies to “non-resident contracts” which are exercised in the Maldives by a non-resident.

In relation to GST, a business whose annual revenue is more than MVR1 million (USD64,850) must register for GST, with voluntary registration permitted for all other businesses. However, a business involved in the tourism sector is required to register for GST irrespective of the revenue threshold.

GST is mainly divided into two sectors: (i) tourism goods and service sector, and (ii) general goods and service sector. All businesses involved in the tourism business are required to register with MIRA under the tourism goods and service tax sector where the standard rate is 12% on all goods and services unless the goods and services are zero-rated and therefore exempt from GST. All other businesses are required to register under the general goods and service sector, where the GST rate for standard goods and services is 6% unless the goods and services are zero-rated and therefore exempt from GST.

9.2 Withholding Taxes on Dividends, Interest, Etc

From 1 January 2020, a flat rate of 10% is applicable to any dividend, interest, royalty, fees for technical services or any other transaction liable for NWT if it is paid or payable to a non-resident. A reduced rate of 5% is applied on all “non-resident contracts” exercised in the Maldives by a non-resident.

A business operating in Maldives via a foreign investment agreement entered into with the government of Maldives is in normal circumstances a non-resident unless it is incorporated in Maldives or has its central management and control in the territories of Maldives.

Currently, Maldives has a bilateral treaty with United Arab Emirates (UAE). Under this treaty a citizen or a resident of either state is eligible for treaty benefits. Where the non-resident is a citizen or resident of UAE and such entity does not carry out any business in Maldives via a permanent establishment, Maldives cannot impose taxes on its income. However, in relation to royalty payments, Maldives can impose withholding tax at a reduced rate of 7% even if the non-resident is eligible for treaty benefit. The payer is required to submit proof of residency along with the withholding tax return when claiming a treaty benefit.

The said double taxation avoidance agreement does not have a specific article on prevention of treaty abuse. In November 2017, Maldives became a member of the Inclusive Framework on BEPs. As such, Maldives is in the process of enforcing minimum standards as required by the Inclusive Framework. It is hence expected that Maldives will commence negotiations on the treaty terms to align with Action 6 (Prevention of tax treaty abuse) of the Inclusive Framework which mandates an inclusion of an anti-treaty shopping article in the treaty.

9.3 Tax Mitigation Strategies

The most common tax planning strategy currently being used in Maldives is the Bilateral Investment Treaty between Maldives and the UAE.

There is a narrow but possible window for tax planning by way of intercompany debt. This is restricted by way of enforcing thin capitalisa-

tion on borrowings which is capped against the Tax-EBITDA of the tax base of Maldives. Interest incurred on a borrowing from a bank licensed by the Maldives Monetary Authority is excluded from the thin capitalisation cap.

9.4 Tax on Sale or Other Dispositions of FDI

Capital gains arise on disposal of any movable, immovable, intellectual or intangible property which is not eligible for capital allowance.

Taxable capital gains arise on direct or indirect disposals of either immovable property or interests in immovable property where the property is located in Maldives.

The ITA allows imposition of capital gains arising on disposal of shares or interests in an entity which owns (i) immovable property, (ii) rights to an immovable property, or (iii) where more than 50% of the value of the entity is directly or indirectly derived through an immovable property located in Maldives via a withholding tax mechanism (withholding tax on offshore indirect transfers). The term “entity” includes companies, partnerships and trusts.

9.5 Anti-evasion Regimes

Maldives has incorporated a general transfer pricing requirement since 2011. However, in the year 2020, Maldives introduced its first regulation on transfer price documentation (TPD) which is benchmarked against the OECD’s transfer price guidelines. All taxpayers are required to maintain TPD from the year 2020 onwards, with minimum exemptions on businesses classified as small and medium enterprises under the Small and Medium Enterprises Act (Law No 6/2013) in Maldives and on exempt transactions. This requirement is mandatory on all entities including FDIs operating in the Maldives.

In 2021, Maldives introduced the Country-by-Country Reporting (CbCR) requirements as part of implementing the minimum standards set by the Inclusive Framework on BEPs. The requirement is similar to that recommended by the OECD in Action 13, where each entity whose consolidated global revenue exceeds EUR750,000 is required to maintain a Master File, Local File and the CbCR report as part of their TPD.

