



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

Hotel Projects for the next generation: What are the key factors for foreign investors in order to ensure a successful running hotel business?

Commission in charge of the Workshop:

REAL ESTATE COMMISSION

Annual Congress London, 2015

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National Report of Cyprus

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Introduction:

In general, new hotel projects nowadays really change the daily life and the face of a city. Suddenly, the city as a whole is upgraded to a new stage of growth and status of prosperity, often combined with spectacular next generation urban architecture style. As a result, and as AIJA people perfectly know, 21st century networking, recreation, business and socializing places are born that inspire us and often allows us to celebrate unforgettable events as a genuine leap into the future of our profession.

For the Annual Congress 2015 in London, the Real Estate Commission is planning to prepare a Workshop with the hot topic *“Hotel Projects for the next generation: What are the key factors for foreign investors in order to ensure a successful running hotel business?”*. Our aim and wish is to compare and share views from different jurisdictions with regard to transactions types, market situation, legal and common hotel business structures and, last but not least, we would like to discuss the effects of the financial crisis in that context.

Below you will find a list of questions related to these aspects. Please try to answer as many questions as possible. If you have any questions, please do not hesitate to contact the responsible General Reporters!

I.- MARKET SITUATION / TYPE OF TRANSACTIONS / MIXED USED TYPE

1.- Give a brief overview of the hotel sector market situation in your country (or region): Specifically, what are the current trends and/or what are the main targets for investors? What are the general expectations for the near future?

Cyprus is an island located in the Eastern Mediterranean Sea and it's the third largest island and one of the most popular islands in the area. Due to its location and the great weather it's a target for tourists hence the hotel sector market is quite large. The Cypriot tourism sector has a share contribution of 12% to the GDP. The current trend and the next target for investors are to create casino hotels in Cyprus. The government plan is to attract a large international investor which will invest 400-500 million euros and create a high quality resort similar to the ones operating abroad. The annual income from the operation is



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expected to be around 450 million. From these, 60 million euros will be collected as taxes by the state. This will create around 3300 new jobs and it will attract more than 500.000 tourists.

2.- What type of transactions are the most usual in your jurisdiction (development, purchase, sale, lease, management agreement, sale & lease-back, franchise, etc.) ?

The most common transactions in the hotel development is the development and then sale of the hotel. For instance during 2014 Le Meridien was sold to Russian investors.

Same concept applied to the sale of Amathus beach hotel in Limassol.

More, specifically, the current owner signed a Binding Heads of Agreement with the new investors. The object of the agreement was to create a new company which will include the three investors .

This new company will then buy the hotel, which includes the freehold property of the hotel, the leased land as well as the content of hotel and brand name.

3.- Are there mixed use types (Hotel & Residential or Resort/Relaxing facilities, condo-hotels/condominium, etc.)? If so, please describe some typical schemes you know about or which you find interesting to share. Please describe pros & cons, if so, of one structure compared with others.

There are hotels and resorts like Four Seasons in Limassol. Additionally there are hotel apartments as well. There are budget hotels but there are 5 stars too. The typical scheme due to the fact that Cyprus is a holiday destination is a hotel resort with bungalows.

The hotel resorts are the most expensive option where the hotel apartments are the budget choice. The resorts are the typical serviced accommodation which are located eg by the sea where the hotel apartments have the comfort and convenience of serviced accommodation with the freedom, space and privacy of your own house. They are more suitable for families.

4.- Is the off-plan project always a common scheme to follow or is it an out of date concept?



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The off plan project in Cyprus is followed in the real estate industry for development of houses, block of flats etc. Still very popular however the financial crisis have affected it as well.

5.- Are new projects involving renewable energy popular in your country? Are those more attractive than standard projects even though they are more expensive? Do they involve lots of clauses which can be considered "*condicio sine qua non*" for the signing of the contracts?

Cyprus as an EU member has to invest in the renewal energy in order to produce electricity, since it's a heavily depended country to petrol. Additionally it's a country that has sun more than 6 months per year. During 2014 incentives were given to households to install photovoltaic panels sell electricity to the Electric Authority of Cyprus.

Cyprus' 2020 targets are to generate 13% of the gross final energy consumption from renewable energy sources and reduce its GHG emission by 5%. Therefore as mentioned above incentives are given which among other it includes large scale businesses to invest and get subsidy in installations of wind energy, solar thermal, PV installations, and biomass exploitation.

6.- Lawyers and Project Managers: Do they work well together or is there friction between them?

They do work well together because projects managers are executing and lawyers ensure that everything is according to the legislation. In cases of friction the assistance of arbitration and/or the courts are seek in order to provide solutions.

7.- Are there favorable tax or other promotion plans for resorts for elderly people in your country?

Cyprus offers a general favourable tax scheme which does to 'discriminate' between elder and younger.



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II.- BUYING AND SELLING THE HOTEL BUSINESS: PLEASE DESCRIBE THE MAIN SCENARIOS WHEN IT COMES TO A HOTEL ASSET OR SHARE DEAL SITUATION.

