

an overview of the

Tenth Amendment to the Tourism Act

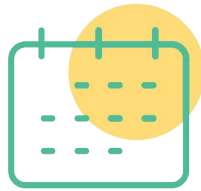


Tenth Amendment to the Tourism Act

Areas Addressed



Tourism Land Rent



Lease Period Extensions



Integrated Tourist Resorts



Private Islands



Strata Lease



Cross-subsidisation



Other Changes

Introduction

The Tenth Amendment to the Tourism Act (the “Amendment”) introduces new models of tourism development including integrated tourist resorts and leasing of private islands. Among other significant changes introduced by the Amendment include changes to the tourism land rent rates and revised fees in relation to the extension of the lease period of existing tourism leases.

This Overview provides a summary of the following key components of the Amendment that are expected to have a substantial impact on businesses operating in the tourism industry of the Maldives:

- △ Revisions to Land Rent;
- △ Revisions to Lease Period Extension Fee;
- △ Introduction of Integrated Tourist Resorts as a type of Tourist Establishment;
- △ Introduction of Private Island Concept as a type of Tourist Establishment;
- △ Strata lease of rooms and villas in tourist resorts and integrated tourist resorts;
- △ Leasing of lands, islands and lagoons under cross-subsidisation arrangements.

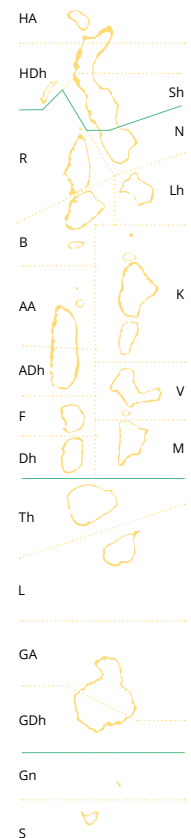
Tourism Land Rent (Section 7, Schedules 1 and 2)



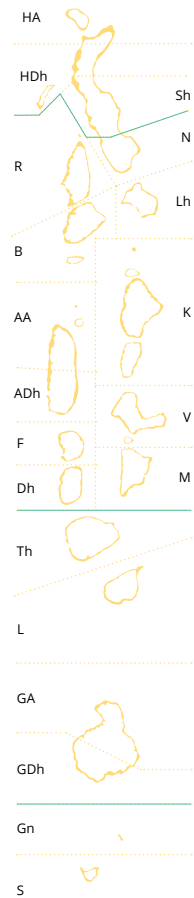
The Amendment brought about major changes to the land rent rates of tourist establishments. With the coming into force of the Amendment, land rent rates will differ depending on the geographical location of the tourist establishments, with the rates being higher for those located in the central atolls and lower for those located in the northern and southern atolls. Additionally, the Amendment also divides land rent rates into 2 main categories as follows:

1. Land Rent Rates of Tourism Establishments on Uninhabited Islands

Atoll	Land Size		
	< 200,000 sqm	200,001 - 400,000 sqm	> 400,001 sqm
HA, HDh, Sh	USD 4 per sqm per year, up to USD 500,000	USD 750,000 per year	USD 1,000,000 per year
N, R, B, Lh, K, AA, ADh, V, M, F, Dh	USD 8 per sqm per year, up to USD 1,000,000	USD 1,500,000 per year	USD 2,000,000 per year
Th, L, GA, GDh	USD 6 per sqm per year, up to USD 750,000	USD 1,125,000 per year	USD 1,500,000 per year
Gn, S	USD 2 per sqm per year, up to USD 250,000	USD 400,000 per year	USD 800,000 per year



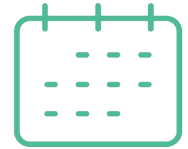
2. Land Rent Rates of Tourism Establishments on Inhabited Islands



Atoll	Land Size < 200,000 sqm	Land Size 200,001 - 400,000 sqm	Land Size > 400,001 sqm
HA, HDh, Sh	USD 2 per sqm per year, up to USD 250,000	USD 375,000 per year	USD 500,000 per year
N, R, B, Lh, K, AA, ADh, V, M, F, Dh	USD 4 per sqm per year, up to USD 500,000	USD 750,000 per year	USD 1,000,000 per year
Th, L, GA, GDh	USD 3 per sqm per year, up to USD 375,000	USD 562,500 per year	USD 750,000 per year
Gn, S	USD 1 per sqm per year, up to USD 125,000	USD 200,000 per year	USD 400,000 per year

The new land rent rates are applicable to headlease rents payable from 1 January 2021 onwards. In effect, this means the rent of the Q1 of 2021 is to be paid at the new rent rates.