Further to this, on August 2021, Maldives signed the Convention on Mutual Administrative Assistance in Tax Matters allowing MIRA to exchange information between member countries to address global tax evasion and co-operate on transactions between multinational enterprises.

10. EMPLOYMENT AND LABOUR

10.1 Employment and Labour Framework

The employment relationship is governed by the Employment Act and the individual employment agreement. The Employment Act provides the minimum implied rights of an employee. The Employment Act is applicable to all employees, regardless of the origin of employment, size of the employer or the type of business organisation.

In addition to the Employment Act, the following statutes and regulations are relevant:

- General Regulation on Employment;
- Minimum Wage Order;
- Service Charge Regulation;
- Expatriate Employment Regulation;
- Employment Agencies Regulation;
- Resolution of Disputes between Employers and Employees Regulation;

- Maldives Pension Act and regulations made under the Act; and
- Income Tax Act and regulations made under the Act.

In general, Maldives has a flexible labour market policy that allows recruitment of foreign talent, except in a few protected professions. However, the employment of Maldivian nationals is generally encouraged and any preference to Maldivians over foreigners for the purpose of employment is not deemed as discrimination pursuant to the Employment Act.

The Constitution of Maldives under Article 30(b) (1) allows for formation of trade unions and participating in their activities.

However, the Employment Act is silent on the establishment and functioning of trade unions. Workers associations and employer associations are currently registered under the Associations Act, although at present these associations do not have legal right to engage in collective bargaining.

10.2 Employee Compensation

Employees working in Maldives are compensated by way of salary, allowances and benefits, such as service charge, food and accommodation in the tourism industry. Employees' remuneration is a matter to be agreed in the individual employment agreement and is subject to the minimum statutory provisions.

The most significant recent development with respect to compensation in Maldives was the introduction of minimum wage for Maldivian employees, which became effective on 1 January 2022. The minimum wage is defined as the basic salary plus the fixed allowances. It does not include variable income such as service charge, over time, pay for working on a public holiday, bonus pay, etc. Neither does it include

benefits provided or benefits in kind such as accommodation, food, etc.

The minimum wage differs depending on the classification of the employer, which may range from small enterprise to large enterprise. The hourly rate for minimum wage ranges between USD1.40–USD2.49 for the private sector, depending on the classification of the employer. There is a moratorium until 22 September 2022 for the implementation of the minimum wage to expatriate employees.

The Maldives Pension Act mandates all employers to enrol all Maldivian employees in the Maldives Retirement Pension Scheme (MRPS). Employers must deduct 7% of the employee's basic salary, and the employer must pay a matching 7% (total 14% of the basic salary) to the Individual Retirement Saving Account of the employee.

The MRPS is not mandatory for expatriates. Employers have the discretion to enrol expatriate employees and contribute to the pension scheme.

Significant statutory benefits relating to compensation include the payment of service charge (in tourism sector), and a Ramadan allowance (for Maldivian employees).

10.3 Employment Protection

The Employment Act provides minimum guaranteed rights and protection in an employment relationship including the right not to be unfairly treated or unfairly dismissed.

Pursuant to Section 17(b) of the Employment Act, in case of an acquisition, lease or transfer of a business as a going concern, the employment agreement associated with the business is deemed as transferred to the transferee of the business. As such, there is a mandatory right

to transfer employment with an acquired business. The rights and duties of the employees and employers arising out of the employment are also transferred.

In addition, the Employment Act deems that any transactions between the transferor and the employee prior to the transfer of employment shall be deemed to have occurred as between the transferee and the employee whereby any liabilities in relation to the employment would also be deemed as transferred.

The Employment Act provides that the period of employment with the previous employer (transferor) prior to the sale or transfer is deemed as being carried forward to the new employer (transferee) upon the transfer of business to ensure that the continuous employment is not affected and the transfer is not deemed as a discontinuation in employment. This is to ensure that the employment benefits associated with the duration of continued employment (for example, notice periods that depend on the duration of service) is not negatively impacted by the transfer of business.

