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Maldives

PROJECT FINANCE

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This country-specific Q&A provides an overview of project finance laws and regulations applicable in Maldives.

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MALDIVES

PROJECT FINANCE



1. What are the typical ownership structures for project companies in your jurisdiction? Does this vary based on the industry sector?

Project companies are formed and organized as special purpose vehicles (SPVs), incorporated as a private; limited company, shares of which are generally owned by holding companies with the specific aim of implementing the project. The ownership of shares in the SPV is vested in sponsors (project owners), who may be either local or offshore investors, in order to limit their liability.

2. Are there any corporate governance laws or accounting practices that foreign investors in a project company should be aware of?

Foreign Investors are mainly classified as Foreign Investment Companies under the Foreign investment Act (Law No 25/79) and Companies Act (Law No 7/2023) which repeals the previous regime governing companies.

Any foreign individual or an entity with foreign shareholding who is seeking to invest in securities including shares, government bonds, corporate bonds, convertible securities, investments funds, etc are considered as Foreign Portfolio Investors who are classified as a Foreign Investor. The rules for a foreign investment company differs in corporate compliance under the existing framework in comparison to the locally registered entities.

However, in respect of the accounting practices, there are no specific requirements other than that is stipulated under the laws and regulations in respect of taxation and accounting governed in the Maldives Inland Revenue Authority. The foreign investors are able to carry out business in specific sectors in the Maldives which are regulated under the Foreign Direct Investment Policy endorsed on 6th February 2020.

3. If applicable, what forms of credit support from sponsors or host governments are typically provided?

There are no recognised forms of credit support from sponsors or host government in project finance in cross border transactions.

4. What types of security interests are available (and suitable) for a project financing in your jurisdiction?

When extending loans to projects in the Maldives, lenders typically seek a comprehensive range of securities.

These may include mortgage security encompassing both movable and immovable properties such as freehold and leasehold interests in land, marine vessels, aircraft, vehicles, and other assets.

Additionally, lenders may require a charge over shares in a company, a security charge over bank accounts, a general debenture covering borrower assets through fixed and floating charges, an assignment of receivables, a corporate guarantee, a personal guarantee, and an assignment of contracts.

5. How are the above security interests perfected?

The Maldives recognizes securities perfection in specific areas such as mortgage over the leasehold interest in land for tourism purposes. The parties shall obtain a prior approval from the Ministry of Tourism and then enter into the security agreement following the confirmation letter issued by the Ministry, pursuant to which the security agreement also needs to be registered with the Ministry of Tourism.

The other forms of security stated above, does not require prior approval and the parties may proceed to execute the securities agreement.

However, certain forms of security interests require subsequent registration and/or notification to the relevant authorities, as follows:

- Mortgage over freehold interest in land pursuant to the Land Act and Mortgagees Act, requires registration of the security interest with the city council or local council (through endorsement of the mortgage on the land registry).
- Charge over shares in a company requires subsequent registration of the share charge in the Ministry of Economic Development following the execution of the security agreement between the parties.
- Mortgage over an aircraft requires subsequent registration of the security interest in the Maldives Civil Aviation Authority.

6. Please identify how security is enforced (notably the enforcement options available for secured parties) both pre and post insolvency/bankruptcy of the project company?

There are no insolvency and bankruptcy legislations in the Maldives.

In the event of a default where the borrower does not contest the enforcement of securities, the lender typically has the option to promptly complete the enforcement process or, in cases involving government ministries or authorities, within a span of 3 to 6 months.

However, if the borrower raises objections to the enforcement of securities for any reason, the lender is required to complete a dispute resolution process through either the court or an arbitral tribunal, depending on the chosen dispute resolution mechanism. In such cases, obtaining an enforcement order for foreclosure or asset sale to recover the loans is anticipated to take a longer period, estimated at 6 to 12 months.

7. What are other important considerations in relation to the security regime in the jurisdiction that secured parties should be aware of?

The most significant aspect that the parties should be aware is the rankings of the security. The Maldives recognizes all forms of rankings of security based on the contractual agreement between the lenders and borrowers. Thus, a security interest can be either first

priority or second priority or third priority, etc or *pari passu* equal ranking.

