

2009 HOSPITALITY LAW CONFERENCE

International Hotel Development Deals:



Common Considerations that Apply in All
International Transactions

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Irvin W. Sandman, Esq.



- Graham & Dunn Hospitality Industry Group Leader since 1993. Irv and his team of 14 attorneys handle the special needs of the lodging industry, bringing to bear hotel industry knowledge, experience, and connections to help hoteliers, developers and investors succeed.
- Lead counsel in hotel transactions worldwide, representing asset values totaling in excess of \$1 Billion. Lead counsel in hotel workouts and restructurings during numerous industry downturns, including the downturn of 1988-93.
- 2008 Recipient of Anthony G. Marshall Hospitality Law Award.



II. Approaching the International Hotel Project Intelligently: Considerations to Reduce Complexity, Costs, and Risk



II. Approaching the International Hotel Project Intelligently (cont'd)

A. How Much Foreign Law Will You Need?

- Avoiding the slippery slope
- Refresh subconscious concepts that you take for granted
 - A contract
 - Ownership of property



II. Approaching the International Hotel Project Intelligently (cont'd)

B. Arbitration: The Most Important Cleavage Point for Drafting Contracts

- Enforcement—the ultimate legal concern



II.B Arbitration: The Most Important Cleavage Point for Drafting Contracts (cont'd)

- Arbitration usually *is* the answer
 - The U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards; the Inter-American Convention on International Commercial Arbitration
 - The foreign court *must* enforce the arbitration judgment



II. Approaching the International Hotel Project Intelligently (cont'd)

C. Making Choices About Arbitration

Considerations:

- Steering clear of the narrow treaty defenses
- Avoiding the slippery slope



II.C Making Choices about Arbitration (cont'd)

1. Choosing the Arbitration Service.

Defense:

“The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties.”



II.C Making Choices about Arbitration (cont'd)

2. Choosing the Governing Law.

- The closer the better.

“the agreement is not valid under the law to which the parties have subjected it”

- Common law vs. civil law



II.C Making Choices about Arbitration (cont'd)

3. Choosing the Venue.

Pick a country that:

- Is a party to the New York Convention
- Is used to applying the law you've chosen



II. Approaching the International Hotel Project Intelligently (cont'd)

D. Considerations When Foreign Property Investments are Involved.

- Ferret out the variances
- Structure to isolate the foreign law aspects



II. Approaching the International Hotel Project Intelligently (cont'd)

E. Selecting and Working With Foreign Counsel.

1. Factors in Selecting Foreign Counsel.

Know what lawyers do there.

2. Special Factors and Hazards.

Challenge assumptions

- *Confidentiality*
- *Conflicts*



II.E Selecting and Working with Foreign Counsel (cont'd)

3. The Engagement Letter.

Address the holes and patch up the expectations.

Arbitration?



***“Approaching the International
Hotel Project Intelligently:
Considerations to Reduce
Complexity, Costs, and Risk”***

Questions?



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