

Article LP

Country Law no. 2021.08 of 1st February 2021 amending country law no. 2018-10 of 29 March 2018 regulating tourist accommodation in French Polynesia

NOR: SDT2021691LP

Following the opinion of the Economic, Social, Environmental and Cultural Council of French Polynesia; The Assembly of French Polynesia adopted

The President of French Polynesia promulgates the country law, the content of which is as follows;

ARTICLE LP 1: Chapter I of country law No. 2018-10 of 29 March 2018 is thus amended:

1° The heading of Chapter I is replaced by the following provisions: "Chapter I - General provisions";

2° After the title of Chapter I, a Section I entitled "Section I - Scope and Definitions" is inserted, consisting of Articles LP 1 to LP 2;

2 bis In the first paragraph of article LP 2, after the words "furnished tourist accommodation," the words "luxury villas," are inserted.

3° The last paragraph of Article LP 2 is replaced by the following provisions:

"Tourist accommodation is operated all year round permanently or only for one or more periods.

It is aimed at a clientele passing through for a stay characterised by daily, weekly or monthly rentals and who do not choose to live there."

4° Before Article LP 3, the words "*Declaration of activity*" are replaced by the title of a Section II entitled "*Section II - Obligation to declare activity*" and consisting of Articles LP 3 to LP 5;

5° The first paragraph of Article LP 3 is replaced by the following provisions:

"Any person exercising the activity of tourist accommodation is required to make a prior declaration to the service in charge of tourism.";

6° After the third paragraph of Article LP 3, a new paragraph is inserted, worded as follows:

"The rental of furnished tourist accommodation gives rise to additional obligations specified in article LP 15."

7° In the last paragraph of Article LP 3, the words "the category of the facility referred to in the first paragraph" are replaced by the words "*the category of the facility y and its characteristics*";

8° Article LP 5 is replaced by the following provisions:

"Article LP 5 Any person exercising the activity of tourist accommodation is obliged to transmit to the service in charge of tourism information relating to her/his identification and the characteristics of any establishment assigned to her/his activity.

The purpose of collecting this information is to monitor compliance with the provisions of this country law, to examine and follow up applications for aid and classification and to manage statistical and technical information.

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This information may be transmitted electronically.

Under conditions guaranteeing their protection, data strictly necessary for the purposes listed below may be communicated:

- *to the municipalities on whose territory the establishments are located, for the purposes of registering and monitoring compliance with reporting obligations;*
- *to the GIE Tahiti Tourisme (economic interest group) for the purpose of identifying and promoting the supply of tourist accommodation;*
- *to the Institute of Statistics of French Polynesia for statistical analysis.”*

Article LP 2. - Chapter II of country law no. 2018-10 of 29th March 2018 is thus amended:

1° In Article LP 6, the second, third and fourth sentences are replaced by the following provisions:

“It is equipped with a minimum of common facilities and services such as reception and relaxation areas, a reception service, a daily maintenance service for the accommodation units and a breakfast service. It may include a catering service.”;

2° In Article LP 7, the last sentence of the last paragraph is replaced by the following provisions:

“They have the traditional look of Polynesian houses. The bungalows of the five-star hotels have pandanus roofs.”;

3° The first paragraph of Article LP 14 is thus amended:

“Furnished tourist accommodation is furnished houses, villas or flats, equipped with at least a kitchen and sanitary facilities, for the exclusive use of the tenant, offered for rent to a visiting clientele.”;

4° After the last paragraph of Article LP 14, a new paragraph is added as follows:

“Principal residences available to be rented out under the conditions defined in this article fall within the scope of this section”.

5° After article LP 14, a paragraph I entitled “Paragraph I - Additional reporting obligations relating to furnished tourist accommodation” is inserted, consisting of articles LP 15 to LP 15-1.

6° Article LP 15 is replaced by the following provisions:

“Article LP 15 - In addition to the obligation to declare the tourist accommodation activity to the service in charge of tourism mentioned in Article LP 3, a copy of the receipt of this declaration is sent to the mayor of the municipality where the furnished accommodation is located before it is rented out.

The responsibility for the declaration and transmission referred to in the first paragraph lies with the person offering the accommodation for rent, even if he or she requests an agent or the services of an intermediary to carry out these procedures.

The declaration indicates the capacity of the accommodation. If the housing is managed by an intermediary, the name, position and contact details of the intermediary are given.

