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Hotel Management in the Lao PDR

Written by: Roy Lee, Kavita Pradoemkulchai, and Walter Heiser

As the growth of Southeast Asian economies has led to increased interest from the rest of the world, the resulting increased traffic, in both the business and tourism sectors, has led to a boom in the hotel industry. The Lao PDR, which has been isolated at times, is now experiencing a renaissance in its hotel and tourism sectors. Many Lao PDR hotel owners are seeking to upgrade operations to an international standard. The entry into international franchising agreements and the use of international hotel management operators are no longer unusual in the Lao PDR. However, any such hotel management arrangement in the Lao PDR must consider the following key issues.

ESTABLISHING A LOCAL PRESENCE

Foreign hotel management companies operating under a short-term contract need not establish a local law subsidiary or other entity and are permitted to engage in business in the Lao PDR under the Temporary Tax Registration regime. The temporary use of foreign contractors is allowed by the Government of the Lao PDR (GoL) as foreign expertise is deemed necessary in many local investment projects—including hotel operations.

However, Lao PDR law is unclear as to whether foreign contractors may engage in long-term management services contracts—generally considered to be a contract with a term of five or more years.

The Temporary Tax Registration regime for foreign contractors applies only to operations under a short-term contract. While the Tax Law contains a provision on local goods and services provided by unregistered foreign entities, the rationale for this law appears to be to impose taxes on unregistered entities which provide goods and services in the Lao PDR, rather than the sanction of activities of such unregistered foreign entities. If a Temporary Tax Registration Certificate is not granted, the foreign



Patuxay Monument in Vientiane, Laos

contractor will be required to establish a local Lao PDR entity to directly perform the contracted services in the Lao PDR.

FORM OF INVESTMENT

Options for a foreign hotel management company seeking to operate in the Lao PDR include:

- Business cooperation by way of contractual agreement;
- An enterprise with foreign and domestic investors; or
- A wholly foreign-owned enterprise.

The most common form of investment in the Lao PDR is the limited liability company. A company with any foreign ownership, regardless of percentage, must have a minimum registered capital of at least 1 billion Kip (approximately USD 130,000). The local entity will be subject to all relevant Lao PDR laws. Direct or indirect foreign ownership of certain businesses and industries is prohibited or restricted. At present, foreign ownership and investment in the hotel management sector is unrestricted.

Note that under the contractual business cooperation agreement, the foreign party would not be able to own the immovable assets of the venture, such as the hotel building and other structures, and would not be able to act as employer if this were to be a 'long-term' contract.

LABOR AND IMMIGRATION

While in practice many foreign business people enter the Lao PDR via short-term "on-arrival" tourist visas, technically, a non-Lao PDR registered entity may not bring any employees/consultants into the Lao PDR for business purposes. Following proper procedure under the Lao PDR investment and labour laws, foreign personnel seeking entry into the Lao PDR for business purposes are required to be sponsored for, and obtain, the "B2 visa". The contracting Lao entity can sponsor the personnel of the foreign contractor for such visa. In order to obtain a longer term B2 visa and work permit (each valid for a one year period), any foreign personnel must have employment contracts with an entity established to do business in the Lao PDR.

A hotel management company would be permitted to hire skilled or expert foreign personnel when necessary and with approval from the Ministry of Labour and Social Welfare. Foreign non-specialized workers may not constitute more than 10% of the enterprise's work force. Foreign specialized workers may constitute up to 20% of the enterprise's work force.

INTELLECTUAL PROPERTY

Hotel management companies should consider proper protection of their intellectual property when operating in the Lao PDR. Lao PDR law recognizes three types of intellectual property:

- Industrial property (including patents, petty patents, industrial designs, trademarks, trade names, integrated circuit topographies, geographical indicators, and trade secrets);
- Plant varieties; and
- Copyright and related rights.