11. INTELLECTUAL PROPERTY AND DATA PROTECTION

11.1 Intellectual Property Considerations for Approval of FDI

Intellectual property is not a component considered in screening FDIs in Maldives. This is particularly due to lack of detailed legislation enacted in Maldives with respect to intellectual property rights (except for legislation covering copyrights and related rights).

11.2 Intellectual Property Protections

Legislation on intellectual property protections is made available in Maldives only to the extent

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of copyright and related rights by virtue of the Copyrights and Related Rights Act and Regulation on Copyrights and Related Rights Registration. These statutes are not enforced.

There are no laws enacted to cover trademarks in Maldives; however, the Registrar of Companies does register trademarks and maintains a record of the trademark registrations under a regulation enacted by the Ministry of Economic Development. Once a trademark is registered, a third party cannot register the same or similar trademark which might cause consumer confusion with existing registered trademarks.

It is untested whether trademarks registered by the Registrar of Companies could be challenged in courts. The thin statutory protection of intellectual property rights and the lack of enforcement thereof makes the protection and enforcement regime of such rights in Maldives very weak.

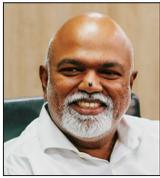
11.3 Data Protection and Privacy Considerations

There is no specific legislation on data protection/privacy in Maldives.

S&A Lawyers LLP is renowned for offering exceptional legal services related to foreign investments. The firm is skilled at catering to the needs of clients to easily guide them through the requisite regulations to enable them to become established in Maldives. The firm has been involved in the negotiation of several multilateral and bilateral foreign investment agreements, including advising several incoming investors in

the real estate and tourism sectors. The experienced team also helps clients to manage their risks while investing and maximising the opportunities that the government often provides to foreign investors. The firm has also assisted foreign investors in various practice areas such as banking, tourism, real estate, construction and infrastructure development, telecommunications and aviation.

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Trends and Developments

Contributed by:

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Current Economic Overview

Economic activity in Maldives continues to recover from the turbulent effects of the COVID-19 pandemic. Maldives witnessed a drastic reduction in its foreign direct investment inflow with closure of the country's borders and government offices for a significant time in 2020. The government then implemented legal and regulatory changes which incentivised foreign investment following the initial pandemic shocks. Foreign direct investment in Maldives therefore steadily picked up in 2021. Market activity has not, however, gone back to pre-pandemic levels, although the results in 2021 indicate that the outlook for Maldives in 2022 is promising, with continued opportunities for investors. Interestingly, investors were seen to not take advantage of the pandemic to snap up distressed assets at discounted prices, and more activity was observed in premium deals with assets and entities that were better able to weather the effects of the pandemic.

Amendments to the Maldives Tourism Act

The Tourism Act's Tenth amendment (the "Tenth Amendment") came into force on 27 December 2020 (the "Effective Date") as part of the government's incentivisation push and market stimulation. The Tenth Amendment also sought to increase additional revenues for the government. Among other things, the Tenth Amendment introduced a legal framework to enable:

- state-run tourism real estate projects;
- integrated tourist resorts (opening up the potential to create tourist facilities contrasting with the locally established one-island-one-resort concept);

- long-term leasing of rooms and villas in tourist resorts with strata title;
- leasing of private islands; and
- revision of existing provisions on payment of lease rent.

Tourism leases to cross-subsidies

Pursuant to the Tenth Amendment, a long-term lease over an island, land, or lagoon can be awarded to a party as a cross-subsidy. These cross-subsidies are provided in relation to infrastructure, housing and other projects which are of importance to Maldives. The projects need to advance economic and social benefits to Maldives in order to qualify for this scheme.

Cross-subsidy leases are capped at an initial term of 50 years. The developer may apply for an extension of a further 49 years – extending the lease term to 99 years – once the development of the project has been completed. Lease rents payable in relation to the cross-subsidy tourism asset can be offset against investment sums made in relation to the development project.

This measure aims to address shortages in public finance in the short term. It presents an opportunity for investors in public infrastructure and construction to expand to hospitality real-estate development through the use of their existing expertise. So far, no projects have come to fruition through this route but discussions between the state and private investors looking to take on such projects on a wide scale are ongoing.