Lease Period Extension (Section 9)



Extensions up to 50 years

Below fees are to be charged when granting extensions of lease periods up to 50 years:

- △ **USD 100,000** per year of extension, where the lessee wishes to extend the lease period **within 2 years** from 27 December 2020.
- △ **USD 200,000** per year of extension, where the lessee agrees to extend the lease period **after 2 years** from 27 December 2020.

Extensions up to Additional 49 years (Total 99 years)

Below fees are to be charged when granting extensions of lease periods up to additional 49 years:

- △ a lump sum fee of **USD 5,000,000** provided the leaseholders make such application **within the first 2 years** from 27 December 2020.
- △ a lump sum fee of **USD 10,000,000** where the leaseholder submits such applications **after 2 years** from 27 December 2020.

Following the coming into force of the Amendment, the Ministry of Tourism is required to extend the lease period within 1 month of applying for an extension, provided that all the requirements for an extension are met.

Integrated Tourist Resorts



(Sections 16-1 to 16-5)

Integrated tourist resort (ITR) is defined as an island or part of an island or a zone comprising of more than one island, developed including a mix of tourist establishments such as tourist resorts, hotels, guesthouses, yacht marinas or any other tourist establishment.

Difference between ITRs and existing models of Tourism Establishments

In ITRs, the allocated zone will be leased to a Developer pursuant to a lease agreement between the Government and the Developer. The Developer, subject to certain conditions, will either be a company with 100% government shareholding or a private party. Once the ITR is developed, the Developer then can lease parts of the ITR to investors that wish to operate the separate tourist resorts, hotels, guesthouses, yacht marinas and other tourist establishments developed as part of the ITR.

Leases to 100% Government Shareholding Companies

Where the leasehold of a zone allocated for the development of ITRs is granted to a company with 100% government shareholding, it has to be carried out as a 'Tourism Real Estate Development Project'.

A Tourism Real Estate Development Project consists of leasing an island, land or lagoon to a 100% government-owned company for the purpose of increasing tourism developments in a particular zone so as to induce economic activities in that area.

Under a Tourism Real Estate Development Project, transfer of the government shares will be restricted to a period of 10 years from the date of commencement of the development. After 10 years, in accordance with the requirements and approval from the Ministry of Tourism, the 100% government-owned company can assign its rights under the lease agreement to a third party.

The Amendment also requires 50% of the ITR developed under the Tourism Real Estate Development Project to be leased out as strata leases.

Leases to Private Parties

Where the leasehold of a zone allocated for the development of ITRs is granted to a private party it has to be carried out in accordance with the general provisions in [Section 5 of the Tourism Act](#).

ITR related Requirements

- △ A permit from the Ministry of Tourism is required to operate any resort as an ITR. Such permit will be issued to the Developer pursuant to the lease agreement entered with the Ministry of Tourism to develop the ITR.
- △ Permits to operate an ITR will be granted where the following requirements are met:
 - * The establishment is located in a zone allocated for the development of ITRs;
 - * The establishment is constructed in accordance with the standards determined by the Ministry of Tourism;

- * Services determined by the Ministry of Tourism are made available at a specific quality; and
 - * Any other requirements stipulated in the regulation, made pursuant to the Amendment.
- △ Separate licences for the operation of tourist resorts, hotels, guest houses (within the ITR) has to be obtained by the operators of these tourist establishments.
 - △ All provisions applicable to tourist resorts under the Tourism Act will apply to ITRs including collection and payment of Green Tax as specified under Section 35(g), i.e. USD 6 per day of stay from each tourist.

