

HOSPITALITYLAWYER.COM PRESENTS:

THE **HL** **HOSPITALITY LAW**
CONFERENCE

FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

FEBRUARY 10th - 12th, 2014

NON-U.S. HOTEL AND RESTAURANT LEGAL CONSIDERATIONS

**PRESENTED BY
DANIEL MARINBERG**

**2014
Hospitality Law
Conference**

**February
10-12, 2014**

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FOCUSING ON LEGAL, SAFETY & SECURITY SOLUTIONS

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- **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)

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I. INTRODUCTION

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

II. LOCAL COUNSEL

- 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

III. CLOSING THE TRANSACTION – (CONTINUED)

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

III. CLOSING THE TRANSACTION – (CONTINUED)

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

III. CLOSING THE TRANSACTION – (CONTINUED)

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

III. CLOSING THE TRANSACTION – (CONTINUED)

- **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?

III. CLOSING THE TRANSACTION – (CONTINUED)

- **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)

■ SNDA

- 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?

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)

- **Litigation or Arbitration?**
 - **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: <http://newyorkconvention.org/>**
 - **Signatory countries: <http://www.newyorkconvention.org/contracting-states/list-of-contracting-states>**

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 marinbergd@gtlaw.com or (305) 579-0726 (work) or (305) 528-6237 (cell)