



Despite investment in hotel projects in the Middle East growing by leaps and bounds to cater to the rising demand for hotel rooms, unfortunately, the UAE's legal and licensing framework for hotel operations is not very conducive to foreign investors

## THE LEGAL ASPECTS OF OWNING AND OPERATING A HOTEL IN DUBAI

### ON RECORD



IT IS estimated that a whopping \$3.39 trillion will be invested in hotel projects all over the Middle East by 2020, much of it through foreign direct investment. As the region prospers due to increased oil prices, economic diversification and construction of themed attractions, there will

be a greater demand for hotel rooms from business and leisure visitors.

Many foreign hotel project investors and hotel operators are presently investing in hotel projects in Dubai and will, no doubt, continue to do so. Unfortunately, the legal and licensing framework in Dubai for hotel operations is not conducive to foreign investment.

Presently, a license to operate a hotel may only be issued to a UAE or other GCC national. Also, land in Dubai proper — not in the freehold areas — that may be used for construction of a hotel may only be owned by a UAE or other GCC national.

As a result of such regulations, the

ownership of hotels in Dubai proper can only belong to these nationals. So then, how can foreign investors own and operate hotels in Dubai proper?

The solution is not a perfect one, but it is workable. It involves obtaining a usufruct right to (right to use) the land from the land owner through a 'land lease agreement'.

However, more importantly and dovetailing into and working in conjunction with such an Agreement are a number of other critical and carefully drafted documents that complete the suite of documents required and crystallise the protection needed for such projects.

The Land Lease Agreement is a spe-

cialised document that differs vastly from a regular lease agreement. Its purpose is to secure the rights of the foreign party and as such contains specific and customised provisions catering to this market to achieve such ends.

The drafting and wording of such an agreement is all important to the legal structuring of such a project.

However, as alluded above, the Land Lease Agreement by itself is by no means sufficiently protective to provide the legal protection that is required. There are a number of other documents and agreements that relate to it which complete the legal chain.

The discussion of these documents is

## Commercial

beyond the scope of this column. Given the nuances of the legal structuring of such a transaction, advice should be sought from a knowledgeable lawyer with long-term experience and presence in Dubai to avoid the all too common pitfalls of such projects.

If the foreign party desires to appoint a hotel operator (for example, a brand name hotel chain) to operate the property, then it will also have to enter into a Hotel Management Agreement. Such an agreement would encompass: hotel construction matters and the formal opening of the hotel; recruitment and training of staff; setting prices in order to be competitive and maximise profitability; furnishing; undertaking appropriate promotion and marketing; setting standards of operation; repairs and maintenance standards; insurance; and expense management and bank accounts.

The structuring and planning of the legal strategy for addressing the myriad issues that arise with respect to hotel projects can be the factor that makes the project a success or a failure. There are many examples of legal structures that have been implemented based on jurisdictions such as the US, the UK, Australia, India or

even other Middle Eastern jurisdictions that have been mostly incorrect and completely inappropriate in this jurisdiction. In many cases, we have been consulted to rectify and repair such faulty legal structuring, which we were able to do after considerable effort and expense to the client. However, in such cases and generally speaking, it would have been far more time — and cost-efficient for the client to have consulted us at the outset to implement a proper project legal structure.

Of course, it goes without saying that some incorrect and inappropriate legal structuring is beyond help and results in litigation — which is another incentive to carefully select a knowledgeable lawyer with lengthy presence in Dubai.

Finally, it is important to note that hotel projects may now be undertaken in the freehold areas in Dubai. Although this is an opportunity for a foreign investor, the dilemma of obtaining a hotel license that can only be issued to a UAE or other GCC national still exists.

Again, customised legal structuring and planning is required to address this issue.

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The writer is a lawyer, professional engineer and a partner at the law firm of Afridi & Angell ([ssafai@afриди-angell.com](mailto:ssafai@afриди-angell.com))