

So you want to build a hotel in Qatar?

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According to the Qatar Tourism Authority (QTA) a total of 48 new 5-star hotels with 13,151 rooms, 41 new 4-star hotels with 8,829 rooms, and nine 3-star hotels with 2001 rooms are planned and will be ready by 2016. A further 10,452 apartment-style hotel rooms are in the planning stage. This will no doubt rise as we come closer to the 2022 World Cup by when the QTA expects there to be in excess of 70,000 rooms. As such hotel investors and operators can see massive growth potential in Qatar in the field in the immediate future. But how does a hotel business become established given the particular laws of Qatar?

The Foreign Capital Investment Law (no. 13 of 2000) (the Foreign Investment Law) regulates foreign investment within Qatar and sets down a general principle at Article 2 that foreign investors are allowed to invest in all sectors of the national economy provided they have one or more Qatari partners owning a minimum of 51% of the capital. Accordingly, foreigners wanting to establish a business enterprise are generally restricted to owning a maximum of 49% of any such enterprise.

However an exemption to the 49% limit can be obtained by investment in certain economic sectors including agriculture; manufacturing; health; education; tourism; development of natural resources; mining; power; information technology; technical and consultancy services; entertainment, sport and cultural services; and distribution services. There is an overriding qualification that such investments are to be consistent with state development plans which allows the Ministry of Business and Trade discretion in granting the exemption.

Therefore, anyone wanting to construct a hotel in Qatar may wish to consider making an application under the tourism exemption to the Ministry of Business and Trade's Investment department for consent to establish a wholly-owned subsidiary by which a hotel business can operate. However this is an arduous process, relies on the Minister's discretion and support will also be needed from the QTA in this regard.

The QTA's requirements include a detailed feasibility study, an initial approval obtained from the Ministry of Municipality and Urban Planning and the conducting of a service trial. For novices in the field, the QTA recommends engaging the services of recognised consultants for the project as this will facilitate communication between the QTA and the applicant. Operation is a big-ticket item for the QTA and the QTA regards the lack of proper operational systems as one of the major problems hotel investors face after the hotel is established and is in operation.

Discussions with some of consultants to the hotel industry indicate that in Qatar the greatest problem is finding an operator for the hotel. Too often local investors build what they think will be a hotel but the floor-plans used are only suitable for an apartment block. For example a 10 square metre room is set aside as a laundry only for the investor to find the hotel operator requiring a laundry 10 times that size or an off-site purpose-built facility. This leads to the expense of major re-fits or to loss of a hotel operator and the investor being forced to re-think the projected use for the building.

Therefore any potential hotel investors need to keep in mind that choosing an operator needs to be

organised early in the piece and certainly involved in the planning and design stages of the project in order to avoid rejection of the product at a later stage.

For international operators there are also issues to be considered as well. The Commercial Register Law (25 of 2005) provides that “no person may engage in commerce or establish a commercial shop unless registered in the Commercial Register”. In order to register in the Commercial Register a foreigner needs to adhere to the capital requirements as established by the Foreign Investment Law. Failure to do so can have criminal consequences. For example Law No (25) for the year 2004 Regarding the Control over Non-Qataris’ Practise of Commercial, Economic and Professional Activities in Violation of the Law (The Proxy Law”) prohibits engaging in any “commercial, economic or professional activity” not authorised under the Foreign Investment Law and an offence can carry a one year prison term in addition to a fine of up to half a million Qatari Riyals. Unfortunately, in Qatar we have not had the opportunity to see what a court will make of these prohibitions and the use of such wide terms.

Furthermore, an exemption may not be available under the tourism exemption for operators only. So what does an operator do? One solution is to establish a company in Qatar with 51% Qatari ownership but many international companies are wary of the same, even where the profit distribution to the foreigner is higher than the 49% of shares it holds. What often happens is that the operator enters into a management agreement with the owner and provides expertise, operating systems and the brand whilst providing management services to the hotel through its staff. But without registering in the Commercial Register there is a risk that a breach of the aforementioned laws takes place.

If the words used in the Proxy Law “commercial, economic or professional activity” are given their literal meaning, the law probably has far reaching and unintended consequences. Any action in Qatar, however benign, would lead to a breach of a serious criminal offence. Meetings about business unconnected to Qatar, discussions about possible ventures outside Qatar, the delivery of firm brochures and analysis about world share markets would conceivably be prohibited. It would be unlikely that the lawmaker intended such a wide operation without expressly overriding the existing laws. However this does mean that for any hotel operator in Qatar that has not established a legal entity a great deal of care must be given to setting up the structure in such a way as to reduce any possible breach of the laws. For example, any staff located permanently in Qatar must by law be employed by the sponsoring entity, so the hotel staff (including management) must be employed by the hotel itself, not the operator. It is all the intricate matters of this nature that must be taken into account by international hotel operators in determining the best and most legally compliant structure to be used.