Conversion of Existing Resorts to ITRs

Any land, island or lagoon, currently leased for the purpose of operating a tourist resort, can be converted to an ITR, after obtaining a permit from the Ministry of Tourism and in accordance with the regulation envisaged by the Amendment. Any such conversion can be carried out after paying a fee of USD 1,000,000.

Further details in relation to the development and operation of ITRs are to be provided in regulation made pursuant to the Amendment. The Ministry of Tourism is tasked with formulating the regulation within 3 months from 27 December 2020.



Integrated Tourist Resort

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Headlease
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Developer



100% GoM owned company

- △ Has to carry out as a Tourism Real Estate Development Project
- △ Share transfer restricted for 10 years

Private Parties

- △ Through:
 - * Open bidding;
 - * Closed bidding; or
 - * Cross subsidisation
- △ No restriction on transfer of shares or sale of business

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Sublease
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Investors

To operate tourist resorts, hotels, guesthouses and marinas,

Private Islands

(Sections 16-16 to 16-19)



Private islands, for the purpose of the Amendment, is defined as an island reclaimed and developed as a private island within a lagoon allocated for the purposes of developing, leasing and operating a private island, and leased as a private island for a long term to an investor.

Lagoons to be Reclaimed and Developed

Lagoons that meet the following criteria are to be allocated as lagoons to be reclaimed and developed as private islands:

- △ designated as a lagoon to be developed as a private island, in accordance with Section 4(a) of the Tourism Act;
- △ designated for Tourism Real Estate Development Projects of the government;
- △ the President, by way of a decree, has determined that the lagoon is to be leased to a company with 100% government shareholding for the purpose of developing and operating a private island; and
- △ all shares of the company that holds the lease, remain as shares held by the government for the period of the lease.

Lease Period and Land Rent

Lagoons for the development of private islands can be leased for a period of 50 years. The option for extension of the lease by additional 49 years is available in accordance with the lease period extension requirements prescribed in the Amendment. The land rent rate for a private island is USD 1 per square meter per annum.

Developer of Private Islands

A lagoon designated to be reclaimed as a private island can be leased only to companies with 100% government shareholding (the “Developer”). A lease agreement is to be entered between the Government and the Developer for the purposes of leasing a private island.

The Amendment expressly bars the Developer from assigning the rights under such agreement to another party. However, the developer is allowed to lease the private island to a third party investor, as per conditions specified below.

Investors of Private Islands

The investor must be either be:

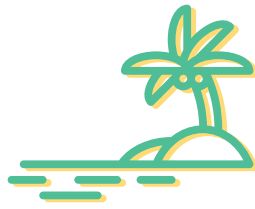
- △ an individual of 18 years of age; or
- △ a company or a partnership registered in the Maldives.

The investor is to only use the private island for their personal private purposes or private purposes of another party authorised by the investor, i.e. the investor does not have the right to use the property as a business nor does the investor have the right to further lease the private property. However, the investor, if they so choose, may transfer all their rights under the lease agreement to another party.

Registration Requirements

The leasehold agreement entered between the developer and investor has to be registered at the Ministry of Tourism. The Amendment stipulates that all rights and obligations of the Developer will be transferred to the investor, for the duration of the lease, once the lease agreement is duly registered at the Ministry of Tourism.

The Amendment further requires the investor to register its interests in the private island once the lease transaction between the Developer and investor is complete. Accordingly, the investor has to submit an application to the Ministry of Tourism to register its interests, and provided the requisite requirements are fulfilled, the Ministry of Tourism has to issue a registration document evidencing the interests of the investor in the property.