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A set of rules and regulations has been drawn up for the attention of our clients. They indicate the capacity of the accommodation and the rules and information to ensure safety, hygiene and decency in order to prevent any disturbance to the peace and security of the neighbourhood.

Article LP 15-1 - The service in charge of tourism may ask the person offering the accommodation for rent to inform it of the number of days during which the furnished accommodation was rented the previous year. This information must be provided within one month, stating the address of the furnished accommodation and its registration number. The transmission can be done electronically.

Paragraph 2 – Intermediaries

Article LP 15-2 - Any person who engages in or assists, in return for payment, through an intermediary or negotiation activity or by making a digital platform available, in the letting of a furnished tourist accommodation informs the person offering the accommodation for rent of his or her obligations under the present country law.

It obtains from the latter, prior to the publication or online posting of the rental advertisement.

- a statement of truth indicating the registration number provided by the service in charge of tourism and attesting to the fulfilment of its obligations;

- a copy of the rules of procedure provided for in Article LP 15, which it shall bring to the attention of the client.

These documents may be transmitted electronically.

It publishes, in any advertisement relating to the furnished property, its registration number.

Article LP 15-3 - The person mentioned in Article LP 15-2 must transmit each year before 31 March to the service in charge of tourism, in particular when it makes available a digital platform that gives it knowledge or control of the data stored, the declaration of the number of days during which the furnished tourist accommodation rented through it was actually rented during the past year.

The declaration indicates the name of the person offering the accommodation for rent, the address of the furnished accommodation and its registration number. It can be made electronically.”

6 bis After article LP 18, the title of a section VI bis entitled “Section VI bis - Luxury Villas Category” is inserted and composed of article LP 18-1 as follows:

“Article LP 18-1. - A luxury villa is a commercial accommodation available for rent to a visiting clientele and for the exclusive use of a tenant.

Of exceptional architectural design, it is made up of one or more furnished flats, offering large living areas and a minimum of space and equipment dedicated to the relaxation and well-being of the clientele.

Services are available, including at least a concierge service, daily maintenance of the accommodation and a catering service.”

7° In the second sentence of Article LP 19, the word “are” is replaced by the words “may be”.

Article LP 3 - The chapter of country law no. 2018-10 of 29 March 2018 is thus amended:

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1° After the title of Chapter III, the title of a Section I entitled “*Section I – General considerations*”, consisting of Articles LP 20 to LP 27, is inserted;

2° At the end of the first paragraph of article LP 26, the words “*where applicable*” are added.

3° After Article LP 27, the words “Classification Procedure” are replaced by the title of a Section II entitled “*Section II - Classification Procedure*” consisting of Articles LP 28 to LP 34.

4° In Article LP 20, the words “categories referred to in Sections I and II” are replaced by the words “*categories referred to in Sections I, II and Via*”.

5° After article LP 22, an article LP 22-1 is inserted as follows:

“Article LP 22-1 - Luxury Villas” category is classified according to criteria relating to surface area, location or site, environment, services and facilities offered, health, safety and sustainable development requirements. These criteria and classification procedure are set by order of the Council of Ministers.”

6° In Article LP 28, the words “in Chapter II, Sections I and II” are replaced by the words “*in Sections I, II and VIa of Chapter II*”;

7° At the end of article LP 33, a paragraph is added, worded as follows:

“Notwithstanding the previous paragraph, the classification order for an establishment in the Luxury Villas category shall indicate the name and address of the establishment, and the capacity expressed in terms of the number of accommodation units and persons likely to be accommodated.”

Article 4. – 1° After article LP 34 of country law no. 2018-10 of 29 March 2018, a new chapter IV entitled “*Chapter IV - Administrative controls and sanctions*” is inserted, consisting of LP 34-1 to LP 39-11;

2° After the heading of Chapter IV, a section I entitled “*Section I - Enforcement of the obligation to make a prior declaration*” is inserted, consisting of article LP 34-1, which reads as follows:

“Article LP 34-1 - The fact that any person does not respect the obligation of prior declaration provided for in Article LP3 is liable to an administrative fine, the amount of which may not exceed XPF 300,000”

3° Before section LP 35, the word “Control” is replaced by the heading of a Section II, which reads “*Section II - Penalties for classification obligations*” and consists of sections LP 35 to LP 39.

4° After Article LP 35, the words “*Chapter IV - Administrative penalties*” are deleted.