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Transfer of shares in tourism joint venture companies

The government has been given discretion under the Tenth Amendment to sell its shares to existing shareholders in joint venture companies which, as at the Effective Date, had previously been formed between the government and private parties to acquire a lease over an area for the development of a tourist resort. The consideration for each percentage of government shares is calculated at the rate of USD5 per square metre of land area.

Continuing with the trend to address short-term public finance shortages, this measure presents investors with an opportunity to acquire 100% of the shares in entities which hold leasehold rights to a tourist resort development. In addition to the obvious corporate governance benefits, such as less stakeholder management in operations, this measure makes the sale of such entities or their underlying assets easier and more profitable for the foreign investor. It is also designed to stimulate more market activity. In this regard, in some recent market activity, investors have chosen to buy out the government's shareholding in a joint venture.

Carving out separate islands to form multiple head leases

When a lease is granted by the government to an investor for the purposes of developing a tourist establishment, a lease agreement is entered between the government and the lessee. The standard terms of this "head lease agreement" will allow a lessee to further sub-lease or assign management rights to a third party. Prior to the Tenth Amendment, the law did not allow separate components in a lease agreement to be carved out and leased to a third party under a separate head lease agreement with the government.

A new provision in the Tenth Amendment now allows the head lessee to carve out and sell separate leases over either one or more individual islands formed or reclaimed within the same lagoon. If any island leased prior to the enactment of the Tenth Amendment is within a lagoon containing multiple islands, the head lessee is now entitled to carve out the islands from the head lease as separate islands and sell or lease the rights over such islands to third parties, in accordance with the regulations enacted under the Tourism Act.

Between 2013 and 2017, the government invited investors to win, through public tender, head-lease rights over greenfield lagoons. The leases that were available at the time created one leasehold interest over the entire lagoon irrespective of the number of islands reclaimed on it. Prior to the pandemic, investors had invested in greenfield deals to reclaim islands in lagoons for resort development. While some reclamation efforts have now been completed, the pandemic's effects have stalled the majority of these projects. The new provision provides a way to stimulate these stalled efforts. There are ongoing deals in which investors are choosing to carve out the head lease and sell the un-reclaimed portion of the lagoon as a greenfield in order to obtain liquidity to finish partially completed projects.

Amendments to the provisions on tourism lease rent

Prior to the Tenth Amendment to the Tourist Act, lease rent for tourist resorts was fixed at USD8 per square metre (subject to certain caps) irrespective of the location of the island being leased. One of the fundamental changes under the Tenth Amendment is the reduction in the applicable rates for lease rent for certain atolls with effect from 1 January 2021, which now range from USD1–USD8 per square metre. For instance, where land area does not exceed

200,000 square metres, land rent is now payable as follows:

- USD2 per square metre per year (capped at USD250,000) – for land in Gnaviyani and Seenu Atolls;
- USD4 per square metre per year (capped at USD500,000) – for land in Haa Alif, Haa Dhaalu and Shaviyani Atolls;
- USD6 per square metre per year (capped at USD750,000) – for land in Thaa, Laamu, Gaafu Alifu and Gaafu Dhaalu Atolls; and
- USD8 per square metre per year (capped at USD1 million) – for land in Noonu, Raa, Baa, Lhaviyani, Kaafu, Alifu Alifu, Alifu Dhaalu, Vaavu, Meemu, Faafu and Dhaalu Atolls.

Integrated tourist resort developments

The Tenth Amendment also creates a legal framework for the development of integrated tourist resort projects where several resorts and/or hotels and/or guesthouses and/or yacht marinas and/or other tourism-related businesses are incorporated within a designated area (located on either a single island, on multiple islands or a part of an island) and leased out for the development of such a project.

Provision has also been created for a lessee to lease out separate components of the integrated tourist resort development to third parties for the development of resorts, hotels, guesthouses and other facilities, in accordance with the regulations enacted in the Tourism Act. The amendment provides for the conversion of an area leased for the development of a tourist resort prior to the Effective Date to an integrated tourist resort subject to the payment of a conversion fee of USD1 million.