Private Islands

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Headlease
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Developer

- △ 100% GoM owned company
- △ Assigning lease rights restricted indefinitely
- △ Land rent is USD 1 per sqm per annum
- △ 50 years lease (with option to extend up to 99 years)

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Sublease
↓



Investor

- △ Can be used for personal private purposes only
- △ Cannot be further leased
- △ Can transfer all rights to a third party

Strata Lease

(Sections 16-6 to 16-15)



The concept of strata leasing, an already existing and practised concept in the industry - pursuant to the Grant of Rights Regulation (2010/R-14), is now by way of the Amendment expressly provided for in the Tourism Act. Whilst this might be a concept which would be familiar to investors investing in the Maldives, noted below are the main areas covered under the Amendment in relation to strata leases.

Strata Lease

For the purposes of the Amendment, a villa or room leased as a strata has to be:

- △ located at a tourist resort or an ITR;
- △ part of the site plan of the resort and built within its own boundary separate from the rest of the facilities with access to the basic utility services such as electricity, water, sewer or refuse, available at the resorts, right of entry to the resort and associated right of ways to the strata properties.

Lessor and Lessee of a Strata Lease

The lessor of a strata lease may be either the:

- △ head leaseholder;
- △ sublease holder; or
- △ person to whom the government has leased an island for the purpose of developing the island as an ITR.

The lessee of a strata lease must be either one of the following:

- △ an individual of 18 years of age; or
- △ a company or a partnership registered in the Maldives.

Rights of the Strata Leaseholder

Under a strata lease, the ownership of the land, building and fixtures attached to the villa or room will not be transferred to the strata leaseholder. The strata leaseholder will obtain the right to use the villa or room for a long term. Additionally, a strata leaseholder will not have any right to sublease the property.

The strata leaseholder may if they so choose:

- △ mortgage their rights under the strata lease, provided that such mortgage is in line with this Amendment, regulation made pursuant to the Amendment and the strata agreement.
- △ assign (sell) their rights to a third party, provided that such sale is in line with this Amendment, regulation made pursuant to the Amendment and the strata agreement.

Where the strata leaseholder mortgages their rights under the strata lease, such mortgage has to be registered at the Ministry of Tourism.

Strata Lease Agreement and Management Agreement

The strata lease agreement is required to be entered in accordance with the requirements under the regulation made pursuant to the Amendment and including the conditions in Section 16-11 of the Amendment. Once executed, the strata agreement is to be registered at the Ministry of Tourism.

Additionally, where a villa or room of a resort is leased as a strata lease, the lessor and lessee have to enter into a management agreement. The terms of such agreement is to be provided in the regulation made pursuant to the Amendment.

Registration of Villas and Rooms

Properties to be let under strata leases are to be registered at the Ministry of Tourism for a fee of MVR 5,000 per villa or room.

Taxing Strata Arrangements

The taxes that are to be levied on strata arrangements are as follows:

- △ GST charged on the sale arrangement of strata lease under the Goods and Services Tax Act;
- △ TGST charged from the tourist under the Goods and Services Tax Act where a tourist stays at the property;
- △ Green Tax under the Tourism Act;
- △ Any other tax introduced by a statute.

Registration Requirements

Once the required agreements are entered into and the arrangement is complete, the rights of the strata leaseholder are to be registered at the Ministry of Tourism. Upon registration, the Ministry of Tourism will issue a registration document to the strata leaseholder.

Additional requirements related to strata lease of villas and rooms of tourist resorts and integrated tourist resorts are to be provided in the regulation made pursuant to the Amendment.

Cross-subsidisation

(Sections 5(a)(3) and 5(j))



With the Amendment, the Tourism Act now expressly provides for leasing of a land, island or lagoon under a cross-subsidisation arrangement with the government of the Maldives.

For the purpose of the Amendment, cross-subsidisation is awarding a land, island or lagoon in consideration to an investor financing a project that is carried out for the purpose of achieving an economic or social policies of the government (for e.g. a housing project of the government aimed at a particular inhabited island).

Any land, island or lagoon leased as a cross-subsidy has to be entered pursuant to an agreement, between the lessee and the Government (as the lessor). Such agreements must provide for the authority for the government to repossess the land, island or lagoon leased as a cross-subsidy where the lessee fails to complete the development works under the project awarded to the lessee.

