HOSPITALITYLAWYER.COM PRESENTS: POCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS FEBRUARY 10th - 12th, 2014

NON-U.S. HOTEL AND RESTAURANT LEGAL CONSIDERATIONS

PRESENTED BY DANIEL MARINBERG



February 10-12, 2014



FEBRUARY 10th - 12th, 2014

HOSPITALITYLAWYER.COM PRESENTS:



- Daniel Marinberg, Esq. Shareholder, Greenberg Traurig, P.A.
- Transactional counsel focusing on hospitality and resort acquisitions, lending, and development domestically and internationally.
- Represent both owners and hotel brand managers in all aspects of financing, construction, and development of new hotel and resorts; reflagging of existing hotels and resorts; negotiation of hotel management agreements, technical services agreement, brand license agreement, and ancillary documents.
- Listed in South Florida Legal Guide as a Top Lawyer in South Florida (2010-2014); Listed in Super Lawyers magazine, Florida Super Lawyers (2010-2011); Member of the Winning Team, Chambers USA Award for Excellence, Real Estate (2010); Team Member, Law360 "Real Estate Practice Group of the Year" (2011, 2013)











- Background
- What's the big deal? Is there any real difference?
- Understanding Cultural Differences







- Friend or Foe?
- Selection of Local Counsel
- Conflicts Issues in Foreign Jurisdictions



II. LOCAL COUNSEL – (CONTINUED)



Friend or Foe?

- Make them your friend
- Explain concerns
- Understand cultural differences and non-U.S. legal processes
- Asking the right questions, and asking them again, and again



II. LOCAL COUNSEL – (CONTINUED)



Selection of Local Counsel

- Ask around
- Vet them by phone or in person
- Negotiate legal fees in advance



II. LOCAL COUNSEL – (CONTINUED)



Conflicts Issues in Foreign Jurisdictions

Conflict? What conflict?



III. CLOSING THE TRANSACTION

- Title and Survey
- Environmental/Zoning/Land Use
- Transfer Taxes
- Ownership Restrictions
- MOU / MOA







- Title and Survey
 - Registry systems
 - Notarial systems
 - Availability of title insurance?
 - Availability of ALTA / ACSM surveys?





- Environmental/Zoning/Land Use
 - Do any such laws and regulations exist?
 - What does this mean for development?
 - What does this mean for financing?





Transfer Taxes

- What types of taxes and what amounts?
- Are there ways to avoid through structuring?





Ownership Restrictions

- Can foreigners own real estate?
- Can foreigners own shares in entities that own real estate?
- Is coastal land permitted to be owned by foreigners?
- Is ownership in freehold / fee simple or leasehold?





- Memorandums of Understanding / Memorandums of Agreement
 - Purpose / benefits to developers and operators
 - Tax benefits
 - Customs/Duties
 - Immigration for workforce
 - Use of Publicly Owned Facilities / Utilities; Expansion of Infrastructure
 - Development Plan Approval
 - Licenses, approvals of operator
 - Taxes and Licenses Upon Sale
 - Lender and Financing Needs



IV. STRUCTURING AND CHOICE OF ENTITY



- Liability
- Employment
- Tax



IV. STRUCTURING AND CHOICE OF ENTITY – (CONTINUED)



Liability

- Determine available vehicles locally
- Separation of roles / assets / operations and entities
- Operators- Determine whether to use main operating entity or SPE
 - Owner- if Operator uses SPE, determine whether guaranty from main operating entity is appropriate or required



IV. STRUCTURING AND CHOICE OF ENTITY – (CONTINUED)



- Employment
 - Who employs? Operator or Owner?
 - Determine employment laws
 - Separate owner entity?
 - Transfer of ownership in employer entity from Operator to Owner?



IV. STRUCTURING AND CHOICE OF ENTITY – (CONTINUED)



Tax

- Any tax treaties of which to take advantage?
- Avoid repatriation of funds
 - More useful in development scenario





V. SUBSTANTIVE LAW ISSUES

- SNDA
- Landlord / Tenant
- Employee Rights
- Litigation or Arbitration?



V. SUBSTANTIVE LAW ISSUES - (CONTINUED)



- Does such a concept exist in the jurisdiction? Does a recording mechanism exist for such a document?
- Are there alternate ways to achieve a similar result?
 - Leases
 - Separate agreements in the U.S.
 - Other?



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V. SUBSTANTIVE LAW ISSUES - (CONTINUED)



- Landlord / Tenant Rights
 - Local law incorporated by default
 - Rights of First Refusal (e.g. Brazil)



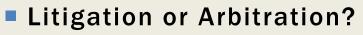
V. SUBSTANTIVE LAW ISSUES– (CONTINUED)



- Employee Rights
 - Profit Sharing (e.g. Mexico)



V. SUBSTANTIVE LAW ISSUES - (CONTINUED)



- Comfort and familiarity with the jurisdiction
- Location of the assets in the event of collection?
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention
 - Text and other links: <u>http://newyorkconvention.org/</u>
 - Signatory countries: <u>http://www.newyorkconvention.org/contracting-states/list-of-contracting-states</u>



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VI. REFERENCE MATERIALS



http://latinlawyer.com/reference/topics/67/real-estate/



VII. SUMMARY AND QUESTIONS



- Questions?
- Comments?
- Please contact Dan Marinberg with any further questions or follow-up issues at <u>marinbergd@gtlaw.com</u> or (305) 579-0726 (work) or (305) 528-6237 (cell)

