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TOURISM BULLETIN

PROPOSED AMENDMENTS TO THE TOURISM ACT

INTRODUCTION

A *Bill on Amendments to the Tourism Act* (the “**10th Amendment Bill**”) has been submitted to the Maldives Parliament on 15th November 2020, proposing several key amendments to Law No. 2/99 (the Tourism Act)

A copy of the 10th Amendment Bill (in Dhivehi language) is available on www.majlis.gov.mv.

This bulletin provides a brief overview of the salient provisions of the 10th Amendment Bill.

PART A: CHANGES TO LEASE RENT

- The 10th Amendment Bill proposes to amend the Lease Rent payable in connection **with islands and land leased for the development of tourism resorts, tourist hotels, yacht marinas and integrated tourism projects** by introducing the rent schedule stated below as *Schedule 1* of the Tourism Act.
- This is a significant matter proposed in the 10th Amendment Bill and follows the Government’s recent announcement to reduce tourism land rent for certain ‘far regions’ of the Maldives to ‘boost investments’¹.
- The revised tourism lease rent provisions are to be effective from **1 January 2021**.

ATOLL	LAND SIZE SMALLER THAN 200,000 SQM	LAND SIZE BETWEEN 200,001 AND 400,000 SQM	LAND SIZE BIGGER THAN 400,001 SQM
Gnavyani Seenu	Annual Rent of US\$ 2 per Square Meter up to US\$ 250,000	Annual Rent of US\$ 400,000	Annual Rent of US\$ 800,000
Haa Alif Haa Dhaalu	Annual Rent of US\$ 4 per Square Meter up to US\$ 500,000	Annual Rent of US\$ 750,000	Annual Rent of US\$ 1,000,000
Noonu Raa Baa Lhaviyani Kaafu Alifu Alifu Alifu Dhaalu Vaavu Meemu Faafu Dhaalu	Annual Rent of US\$ 8 per Square Meter up to US\$ 1,000,000	Annual Rent of US\$ 1,500,000	Annual Rent of US\$ 2,000,000
Shaviyani Thaa Laamu Gaafu Alifu Gaafu Dhaalu	Annual Rent of US\$ 6 per Square Meter up to US\$ 750,000	Annual Rent of US\$ 1,125,000	Annual Rent of US\$ 1,500,000

¹ <https://edition.mv/news/18029>

- The 10th Amendment Bill also proposes the following as lease rent payable in connection **land leased for tourism purposes in inhabited islands.**

ATOLL	LAND SIZE SMALLER THAN 200,000 SQM	LAND SIZE BETWEEN 200,001 AND 400,000 SQM	LAND SIZE BIGGER THAN 400,001 SQM
Gnavyani Seenu	Annual Rent of US\$ 1 per Square Meter up to US\$ 125,000	Annual Rent of US\$ 200,000	Annual Rent of US\$ 400,000
Haa Alif Haa Dhaalu Gnaviyani²	Annual Rent of US\$ 2 per Square Meter up to US\$ 250,000	Annual Rent of US\$ 375,000	Annual Rent of US\$ 500,000
Noonu Raa Baa Lhaviyani Kaafu Alifu Alifu Alifu Dhaalu Vaavu Meemu Faafu Dhaalu	Annual Rent of US\$ 4 per Square Meter up to US\$ 500,000	Annual Rent of US\$ 750,000	Annual Rent of US\$ 1,000,000
Shaviyani Thaa Laamu Gaafu Alifu Gaafu Dhaalu	Annual Rent of US\$ 3 per Square Meter up to US\$ 375,000	Annual Rent of US\$ 562,500	Annual Rent of US\$ 750,000

² This repetition appears to be a typing error in the 10th Amendment Bill.

PART B: LEASE TERM EXTENSION

- The 10th Amendment Bill once again provides opportunity for existing head-lessees who currently hold leases of a term of less than 50 years, to apply to extend their leases (up to a cumulative 50 years).
- The previous provisions of the Tourism Act (last amended under the 8th Amendment to the Tourism Act) pertaining to lease extension matters have been replaced with the following provisions:

Lease Extension Fees	<p>A head-lessee may apply to the Ministry of Tourism for an extension to their lease term, subject to the following:</p> <ul style="list-style-type: none">• Where the applicant undertakes to settle the lease extension fees within 2 years of enactment of the 10th Amendment to the Tourism Act, the lease extension fee shall be fixed at US\$ 100,000 per year of extension.• Where the applicant undertakes to settle the lease extension fees 2 years after the enactment of the 10th Amendment to the Tourism Act, the lease extension fee shall be fixed at US\$ 200,000 per year of extension.• The Ministry of Tourism is required to finalise the lease extension (by way of an addendum to the lease agreement) within 1 month of receiving the complete application from the head-lessee.
99-year Lease Extension	<p>We note that the 99-year lease extension fees are set to increase within 2 years of enactment of the 10th Amendment Bill:</p> <ul style="list-style-type: none">• Where a head-lessee applies to extend their head lease for a cumulative 99 years, and such application is submitted within the first 2 calendar years following the enactment of the 10th Amendment Bill, the lease extension fee shall be fixed at US\$ 5,000,000.• Where a head-lessee applies to extend their head lease for a cumulative 99 years, and such application is submitted after 2 calendar years have elapsed following the enactment of the 10th Amendment Bill, the lease extension fee shall be fixed at US\$ 10,000,000.