Long-term sale of villas under the strata title scheme

Although the long-term sale of luxury villas has been possible for quite some time, the Tenth

Amendment also seeks to better regulate the sales of such villas under a “strata title scheme”. The concept of a “strata title”, as recognised in the Tourism Act, is not similar to strata title regimes that exist in other more developed jurisdictions, but the amendment to the Act is designed to give long-term buyers of luxury villas more protection and comfort through the strata scheme, in order to stimulate the market in Maldives. Whether the provisions of law will be effective to achieve this purpose remains to be seen.

Development and lease of private islands

The Tenth Amendment introduces a regulatory framework for the lease and development of private islands for tourism-related purposes. For the purposes of the Tourism Act, private islands are defined as islands which are reclaimed and developed as a tourist island within a designated lagoon and leased to an investor under a long-term lease by the designated developer of the island (being 100% state-owned entities).

These private island leases are priced at USD1 per square metre and are intended to be used by investors more for private purposes. Since the law came into force, however, no such private island leases have been granted.

Unsolicited Proposals

In January 2019, the Unsolicited Proposals Policy (the “USP Policy”) was enacted by the Maldives’ government under Section 10.27 (b) of the Public Finance Regulations (Regulation No 2017/R-20) to incentivise and harness private-sector participation in the delivery of strategic projects which attain the public policy objectives of the government. The USP Policy allows the president to determine which parties may carry out projects (funded either through a foreign grant or concessional loan assistance) to help achieve the pledges of the government

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and effectively contribute to the development agenda of the government.

The policy provides the procedures for the submission of unsolicited proposals from the private sector, and the requirements to assess the financial and technical capacity of these applicants. Investors are therefore encouraged to submit proposals that either identify strategic projects that the government has not identified but which conform with the developmental agenda of the government, or proposals for innovative and affordable solutions to the needs of the government as identified in its strategic plans. The policy expressly prohibits any proposals for a project which is already under procurement, has been developed for procurement by the government, or has been publicly announced by the government.

The Ministry of Economic Development bears the responsibility of receiving the proposals and co-ordinating the review process of these proposals, including appointment of the Unsolicited Proposals Steering Committee, consisting

of representatives from the Ministry of Finance; Ministry of Housing, Planning and Infrastructure; Ministry of Environment; and the Ministry of Economic Development. The final decision on the unsolicited proposals will be made by the cabinet of the Economic Council of the government. The use of the USP Policy by foreign investors has recently gained momentum with more interested parties submitting proposals to actively partake in government projects.

Conclusion

Although none of the amendments to the Tourism Act have been ground breaking, except for the changes to the rates of lease rents, the intention behind the Tenth Amendment has been to expand the opportunities available for investors in the Maldivian tourism market.

Investor appetite in the tourism industry in Maldives appears to be strong (and was even during the pandemic) and it remains to be seen how these amendments will affect investor appetite going forward.

S&A Lawyers LLP is renowned for offering exceptional legal services related to foreign investments. The firm is skilled at catering to the needs of clients to easily guide them through the requisite regulations to enable them to become established in Maldives. The firm has been involved in the negotiation of several multilateral and bilateral foreign investment agreements, including advising several incoming investors in

the real estate and tourism sectors. The experienced team also helps clients to manage their risks while investing and maximising the opportunities that the government often provides to foreign investors. The firm has also assisted foreign investors in various practice areas such as banking, tourism, real estate, construction and infrastructure development, telecommunications and aviation.

AUTHORS



Mohamed Shahdy Anwar is the managing partner and heads the corporate and commercial team at S&A Lawyers LLP. In his legal practice, he advises various corporations and entities on a

wide variety of corporate and commercial issues. His experience ranges from advising investors on tourism and infrastructure projects to representing major international banks and financial institutions on lending for projects in Maldives and abroad, and also in related litigation. Shahdy is highly regarded as a leading legal professional in the corporate and commercial field and has received many accolades and much recognition for his practice over the years.



Fathimath Lamaan plays a leading role in the corporate and commercial team at S&A Lawyers LLP. She has a wealth of experience in representing foreign real estate funds,

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