The Maldives upholds the principle of 'first in line'; thus, secured lenders that perfect their security interest will typically rank ahead in priority to subsequent creditors. A creditor can secure their position among other creditors of the company by acquiring a first priority security in assets or signing a non-subordination agreement with the company in regard to the security.

8. What key project risks should lenders be aware of in project financings in your jurisdiction? This may include, but may not be limited to, the following risks: force majeure, political risk, currency convertibility risk, regulating or permitting risk, construction/completion risk, supply or feed stock risk or legal and regulatory risk).

There are no specific risks that lenders should be aware of in project financings in the Maldives jurisdiction. However, in addition to above the lenders shall note that, force majeure is mainly considered to include but not limited to epidemics, pandemics, declaration of state of emergency, terrorist attacks, collapse of buildings, recessions, international or domestic political crisis, fire incidents, flooding, other natural disasters, etc.

Moreover, any other events such as socio-political and economic situation, that causes disruption of the financial condition, insolvency and bankruptcy are main risks that lenders shall be aware of as well.

9. Are any governmental / regulatory consents required and are any financing or project documents requirement to be filed with any authority in order to be admissible in evidence in a court of law, valid or enforceable?

Yes, where there is a requirement by law for security interests granted by a borrower to be registered, lenders shall ensure that such security is registered with the relevant authority pursuant to which the confirmation of security has been issued.

10. Are there any specific foreign exchange, royalties, export restrictions,

subsidies, foreign investment, that are relevant for project financings (particularly in the natural resources sectors)?

There is no specific foreign exchange, royalties, export restrictions, subsidies, foreign investment that are relevant for project financings.

11. Please set out any specific environmental, social and governance issues that are relevant. For example, are project companies subject to certain ESG laws, reporting requirements or regulations?

The key legislation endorsing protection and preservation of the environment of Maldives is the Environmental Protection and Preservation Act, which stipulates that development projects which have a potential impact on the environment shall complete an Environment Impact Assessment (EIA) prior to commencing the project.

It is also important to note that the Environmental Protection and Preservation Act also provides that “any type of waste, oil, poisonous gases of any other substance that may have a harmful effect on the environment shall not be disposed within the territory of the Maldives. In case where the disposal of such a substance becomes absolutely necessary, they shall be disposed only within the areas designated for the purpose by the government. If such waste is to be incinerated, appropriate precautions shall be taken to avoid any harm to the health of the population”.

The secondary legislation enacted under the Environmental Protection and Preservation Act which is the Environmental Impact Assessment Regulation (NO. 2012/R-27) reflects the same sentiment that development projects which have a potential impact on the environment shall complete an Environment Impact Assessment (EIA) prior to commencing the project. The regulation further details the list of projects which require approval of the Environment Impact Assessment.

12. Has any public-private partnership models or laws been enacted in the jurisdiction, and if so, are they specific to certain industry sectors?

The Maldives has not enacted specific public-private partnership laws, but the law does not restrict the entry of public-private partnership.

In our experience, we have seen a significant number of public-private partnerships models being implemented, especially in renewable energy and waste disposal projects.

13. Will foreign judgments, arbitration awards and contractual agreements to arbitrate be upheld?

Foreign judgements

The Republic of Maldives is not a party to a treaty or agreement for bilateral or reciprocal enforcement of foreign judgments. Any judgment issued by the courts of jurisdictions other than the Republic of Maldives in connection (1) may not be automatically enforced in the Republic of Maldives, and (2) may be recognised and enforced in the Republic of Maldives, subject to requisite conditions provided in Maldives' Civil Procedure Act (Law No. 32/2021) being satisfied.

The courts of the Republic of Maldives have not specifically ruled on an application for the enforcement of a judgment by the courts of foreign countries in connection with a contract containing such a provision.

Contractual Agreements to Arbitrate & Arbitration Awards

The Contracts Act (Law No. 4/1991) specifically stipulates that any clause in a contract requiring a party to refer to arbitration any dispute arising from the contract shall be valid, and therefore contractual agreements to arbitrate will be upheld.

Maldives is a signatory to the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Maldives signed up to the New York Convention on 17 September 2019, which came into force on 16 December 2019

Arbitration awards granted by an international arbitral tribunal and the local arbitral tribunal, will be recognized and enforced in the Republic of Maldives pursuant to the Maldives Arbitration Act 2013.

