The Swiss hospitality industry is world renowned; in fact Switzerland’s reputation as the birthplace for hospitality was established more than a century ago when hotels were constructed like palaces to cater to an exclusive clientele. Today, Thailand follows in Switzerland’s footsteps by creating what is known all over the world as “Thai Hospitality”.

Thailand in 2013 played host to over 26 million visitors. Each of those travelers needed a place to rest their fatigued heads at night, be it in a 5-star hotel, a serviced apartment, a guesthouse, or a bungalow by the beach. Thailand’s hospitality industry has in the past flourished due to an uninterrupted growth market. The end result being that there are now in excess of an estimated 1,900 hotels across the Kingdom. As more and more hotels, services apartments and guesthouses develop we ask the question whether all such temporary accommodation facilities are considered to be “hotels” under the relevant Thai hotel law whereby requiring them to obtain a hotel license to operate. Presently there exists several temporary accommodation facilities scattered across the country that operate without this required hotel license. These facilities are able to do so due to lenient attitude towards inspections and enforcement.

Hotels and their operations are governed by the provisions of the Hotel Act B.E. 2547 (the “Hotel Act”) which replaced the original hotel act of 1935 (B.E. 2478). For the three years following the relevant amendments to the Hotel Act, most small-sized hotels encountered several problems when applying for the required hotel license. As more and more such complications arose, the Ministry of Commerce issued the Ministerial Regulation Specifying the Criteria and Conditions Relating to Location, Size, Safety, Sanitation and Facilities of a Hotel (the “Ministerial Regulation”). Under the Hotel Act, a “hotel” is defined as all lodging premises, established for commercial purposes to provide temporary accommodation to a traveler or any person for consideration. The problem with utilizing such a broad definition is that other lodging premises that provide both short term and long
term accommodation facilities, also fall within the definition of “hotel”. Before issuance of the Ministerial Regulation, the Hotel Act required all providers of temporary accommodation to obtain a hotel license.

Herein lays the challenge, applying for a hotel license is not as simple as filling in a form and submitting it to the relevant authority; under Section 33 and 16 of the Hotel Act; hotel managers and hotel operators are required to meet certain requirements before being eligible for the grant of a hotel license. This is where the smaller-sized hotels struggled as they were unable to satisfy the strict criteria used when granting the hotel license. A hotel manager is required by Section 30 of the Hotel Act as the person appointed by the hotel operator to be in charge of the management of a hotel. A hotel operator on the other hand is defined by Section 4 as the person obtaining licenses for operation of the hotel. The hotel manager is required to be able to present proof of his/her professional education and/or experience in the field of hotel management. The hotel operators under the Hotel Act are permitted to be either an individual or a juristic person; hotel operators are subject to foreign business restrictions and as such cannot be licensed without the prior consent of the Foreign Business Administrative Bureau, Ministry of Commerce.

In addition, the Ministerial Regulation issued under Section 13 of the Hotel Act requires that prior to being issued a hotel license, hotel operators are required to ensure that the hotel building complies with the Building Control Act B.E. 2522, and that the building permit for the hotel stipulates that the building may be used as a hotel. Hence, issue here being that many existing hotels, which were located in older buildings or in condominiums which were converted, were unable to modify their building to satisfy the requirements under the Building Control Act B.E. 2522 (the “Building Control Act”).

Upon issuance of the aforementioned Ministerial Regulation, the definition for “hotel” was modified to exclude any lodging premises open to the public for rental with no more than 4 room (in aggregate) on all floors with a total service capacity of 20 guests, operating as a small business which serves to provide additional income for the owner. Though such hotels are exempt from the hotel license requirement, owners of such establishments are still required to be registered under the Hotel Registrar.

The Ministerial Regulation classed hotels into different types based on their room capacity and on their services and facilities offered to guests.
Those hotels providing accommodation only without any catering or restaurant facilities, limited to 50 rooms in aggregate with area of each room not less than 8 square meters are classed as type 1 hotels. A type 2 hotel is defined as a hotel which provides both accommodation and catering/restaurant facilities to guests with no limitation on the number of rooms provided that each room’s area is greater than 8 square meters.

Hotels classed under types 3 and 4 are those hotels which provide accommodation, restaurant facilities, conference rooms and entertainment venues to their guests. The difference between type 3 and type 4 hotels is that the entertainment venues offered are required to be in accordance with the Place of Service Act B.E. 2509 for type 3 hotels, whereby allowing them to use such premises for dancing, bars, nightclubs and spas. The inclusion of entertainment venues requires that the hotel operate at least 80 rooms. However should the hotel be located in entertainment areas this requirement can be waived.

Though the Ministerial Regulation helped define what premises constitutes a “hotel” in Thailand, medium sized hotels with more than 4 rooms still classed as “hotels” under the Hotel Act continue to face problems in applying for hotel licenses given the strict compliance requirements with the Building Control Act. As a result, several smaller-sized hotels, who fall under one of the definitions of prescribed hotel types, continue to operate without obtaining a hotel license.

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