Domestic and foreign individuals or entities (including foreign investors) may apply for patents, petty patents, or registration of their industrial property and plant varieties at the Ministry of Science and Technology or with an international intel-

lectual property registration organization to which the Lao PDR is a party.

After obtaining lawful registration of intellectual property rights, an applicant becomes the owner of industrial property, and obtains the right to:

- enjoy the benefits derived from the industrial property;
- Transfer all or part of the industrial property;
- Sell the rights to other persons;
- Exchange, lease, or assign;
- Permit other persons to seek benefits over all or part of the industrial property;
- Bequeath and assign the rights in the industrial property to other persons; and
- Protect the industrial property from violation by other parties.

FOREIGN CURRENCY CONTROLS

The Lao PDR has enacted strict rules governing foreign currency and capital. Lao PDR entities are prohibited from paying or receiving foreign currency for goods and services rendered to them or by them, or from settling debts in foreign exchange within the Lao PDR, without approval from the Bank of Lao PDR (BoL).

These capital control regulations may restrict the ability of the hotel management company to borrow money, maintain offshore bank accounts, transfer funds abroad and utilize foreign exchange for domestic payments.

The use of foreign currency is permitted for specified purposes, including payment for imported goods, payment for import-export related services, repayment of foreign loans in accordance with a loan agreement that has been approved by the BoL, and the repatriation or transfer of dividends, capital, interest, or salaries by foreign investors to a third country, provided that such use is in compliance with the regulations issued by the BoL.

Foreign investors are required to use the Lao PDR banking system (and domestic bank accounts) for all transactions, unless BoL approval has been obtained for the use of offshore bank accounts. ■

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AMCHAM Thailand is seeking nominations for the 2015-2016 Board of Governors

Seven positions on the Board of Governors for a term of two years will be filled at the election in late October, to be effective as of January 1, 2015. If you interested in helping to promote trade and commerce between the U.S. and Thailand and making Thailand a more attractive place for American companies to do business then AMCHAM needs you.

CRITERIA FOR CANDIDATES

- Be the Designate or Alternate representative of an AMCHAM Ordinary Regular or Ordinary Special member.
- Sign a Board responsibility statement pledging willingness and ability to participate in AMCHAM events. The Board responsibility statement outlines attendance requirements and responsibilities should the person be elected to the Board, which includes a commitment to participate in AMCHAM activities on an average of 15 hours per month

and to be prepared, as necessary and if eligible, to assume responsibilities as a Chamber officer, namely President, Vice President, Secretary or Treasurer. In addition, each Board member is assigned to oversee one or more committee activities or coordinate Chamber efforts on specific issues. Candidates will be selected to ensure a balanced representation of industries and business sectors to allow the Board to fairly represent the interests of the Chamber members.

NOMINATIONS INFORMATION

For more information about running for the Board, please contact the chair of the Nominating Committee, David Carden at: nominations@amchamthailand.com.

Deadline for submitting nominations is August 25, 2014

Phuket Hotels Survive Political Turmoil

Written by: James Pitchon and Nattaporn Kaewiyudth

The number of international tourist arrivals to Phuket grew by 6.9% year-on-year to 962,953 arrivals in the first quarter of 2014 (Figure 1) with an increase in direct international flights to Phuket helping insulate it from any negative impact of the ongoing political turmoil in Bangkok.

The average occupancy of upscale hotels (with rates over Baht 2,000 per night) was over 80% in the first quarter of 2014. Hotels in Phuket were also able to increase the overall daily rate by 3.3% year-on-year, but this was mainly due to the Baht's depreciation in value against major currencies.