Where the Lender wishes to enforce a foreign arbitral award (upon receipt of a foreign arbitral award), it shall file an application at the Maldives Civil Court for recognition of the foreign arbitral award. The Civil Court would issue a 'recognition order' subject to Section 74 of the Arbitration Act (Grounds for Refusing Recognition or Enforcement), pursuant to which the applicant can request the court to proceed with enforcement of the foreign arbitral award. Grounds for refusing recognition or enforcement of foreign arbitral awards are limited to

situations inter alia where the arbitration was conducted unfairly and in contravention with procedural rules. There is no judicial precedent of a case in Maldives where a foreign arbitral award has been set aside under such grounds.

14. Is submission to a foreign jurisdiction and waiver of immunity effective and enforceable?

Yes, submission to foreign jurisdiction and waiver of immunity will be effective and enforceable, pursuant to the Contracts Act (Law No. 4/1991).

15. Please identify what you consider to be (a) the key current issues for project financing in your jurisdiction; and (b) any emerging trends or topics which should be considered or focused on by project financing stakeholders.

The new government of Maldives sworn in on 17th November 2023, had promised and are working to commence many development and infrastructure projects across the Maldives, leading the way for various project financiers to grant significant funding to Maldives' projects.

16. Please identify in your jurisdiction what key legislation or regulations have been implemented (or will / plan to be) for projects in connection with the energy transition?

The Energy Act was implemented in 2021 which consists of provisions relating to renewable energy, manufacture of petroleum and petrol, generation and supply of electricity.

17. Please identify if there are any material tax considerations which need to be taken into account for a project financing in your jurisdiction, and if so, how such tax issues can be mitigated.

Where a project is financed through equity, the material tax implications under the Income Tax Act (Law Number 25/2019) that need to be considered are as follows:

- a. Companies operating in the Maldives are subject to Corporate Income Tax at the rate of

15% on the taxable income of that entity which exceeds, MVR 500,000 (Approx. US\$ 32,425).

- b. Dividends paid or payable to a non-resident by a person carrying on business in the Maldives are subject to 10% Non-Resident Withholding Tax on the gross amount of the payment.

Where a project is financed through debt, the material tax implications under the Income Tax Act (Law Number 25/2019) that need to be considered are as follows:

- a. Loan transactions between related parties are subject to the arm's length principle.
- b. The deduction of interest paid to parties other than the bank and non-banking financial institutions approved by the Commissioner General of Taxation is capped at 6% per year.
- c. Interest on loans is further subject to thin capitalization rules, which dictate that the maximum amount that can be deducted as interest expense (except for loans obtained from banks licensed under the Maldives Banking Act 2010 or insurance business, finance leasing business, or housing finance business licenses under the Maldives Monetary Authority Act 1981) is capped at 30% of the tax-EBITDA.
- d. Interest paid or payable to a non-resident (except to a bank or non-banking financial institutions approved by the Maldives Inland Revenue Authority) by a person carrying on business in the Maldives, is subject to 10% Non-Resident Withholding Tax on the gross amount of payment.

Alternatively, the President of the Maldives may at his discretion, under specific circumstances, provide special tax exemptions to government-related projects that are funded by the government.

18. What types of funding structures (e.g. debt, equity or alternative financing) are typical for project financing in your jurisdiction. For example, are project bond issuances, Islamic finance and - in the context of mining deals - streams or royalties, seen as attractive (and common) options for stakeholders?

The most common form of funding structure for project financing is debt, equity and in the case of government-related projects, funding from the government.

Significant number of projects in Maldives have been funded by institutions such as Asian Development Banks and International Finance Corporation, multiple Chinese banks, Indian banks and European banks.

19. Please explain if there are any regional development banks or export credit agencies, and if so, what is their role in project financing in your jurisdiction and beyond.

Significant number of development and infrastructure projects in Maldives, including renewable energy projects have been funded by regional development banks such as Asian Development Banks.

Additionally Islamic Development Bank has also financed several projects in the education, health, transport, and water and sanitation projects.

20. Please explain if there are any important insurance law principles or considerations in connection with any project financing in your jurisdiction.

There are no specific insurance law principles or considerations in connection with project financing in Maldives. Insurance requirements would generally be governed contractually and usually there would be a requirement to provide advance payment guarantees and performance guarantees to ensure proper utilization of project funds and completion of the project.

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