

## Making a Hotel Acquisition in Thailand: Protecting your Future Assets

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Thailand is a popular tourist destination and, to many of those with an entrepreneurial spirit, it is an attractive country in which to operate a hotel business. Phuket, for example, is a bustling tourist hotspot and sees some of the highest levels of foreign investment in the hotel industry.

Developing a new hotel from scratch, however, may not be an ideal choice for someone who lacks experience in the field. Hence, entrepreneurs with sufficient financial support often choose to acquire an existing hotel.

Acquiring an already established hotel business can ease the process of governmental approval procedures, and it can provide an instant source of income through its existing client base and facilities.

There are, however, numerous factors to be considered in hotel acquisition transactions. Legal due diligence is one such consideration that will greatly assist you in clarifying any defects in the hotel. Other issues include licences and permits and validation of the legal ownership of lands and buildings.

Real property: The documents that prove the ownership of a plot of land on which a hotel is located are important, since land tends to be the most valuable asset in a hotel business. Also, just because a hotel has been in operation for a long time does not mean that the business is being run completely legally.

The history of land documents is also important. A title search at the local Land Office will ensure that the document has been issued legitimately and that there are no attachments, restrictions or encumbrances registered, and there are no risks that may lead to revocation of the land.

Some legal encumbrances, such as mortgages, leases and servitudes, are subject to registration at the Land Office, and will be shown on the back of the title deed, which can also be verified by conducting a title search at the office in the district where the land is located.

Only leases of three or more years, however, are required to be registered with the Land Office. Therefore, a title search will not show a lease with a period of less than three years, but the hotel's owner should disclose an unregistered lease agreement during the due diligence process.

In Thailand, land use is regulated under the City Planning Act for residential, industrial, agricultural, environmental and cultural protection, or other purposes.

Additionally, the construction of a building must comply with the relevant rules, regulations and notifications issued under the laws governing building control and the environment as well as other relevant laws. The construction of a hotel building must also abide by these rules.

We have encountered cases in which the construction of a hotel has not complied with zoning regulations, and this can lead to major problems. For example, in the case of a hotel being constructed in a prohibited zone, it may be ordered demolished.

If the hotel was constructed in a prohibited zone before the relevant law was enacted, the hotel is prohibited from being renovated or altered in the future, and the owner cannot construct any new buildings.

Licences and permits: An owner needs many kinds of permits and licences to operate a hotel. As with buildings used for other purposes, buildings used as a hotel require a construction permit.

Additionally, a hotel building requires a certificate of construction, as its use is controlled by the Building Control Act. A hotel building must be inspected by a qualified engineer annually, and on passing the inspection, the owner will be issued a certificate.

In terms of operating licences, a hotel licence is required, which will indicate the type and number of rooms. This is valid for five years and it can be renewed for another five years each time. The applicant is required to prepare an environmental impact assessment report (if the hotel will have 80 or more rooms) as well as other permits for buildings to be used as a hotel.

Operating a hotel without a hotel licence or not complying with the provisions of the licence are subject to penalties under the Hotel Act. Furthermore, in addition to the hotel licence, other licences may also be required, e.g., a licence for public entertainment, the sale of food, the sale of alcohol and cigarettes, etc.

Finally, in addition to the due diligence that must be conducted on the property, due diligence on other matters (corporate structure, employment, finance, tax, etc) will also be conducted to ensure there are no hidden liabilities.

It is also important to check who owns the intellectual property rights in the hotel, such as the hotel's name, internet domain name, or other businesses in the hotel, and to ensure that all rights and ownership to those rights can be transferred to the buyer.

Furthermore, the terms and conditions of an operational contract in which the hotel owner hires a third party to be responsible for different aspects of the hotel, such as maintenance and lease agreements, should be clarified. If those contracts are still effective after the business transfer, then the new owner will be bound to the obligations under those agreements, including costs and expenses.