The investment amounts expended by an investor in such a project is to be deducted from the land rent of any land, island or lagoon leased as a cross-subsidy. The minimum required amount of investment towards such projects so as to be awarded an land, island or lagoon under a cross-subsidisation arrangement is to be determined by a decree of the President, gazetted each year.

A land, island or lagoon can initially be awarded as a cross-subsidy for a maximum period of 50 years. However, provided that the investor has completed the allocated project within the project duration or any extensions thereof, the investor can request for an extension of 49 years by paying the extension fees as required under Section 9 of the Amendment.

Additional rules on cross subsidisation are to be provided in the regulation made pursuant to the Amendment.



Government of Maldives



Contractor

For example, a housing project funded by the investor



Payment / Consideration



Island, Land, Lagoon

- △ Concessions given on land rent
- △ Lease period of 50 years, with option to extend

Other Changes



Determination of Tourism Zones (Section 4)

The Amendment, for the first time, afforded local councils with the authority to allocate lands, from those in the jurisdiction of the local councils, to be developed as tourist hotels and tourist guest houses. Any such determinations of the local councils are required to be in line with the Urban Development Plan of that particular island or city.

The primary authority to determine tourism zones, however, still vests with the President of the Maldives. This authority of the President now expressly includes the power to determine lands, islands and lagoons to be developed as tourist resorts, ITRs, Tourism Real Estate Development Pprojects, private islands, tourist hotels, tourist guesthouses and yacht marinas.

Leasing For Tourism Purposes (Sections 5(a), 5(h) and 5(i))

Previously, Section 5(a) of the Tourism Act provided that lands, islands or lagoons leased for tourism purposes can only be leased either:

- △ to the party that submits the best proposal in a public tender (open bidding); or
- △ to the party that submits a proposal with the details of the planned tourism project (closed bidding).

The Amendment amends Section 5(a) to expressly include an additional way of leasing lands, islands and lagoons for the development of a tourist resort or an integrated tourist resort, namely “cross-subsidisation” (see section above on cross-subsidisation).

Prior to the Amendment, the authority to lease lands, islands and lagoons for tourism purposes was with the Ministry of Tourism. Section 5(h) however, now affords local councils with the authority to lease lands from those within the jurisdiction of the councils for the purpose of developing a tourist hotel or a tourist guesthouse. Councils are required to lease such lands to the party that submits that best proposal in a public tender, in accordance with the related policies determined by the government and regulation made pursuant to the Amendment.

Separated Islands in the same Lagoon (Section 5-1)

For the purpose of the Amendment, separate land formed or reclaimed in a lagoon located within a zone leased for the development of a tourist resort can be determined as a separate island and leased to separate parties.

Where existing tourist resorts have more than one land or island within the same lagoon, such islands can be determined as separate islands, in accordance with the regulation formulated under the Act, and rights of such separated islands can be leased out or sold.

The rules relating to separated islands will be formulated in a regulation which is to cover the following:

- △ Policy on operation of 2 or more islands in the same lagoon as separated islands;
- △ Determination of boundary of the separated islands;
- △ Fees applicable to separated islands;
- △ Other rules applicable to separated islands.

For additional information with respect to the Tenth Amendment to the Tourism Act, please contact one of the following members of our team:



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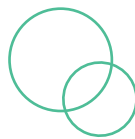
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ABOUT US

CTL Strategies is a multi-disciplinary law firm registered in the Maldives, specialised in tax advisory services. We advise international hotel chains, multinational companies, some of the big four audit firms, and a number of the world's largest companies as well as high net-worth individuals on commercial transactions, tax compliance, planning and tax disputes.

We are ranked in the 2021 edition of Chambers and Partners, and as a Highly Recommended Tax Disputes Firm by Asia Law Profiles.

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This publication is intended to provide an overview of the Tenth Amendment to the Tourism Act. It should not be taken as legal advice of any nature, nor should be regarded as offering detailed explanation of all the matters addressed in the Amendment. Readers are advised to seek professional advice specific to their particular circumstances.

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