1.- Please describe the pros & cons or simply the differences to keep in mind when the “Hotel Business” changes ownership – the answers may contain legal as well as practical aspects.

- Engage the legal team
- Prepare letter of intent
- Start the due diligence process
- Sign an agreement for the due diligence exclusivity
- Request the due diligence (includes accounting records, financial matters, contractual matters, franchise issues, permits, plans, equipment issues, personnel issues etc)
- Finalise the due diligence
- Sign contracts for the transfer of ownership

2.- In cross-border situations: Tell us about your experience or lessons learned when it comes to local differences and how to deal with these situations (e.g. are there some peculiar legal or cultural aspects, which investors should keep in mind when they want to invest in hotel business in your country?)

They should particularly pay attention to personnel administration issues. In Cyprus there are strong employee unions which can really affect a business. In order to deal with such issues is to have a clear and precise employment agreement which is full compliance with the Union.

3.- Have you had lots of M&A transactions involving Hotel Projects in your country in the last two years? Yes they were mentioned above.

Cases of Le Meridien, amathus beach hotel.



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III.- HOTEL BUSINESS STRUCTURE - MANAGEMENT AGREEMENT/LEASE AGREEMENT/FRANCHISED OR ALL MANAGED BY THE OWNER?

1.- How would you describe the usual hotel business structures in your country. Who are the key parties/players involved and who is responsible for which part of the running business? (For example, in case the owner is responsible for everything, that means he owns the building and also owns & operates the hotel business – please give a short overview.)

Yes indeed in Cyprus the owner of the building is usually owns and operates the hotel business. Sometimes you might have separate companies running the shop in the hotel as well as the facilities of the hotel, eg restaurants bars etc.

2.- In the event of a management agreement, i.e. the owner owns the building and the hotel business, what are the most important clauses or aspects to be structured or dealt with (duration, fees, liability of the management, operating risks, etc.)?

- Check the Parties
- Clear description of Services
- Charges, payment and costs
- Check Licences and permits
- Warranties and indemnities
- Check Intellectual property rights
- Limitations on liability
- Assignment and subcontracting
- Confidentiality
- Term
- Tax issues
- Termination
- Boilerplate clauses
- Governing law and jurisdiction and dispute resolution



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3.- In the event of a lease agreement, i.e. the owner owns the building but not the hotel business, what are the most important clauses or aspects to be structured or dealt with (duration, rent, early termination rights, change of control clauses, pre-emption rights, etc.)?

- Capacity of the Parties
- Duration
- Rent
- Warranties
- Insurance
- Agreement survives completion
- Third party rights
- Successors
- Counterparts
- Joint and several liability
- Governing law
- Jurisdiction

4.- In the event of a franchise system, what are the most important clauses or aspects to be structured or dealt with (contractual relationships and parties involved, etc.)?

- Rights granted
- Commencement and duration
- Fees
- Franchisor's initial obligations
- Franchisor's continuing obligations
- Franchisee's obligations
- Employees
- Training
- Advertising
- Intellectual property
- Sale of business
- Death or incapacity of individual



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- Confidentiality
- Termination
- Consequences of termination
- Restrictions
- Indemnity
- Individual's guarantee and covenants
- Rights and remedies
- No partnership or agency
- Force majeure
- Notices
- Alternative dispute resolution
- Governing law
- Jurisdiction

5.- Please describe which one are the most common financial leverage or instruments to be arranged by the builders or investors?

6.- Is a private equity scheme more common than traditional bank loans in your jurisdiction?

The traditional bank loans are used in Cyprus.

IV.- EFFECTS OF THE FINANCIAL CRISIS

1.- Please describe the effects of the financial crisis in your jurisdiction, if any. Are there a lot of forced sales scenarios? Give examples.

The financial crisis deeply affected Cyprus. Especially in the area of real estate. During 2003-2005 there was a rapid increase in the prices of the real estate of 25% per year. The prices of house in Cyprus rose 125% the last 10 years.

However after the severe damages in the economy the prices started to drop. At the moment there is a reduction in the prices of 25%. However, a very important factor in the



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sale of real estate is that it is very difficult for a bank institute to confiscate a house if the loan is not paid in time. For instance it can take 10-12 years.

2.- Financing of hotel transactions – how does that work nowadays? (Which are the most obvious differences in contrast to earlier times? Which expectations and requirements do Banks have at the moment?)

In Cyprus the financing is done via the banks. The bank require collateral of 40%-50% or to mortgage the property.

3.- Litigations matters: Are many of the failed transaction resolved by arbitration or is traditional litigation used in your jurisdiction?

Still the most popular is traditional litigation.

4.- In case a criminal proceeding is involved: Is there also a way to protect third parties involved without awaiting the decision of the Criminal Court?

5.- In your opinion: Is the crisis also a financial opportunity for speculators who can invest in "unfinished projects" with few resources?

Yes it is indeed cause you can get hotels/real estate in much lower prices.