PART C: DETERMINATION OF LAND/ ISLANDS FOR TOURISM DEVELOPMENT

- One major proposed amendment to the Tourism Act is a proposal to empower island councils and city councils (established under the Decentralisation Act) to determine land under their purview for tourism development purposes.
- This is in line with the current administration’s electoral pledge to initiate effective decentralisation³.

Leasing of Lands by Island and City Councils	<ul style="list-style-type: none">• Island and city councils are allowed to determine areas within the island/ city for development of tourist hotels and guesthouses, in accordance with the development plan for that island/ council.• A lease may be awarded to a party (under the above provision) by way of public bidding according to pre-determined procedures established by the Government.• Leasing of land by island and city councils must be carried out in accordance with procedures determined by the Ministry of Tourism.
‘Splitting’ the Head Lease	<p>One other significant proposed amendment is the introduction of the legal framework for ‘splitting’ head leases for multiple islands within the same natural lagoon.</p> <p>This is of relevance to lessees developing large-scale projects involving multiple, separate properties under a single lagoon lease.</p> <ul style="list-style-type: none">• Where any islands leased at the time of enactment of the 10th Amendment Bill contain multiple islands in one lagoon, the head-lessee will be entitled to carve-out and create an independent head lease for each respective island and sell their rights over those islands to a third party in accordance with guidelines determined by the Ministry of Tourism.• The Ministry of Tourism is also required to introduce guidelines on the boundary determination, fees, and other procedures pertaining to carving-out islands from an existing lease.

³ <https://presidency.gov.mv/Press/Article/22833>

PART D: INTEGRATED TOURIST RESORT DEVELOPMENT

- The 10th Amendment Bill legislates for the development of integrated tourist resort development in the Maldives.
- The provisions of the 10th Amendment Bill create the legislative framework for development of separate individual resorts, hotels, guesthouses and facilities by various developers (as opposed to a single developer) on a single island or lagoon, such as that envisaged by Maldives Integrated Tourism Development Corporation (MITDC) on Baresdhoo Island.
- The 10th Amendment Bill also develops the legislative framework for major tourism development projects that incorporate development of various resorts, hotels, F&B outlets, and retail outlets, particularly under a single lagoon lease, such as the Crossroads lagoon development in Emboodhoo Lagoon, Maldives.
- A summary of the salient provisions of the 10th Amendment Bill relating to integrated tourist resort development, and some of our corresponding comments are stated below:

Definition of “integrated tourist resort”	An integrated tourist resort is defined as a tourist resort developed with more than one type of tourist resort, hotel, guesthouse, yacht marina or other form of tourism-related business within the island, lagoon, or land leased for the development of tourism business.
Lease of island, lagoon or land to develop an integrated tourist resort	An island, lagoon, or land can be leased for development of an integrated tourist resort to: <ul style="list-style-type: none"> • a 100% Government-owned entity (“SOE”), for tourism real estate development projects⁴; or • to any other party, in accordance with section 5 of the Tourism Act (i.e. in accordance with the standard provisions any island, land or lagoon may be leased to a party.
Right to lease plots of land or areas to third parties	<ul style="list-style-type: none"> • The lessee who has leasehold rights for development of an integrated tourist resort can lease plots of the island or lagoon to third parties, in accordance with the regulations issued pursuant to this Act. • This means that a lessee may lease plots of land within an island or lagoon to different investors or operators for development and operation of various businesses, such as hotels, guest houses, diving centres, spas, etc.
Individual licenses	Individual tourist developments within an integrated tourist resort, shall obtain the relevant separate and individual licenses from the Ministry of Tourism (i.e. as opposed to or in addition