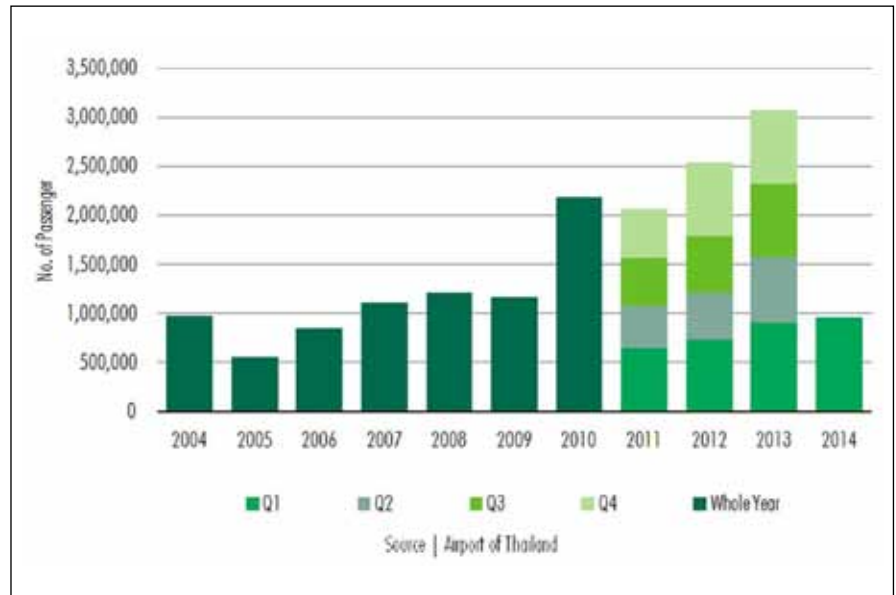
CBRE forecasts that the total Phuket hotel supply will increase by 4,000 keys over the next three years, a 25% increase in current supply. CBRE has also observed fewer new construction starts of hotels in Phuket, which means that the rate of new supply will decrease over the next three years.

Despite the political problems, there is a possibility that visitor arrivals to Phuket may increase at a faster rate than new hotel supply, which means that there is a good possibility of room rates rising.

China and Russia were the largest feeder markets with 225,949 and 228,691 arrivals to Phuket airport, respectively. There was a 1.6% year-on-year decline in Chinese arrivals, a market that had been growing at 90% per year, while Russian arrivals grew by 20.4% year-on-year this quarter. These two key markets constitute about 50% of the total.

The other key feeder markets including Sweden, Korea and Australia only account for about 5% each. The data shows the sensitivity of Asian feeder markets to political unrest in Thailand and the lack of concern from Russian tourists regarding the same.

FIGURE 1: TOTAL INTERNATIONAL PASSENGER ARRIVALS AT PHUKET INTERNATIONAL AIRPORT, 2004-Q1 2014



Phuket is, however, becoming a lot more dependent on Chinese and Russian arrivals whereas in the past there was a far greater spread of key feeder markets. The risk is that there could either be an event that prevents people from these markets from travelling, such as an economic downturn, or that their attitude to Thailand as a destination suddenly changes.

Although the Phuket hotel market is surviving, not every grade of hotel is prospering. Hotels are classified into four grades: luxury, first-class, mid-range and economy based on achieved room rate.

REVPAR (revenue per available room) is the combination of room rate and occupancy, and is a measure commonly used to analyse performance. First-class hotels with rates between Baht 4,000 - 10,000 per night had the best REVPAR. The positive aspect of this result is that it shows Phuket is not a zero dollar tour destination with tourists being pushed into the cheapest hotels and the tour operators hoping to gain revenue from commissions on shopping and entertainment.

CBRE believes that Phuket will remain one of Asia's leading tourist destinations. The airport is being expanded which will reduce capacity problems. The dependence on a limited number of feeder markets increases risk but there is still potential for growth. There were about 100 million outbound Chinese tourists last year and only 4.7 million of them came to Thailand.

The challenge for hotel owners is that if a property becomes dominated by one nationality, it tends to drive other nationalities away so the potential growth from key feeder markets needs to be handled carefully. The best revenue will come from quality, not quantity. Therefore, tourism policy makers, hotel developers and operators need to focus on long term profitability for the Phuket hotel market. ■

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