

10 ways to approach emerging markets

May 19 2015

There are challenges aplenty when it comes to doing business in global emerging markets. Here are 10 ways to make the process go more smoothly.

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Developing and operating hotels in emerging markets throws up several factors you might not prioritize when doing a similar project back home.

In my 20-plus years of, mainly, emerging markets advisory in the hotel legal sphere, these are some recurring issues I would advise anyone investing in such regions to prioritize.

- 1. Unsophisticated players:** Frequently investors will have made their money elsewhere and be new to the hotel sector. Also, often one finds a priority on "return on ego" driven investment, which means there is a need to manage down brand and product expectations to what suits the market (a Hilton Garden Inn rather than Waldorf will suffice for Novosibirsk, Russia).
- 2. Engage experienced advisors:** Early engagement of advisors (consultants, architects, lawyers) with hotels experience in the market is time and money well spent for delivering a quality product. Bringing a hotel operator on board at an early stage after a thorough operator search also is advised to avail of the valuable services they can offer in getting the hotel's rooms, food and beverage, and other configurations right from the outset.
- 3. First mover advantage:** Never underestimate the benefits of being first to an emerging region. That shabby 300,000-plus-person city might look incapable of supporting a quality hotel, but there often is hidden money and pent-up demand such that the hotel becomes the "meeting place" for business, social and other events. Finding this, I have seen operators "up" their F&B, conference and other non-room brand specifications to cater to this local demand.
- 4. LOI detail:** Get as many commercial terms as possible in the Letter of Intent and have it reviewed by counsel. This is upfront time and money well spent and precludes delays and disagreements at the contract negotiations stage where such discussions are more costly and can result in acrimony and accusations of going back on the original deal.
- 5. Legally, it ain't Kansas:** International operators frequently apply a "one size fits all" approach to the management agreements and the hotel operations process. This does not work in emerging markets and can get both parties—but mainly the owner—in trouble. Frequently these are civil law countries and most management agreements have been drafted under common law (e.g., English) rules. Many of the rights and obligations recited in these contracts (reps and warranties, liquidated damages, termination restrictions, liquidated damage clauses, etc.) are not understood or will be overridden by mandatory provisions of the local civil law even where the parties have negotiated that foreign law controls. Foreign court judgments may also not be enforceable and dispute resolution using international arbitration may be required.
- 6. Feel the owner's pain:** Similarly, local regulations and compliance therewith can frequently be onerous in emerging markets, particularly for accounting and taxation. Listen to the hotel's accountants when they insist they need special "factura" invoices with detailed service descriptions and acceptance acts. Without it, the hotel gets no tax deduction; the accountant has legal risk; and you, the operator, don't get paid.
- 7. Involve decision makers:** Corporate decision making in emerging market companies is frequently top-down. There is nothing more embarrassing and time wasting than negotiating a deal to near completion only for it to come back at the 11th hour from the general director's or in-house counsel's office completely rewritten. Insist that people who can bind the company be present at the contract negotiations sessions. This also applies to the operator who should be represented by someone who can in principal commit to certain positions without having to "check with HQ." Also, educate the owner's in-house counsel in advance on the management contract model and what are the key negotiation points and what are not (e.g., operator control of hiring and spending).
- 8. Explanation:** It seems obvious, but so often operators talk on about the strength of their brand and distribution system without explaining all the other value benefits they bring to the property such as revenue management skills, internal cost controls, training and best practices expertise. Educating the owner on what you do and what it takes to run a hotel helps the relationship over the long run.
- 9. Branded residence issues:** [Branded residence](#) components of high-end hotel developments are increasingly common in emerging markets for their source of upfront cash flow as well as the popularity of brand cache, security offerings and associated hotel amenities.

However, local legislation is frequently lacking for commercial- and living-designated premises in one development. Also, there might be

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issues with respect to the establishment and powers of owners' associations to represent owners' interests before the owner/manager of the common areas, as well as the ability to force current or future owners to remain in the association, pay related dues and abide by certain rules and regulations aimed at maintaining residence standards. In some countries foreign nationals may be prohibited from purchasing such residences. All of these hurdles can be addressed with some flexibility and compromise but involve significant legal time and investment to get right.

10. Limits of the law: Markets are labeled "emerging" because of limits to what their emerging legal systems can do to protect one's investment. Poorly drafted, ineffective or absent legislation combined with inexperienced and less than transparent judicial systems and varied ethical and "sanctity of contract" notions raise the risks but can increase the rewards to those who plan accordingly.

A recurring theme above is the need for foreign participants to invest the time to understand the cultural, commercial and legal issues unique to a new country and be willing to adapt their standard practices accordingly. Also, for local developer/owners to invest in understanding the hotel management business model and the benefits that it and a good operator can bring to their hotel investment. The additional effort upfront will more than pay for itself in the long run.

Scott Antel is an internationally regarded emerging markets hotels & hospitality lawyer. He has more than 20 years' experience advising both owners/developers and international operators in the Middle East, Russia/CIS, Turkey, the Baltics and Caribbean on hotel & resort, branded residence and mixed use developments. A senior partner in BLP's Abu Dhabi and Dubai offices, Scott recently joined BLP to lead the firm's Hospitality Practice in the Middle East as well as developing BLP's African hospitality practice.

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