⁴ Pursuant to Section 16.6 of the 10th Amendment Bill

	<p>to the operating license which may be issued to the head lessee of the integrated tourist resort).</p>
Conversion to an integrated tourist resort	<ul style="list-style-type: none">• Any existing islands, lagoons or land leased for development and operation of a tourist resort, can be converted to a lease relating to an integrated tourist resort, pursuant to the Regulations to be issued by the Ministry of Tourism.• US\$ 1,000,000 (one million US Dollars) shall be paid as a conversion fee.
Integrated tourist resort development under tourism real estate development projects	<p>An island, lagoon or land may be leased to an SOE, without undergoing the standard process for a lease stated in section 5 of the Tourism Act, provided that <i>inter alia</i>:</p> <ul style="list-style-type: none">• President issues a presidential decree in respect of the same.• At least 50% of the development on the integrated tourist resort development shall be rooms or villas that will be leased pursuant to the strata title rules stated in the 10th Amendment Bill.• The head leasehold rights of the SOE may not be subleased, transferred or leased for the first 10 (ten) years of the lease. The head lease rights may however be subleased or transferred after 10 (ten) years.
Regulations	<p>The regulation on development of integrated tourist resort developments shall be issued by the Ministry of Tourism within 3 (three) months from the date of the 10th Amendment to the Act coming into force.</p>

PART E: LEASE OF VILLAS ON A STRATA BASIS

- The 10th Amendment Bill introduces to the Tourism Act provisions for leasing individual villas in a tourist resort on a strata basis.
- As per the existing rules, lease of individual villas on a tourist resort is facilitated by the Regulation of Grant of Rights related to Tourist Resorts 2010 (as amended) ("**Grant of Rights Regulation**").
- The provisions of the 10th Amendment Bill relating to strata title leases are primarily a codification of the existing rules in the Grant of Rights Regulation (with the exception of the provision on taxes), and expansion or clarification of the principles relating to strata title leases contained in the Grant of Rights Regulation.
- A summary of the salient provisions of the 10th Amendment Bill relating to strata title leases, and some of our corresponding comments are stated below:

Lease of a villa on a strata basis	Individual rooms or villas developed on a resort or integrated tourist resort can be leased on strata basis. Lease of a villa on a strata basis means that the lease will be granted in respect of all development, fixtures and fittings relating to a villa, to a third party, without granting ownership rights.
Regulations of the Ministry of Tourism	Individual rooms and villas on a tourist resort can be leased on a strata basis in accordance with regulations issued by the Ministry of Tourism pursuant to the Tourism Act.
Registration of strata title leases by the Ministry	Ministry of Tourism shall maintain a register of rooms and villas leased on a strata basis. Registration shall be subject to a fee of US\$ 5,000.
Parties who may obtain a strata title lease	<p>Villas can be leased on a strata basis to:</p> <ul style="list-style-type: none"> • any individual of 18 years of age; or • a company or partnership registered in the Maldives. <p>Accordingly, as per the existing draft of the 10th Amendment Bill, villas may not be leased on a strata basis to a foreign company with a branch re-registered in Maldives. Under the existing Grant of Rights Regulation, however, a foreign company with a branch re-registered in Maldives may obtain a strata title lease.</p>
Conditions of the lease transaction	<p>The following conditions shall be satisfied in any strata title lease transaction:</p> <ul style="list-style-type: none"> • Strata title lease shall not extend beyond the term of the main head lease. • Lessee shall not be permitted to further sublease the villa. • The provisions of the main head lease shall prevail over any provision of the strata title lease, in the event of any inconsistency between the two agreements.

	<ul style="list-style-type: none"> • The lessee shall be permitted to transfer or sell the lease to a third party, in accordance with regulations issued by the Ministry of Tourism. • The lessee shall be permitted to mortgage its rights over the villa, and such mortgage shall be registered with the Ministry of Tourism.
<p>Provisions to be stated in the strata title lease agreement</p>	<p>The following salient terms shall be stated in any strata title lease agreement:</p> <ul style="list-style-type: none"> • The term of the lease. • The period during which the lessee shall be permitted to use the villa. • Lease price and payment terms. • The villa details, island, land area and services available. • Terms of sale of the lease, and management of the villa. • Terms of usage of the villa. • Termination provisions, including notice details and compensation. • Resort development provisions.
<p>Management Agreement in respect of room/villa leased on strata basis.</p>	<p>The 10th Amendment Bill codifies the requirement to enter into a management agreement in respect of strata title leases into the Tourism Act.</p> <p>The contents of the management agreement to be stipulated under a regulation to be issued in connection with this provision.</p>
<p>Taxation</p>	<p>The 10th Amendment Bill notes that the following taxes will apply in connection with a villa lease on strata basis.</p> <p>(a) Goods and Services Tax for the sale transaction</p> <p>It is to be seen how this clause will interact with the Goods and Services Tax Act which technically does not apply to property transactions.</p> <p>(b) The following taxes in connection with tourist stays in the room:</p> <ul style="list-style-type: none"> (i) Goods and Services Tax (ii) Green Tax (iii) Any other taxes as maybe levied on tourists under a law enacted by the parliament
<p>Register of premises leased under strata basis</p>	<p>The Ministry if required to establish a register of premises that are leased on strata basis.</p>