5° After Article LP 39, a Section III and a Section IV shall be inserted, worded as follows:

“Section III. - Penalties for obligations relating to furnished tourist accommodation

Article LP 39-1 - Failure to comply with the obligation to send a copy of the declaration receipt to the mayor mentioned in article LP 15 is punishable by an administrative fine, the amount of which may not exceed XPF 300,000.

Article LP 39-2- Failure to comply with the obligations resulting from article LP15-1 is liable to an administrative fine, the amount of which may not exceed XPF 300,000.

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Article LP 39-3 - Failure to comply with the obligations resulting from article LP15-2 is liable to an administrative fine, the amount of which may not exceed XPF1,000,000 per furnished tourist accommodation which is the object of the failure.

Article LP 39-4 - Failure to comply with the obligations resulting from Article LP 15-3 is liable to an administrative fine not exceeding XPF 5,000,000 per furnished tourist accommodation that is the object of the failure.

Section IV. - Implementation of administrative sanctions

Article LP 39-5 - Failures to comply with the provisions of country law shall be investigated and ascertained by the officials and agents of the service in charge of tourism.

Article LP 39-6 - Non-enforceability of professional secrecy

Agents acting within the scope of the powers conferred on them by this Chapter may not be deprived of professional secrecy.

Article LP 39-7 - Report of Findings of Non-compliance

Failures liable to an administrative fine are recorded in minutes, which shall be authentic until proven otherwise. A copy is sent to the person concerned.

Article LP 39-8 - Rights of Defence

Before any decision is taken, the person concerned shall be informed in writing of the penalty envisaged against him/her. S/he is informed that s/he may review the documents in the case file and be assisted by counsel of his/her choice. He or she shall be invited to submit, within 30 days, his/her written and, where appropriate, oral observations.

After this period has elapsed or after receiving the observations of the person concerned, the decision shall be notified to him.

Article LP 39-9 - Publication of the decision

The decision pronounced may be published at the expense of the defaulting party.

Article LP 39-10 - Disclosure of documents

Documents collected and drawn up in connection with the investigation and the finding of a breach which has given rise to an administrative sanction procedure shall be disclosed only to the person to whom they relate or to his representative.

Article LP 39-11 - Accounting system for the recovery of administrative fines

The amount of the fine, paid to the budget of French Polynesia, is recovered like the non-tax debts of the latter.”.

Article LP 5.- 1° After Article LP 39 of country law no. 2018-10 of 29 March 2018, the heading “Penal sanctions” is deleted;

2° Sections LP 40 to LP 42 are repealed.

Article LP 6.- Article LP 45 of the country's law no. 2018-10 of 29 March 2018 is thus amended:

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- 1° In the third paragraph, the word “second” is replaced by the word “third”;
- 2° In the fourth paragraph, the word “third” is replaced by the word “fourth”;
- 3° In the fifth paragraph, the word “fourth” is replaced by the word “fifth”;
- 4° In the sixth paragraph, the word “fifth” is replaced by the word “sixth”.

Article LP 7.- Any person who offers a furnished tourist accommodation for rent on the date of entry into force of the present country law has a period of six months to regularise his/her situation, in particular with regard to the provisions of article LP 15 of country law no 2018-10 of 29 March 2018 in their wording resulting from this country law, relating to the prior declaration of tourist accommodation activity to the service in charge of tourism and the transmission to the mayor of the municipality where the furnished accommodation is located of a copy of the receipt of this declaration.

Article LP 8. - Deliberation no. 2000-140 APF of 30 November 2000 as amended defining the categories of classified tourist accommodation establishments in French Polynesia and the conditions for their approval as such is repealed.

This act shall be executed as country law.

Done in Papeete on 1st February 2021.

Signed the President of French Polynesia: Edouard Fritch

Signed the Minister of finances and economy: Yvonnick Raffin

Signed the Minister of tourism and employment: Nicole Bouteau

Preparatory work

- opinion no. 49/CESEC of 10 November 2020 of the economic, social, environmental and cultural council of French Polynesia;
- order 2101/CM of 25 November 2020 submitting a country bill to the assembly of French Polynesia;
- review by the economy, finances, budget and civil service committee on 30 November 2020;
- report 130-2020 of 30 November 2020 of Mrs. Tepuaraurii Teriitahi, rapporteur of the bill;
- adoption on 15 December 2020; text adopted no. 2020-39 LP/APF of 15 December 2020;
- publishing for information at JOPF no. 102 of 22 December 2020.