PART F: LEASE AND DEVELOPMENT OF PRIVATE ISLANDS

- The 10th Amendment Bill introduces to the Tourism Act provisions for leasing and development of private islands.
- This is a new addition to the tourism regulatory framework.
- A summary of the salient provisions of the 10th Amendment Bill relating to lease and development of private islands, and some of our corresponding comments are stated below:

“Private Island”	Private Island is defined as islands that are reclaimed and developed in designated lagoons for the purpose of a long term lease to investors by the developer.
“Developer”	Developers are defined as persons that are granted permission to develop the Private Island.
“Investors”	Investors are defined as a person who leases the private island developed by the Developer under an agreement between the Developer and Investor.
Exception granted to State Owned Enterprises wholly owned by the Government of Maldives (“SOE”)	<p>SOE’s are exempted from the requirement under Section 5 of the Tourism Act (with regards to award of islands). In this regard, lagoons can be leased to SOE’s if it meets the following criteria.</p> <ul style="list-style-type: none"> • Where the Lagoon is designated for the development of a private island, and • The lagoon is in a designated area for a tourism real estate development project of the Government, and • The President of the Maldives has issued a Presidential Decree to lease the lagoon to the SOE for the development of a private island and • 100% of the share capital of the SOE is held by the Government at all times during the lease period of the lagoon.
Lease Period	<p>A lease of a Lagoon for the purposes of development of a private island is granted to an SOE for a period of 50 years.</p> <p>Subject to payment of the lease extension fee as stipulated in section 9 (g) (3) of the Tourism Act, the lease period can be extended for an additional period of 49 years.</p>
Lease Agreement	<p>A lagoon lease for the purpose of development of a private island shall be granted subject to execution of an agreement between the SOE and the Government of the Maldives in accordance with Section 6 of the Tourism Act.</p> <p>The Lease Agreement between the Ministry of Tourism and the SOE is not allowed to be transferred, assigned, subleased to any party except in the manner stipulated below.</p>

Long-term lease of Private Island	<ul style="list-style-type: none">• Private Islands developed in accordance with this law can be leased on a long term basis in accordance with regulations to be issued, to an investor to be used for personal vacation use or third parties (with their consent) on a non-commercial basis, subject to execution of an agreement registered with the Ministry of Tourism.• Pursuant to such an agreement all rights and obligations of a developer will transfer to the Investor for the duration of the lease.• Lease to an investor cannot exceed the lease period granted to the developer.• The investor does not have the right to sublease the private island further.• The investor can however transfer and sell their rights and obligations (in a manner that does not contravene the lease agreement in place) to a third party in accordance with regulations to be issued.• Rights held by investors are required to be registered with the Ministry of Tourists. <p>Private Islands can be leased to:</p> <ul style="list-style-type: none">• An individual over the age of 18; or• A company or partnership registered in the Maldives.
Annual Lease Rent of a Private Island	<p>Where the private island that was developed is leased on a long-term basis to an investor, the investor is required to pay an annual lease rent at the rate of US\$ 1 per square meter to the Government.</p>

PART G: OTHER PROPOSED AMENDMENTS

Proposed Amendments to Section 24 (b) of the Tourism Act [Operation of Foreign Tourism Vessels in the Maldives]

- The 10th Amendment Bill amends the fee currently levied by the Ministry of Tourism on foreign vessels for the purpose of granting permission to anchor and travel in the Maldives.
- In this regard, the Bill now proposes to levy a fee of US\$ 5000 on vessels that exceed 15 meters in length only.
- The amendment effectively will stop the US\$ 5000 fee charged currently on foreign vessels smaller than 15 meters in length upon its enactment.

Proposed Amendments to Section 43 of the Act [Duration and renewal of licenses]

- The Tourism Act currently stipulates that the licenses granted for the operation of tourist resorts, tourist hotels and tourist guesthouses, marinas, tourist vessels, dive centres and travel agencies will be issued for a period of 5 years.
- The 10th Amendment Bill removes the statutory duration of the licenses and defers the same to regulations to be issued. In this regard, the proposed Section 43 states that the referenced licenses shall be issued for the durations specified in the Regulation to be issued, and must be renewed upon the expiry of such periods.

Proposed Amendments of Definitions section of the Tourism Act

- The definition of “Tourist” is proposed to be amended as follows.
“Any person that enters into the Maldives or remains in the Maldives under a “Tourist Visa’ referenced in Section 9 (a) (1) of Law number 1/2007 (the Maldives Immigration Act)”.
- The current definition of the term “tourist” refers to anyone who is not a Maldivian citizen and does not have a “Resident permit”, which has the effect of admitting anyone not falling within these categories to be considered as a tourist.

Material Additions to Definitions section of the Tourism Act

“**Tourism Real Estate Development Project**” is defined as projects that the cabinet approves to be conducted through State Owned Companies that are wholly owned by the Government of Maldives intended specially to increase foreign investment and carried out on real estate basis.

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