HOTEL ACQUISITIONS IN GREECE

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What makes a hotel acquisition special?

Purchasing a hotel means investing in real estate for a specific purpose. This specific purpose is the hotel business that is directly connected to the real estate. At the same time, however, such an acquisition is much more dynamic than a "normal" real estate investment with a "major tenant", since the hotel operator must cater to a continuous stream of guests.

But operating a hotel is much more than renting out rooms on a nightly basis. For there are always additional businesses such as a restaurant, a bar, shops, guided tours, conferences, etc. And usually even more businesses are situated within the hotel (e.g. a spa, water sports, car rental, etc.), operated by an independent party that leases the space from the hotel owner.

In the context of a hotel acquisition, all these components and the complexity of these interrelated businesses must be taken into consideration for the purchase decision, the evaluation and negotiation of the purchase price, the details of the purchase agreement and the structure of the acquisition process. This chapter outlines the typical acquisition process, with a focus on legal due diligence, while also describing some special forms of hotel acquisitions.

What is the current situation in the hotel and hospitality sector in Greece?

Greece is a significant global tourism destination, with approximately 30 million visitors in 2017, up from 24,799 million in 2016. On the basis of Greek Tourism Confederation estimates, arrivals in 2018 will exceed 30 million, a figure that ranks Greece among the world's most popular destinations.

The direct contribution of tourism to Greek GDP is as high as 8%, with tourism revenue of approximately EUR 14.3 billion in 2017. While the total contribution was EUR 35 billion or 19.7 % of GDP and is forecast to rise by 5.3 % in 2018.

According to Bank of Greece and Hellenic Federation of Enterprises data, there are about 9,745 hotels with approximately 405,000 rooms and 781,000 beds in the country, mainly concentrated (85%) in Crete, Rhodes, South Aegean, Central Macedonia and the Ionian islands. Greek hotel accommodation is mostly provided by small 2-star hotels (3,990), while 4- and 5-star hotels account for 27% of the total.

Greece's tourism policy is currently undergoing a major strategic overhaul. The main focus is on expanding the tourism season (as high seasonality is one of the main structural problems of Greek tourism), attracting higher-income tourist segments, increasing average daily spending and attracting more investments in differentiated segments of the tourism product (city hotels, resorts, all-inclusive, luxury, etc.).

The above-mentioned rapid increase in tourism volumes has led to an increase in demand for hotel beds and rooms which, coupled with the comparatively small proportion of 4- and 5-star hotels, makes Greece an attractive hotel investment market for international hotel chains and tour operators.

What are the main transaction types for a hotel acquisition in Greece?

The acquisition of a hotel in Greece can be structured in two forms: either as an asset deal (where the underlying assets of the company and most importantly the hotel property are purchased directly) or as a share deal (where the purchaser obtains a controlling stake from the owners of the respective legal entity).

What is the typical process for a hotel acquisition in Greece?

After the preliminary decision to undertake a hotel investment in Greece, determining the acquisition criteria and identifying potential targets, the investor proceeds firstly by getting in contact with the seller. The typical acquisition process follows the procedure below, although there may be variations:

(a) Initial evaluation of the potential target and calculation of the preliminary purchase price offer

After the initial evaluation of the chosen target, the next step is to visit the property and conduct a preliminary analysis of the property, the location and the market.

Subsequently, the seller will likely disclose certain data such as room occupancy, turnover, earnings, etc., and also make known its expectations regarding the purchase price.

In some cases, the purchase price anticipated by the seller is based not only on objective criteria or common evaluation methods, but may also reflect an overestimation of the property value and should therefore be negotiated.

In this respect, it should also be taken into consideration that most hotels in Greece are not owned by international companies but directly or indirectly by natural persons or families.

(b) Written Offer, LOI, Exclusivity Agreement and NDA

Once the most important deal points and the (preliminary) purchase price have been negotiated, it is advisable to set out the agreed positions in writing. This can be achieved:

- by the purchaser sending a (binding or non-binding) written offer to the seller and a corresponding reply from the seller, or
- by means of a Letter of Intent (LOI).

At this point, the parties also usually sign an exclusivity agreement for a certain period of time (if not already integrated in an LOI) and a non-disclosure agreement (NDA).

In general, it is in the interest of the purchaser that the wording of the LOI or of the purchaser's offer gives rise to only a minimum of binding commitments on the part of the purchaser. At the same time, it is in the purchaser's interest to secure a long exclusivity period in order to have sufficient time to review the target without the pressure of other potential buyers.

(c) Due Diligence

After signing an NDA, the purchaser has the option to conduct an investigation and analyze the target by gaining access to information requested from the seller within a set time period.

In bigger deals this information is provided in a data room. In smaller deals it can also be handed over in hard copy. In addition, the purchaser or its advisors will gain access to the property in order to carry out the investigation with regard to land, building and equipment.

It is strongly recommended that the purchaser undertakes the following due diligence steps:

- Financial (financial position of the target)
- Technical (building, safety regulations, any breach of building laws and legalizations, earthquake stability, renovation costs)
- Legal (property, licenses, agreements, employee issues, litigation, etc.)
- Tax (tax risks, especially when the transaction is a share deal)

(d) Negotiating the definitive purchase and sale

Once the due diligence reports are available, the purchaser will have a clearer picture of the intended hotel purchase. Subsequently, a number of other aspects can be determined, including the negotiation of the final purchase agreement:

- any deductions from the initially agreed purchase price
- the final purchase price (in share deals, usually according to an already agreed purchase price formula)
- conditions precedent to the closing of the deal
- warranties and indemnifications of the seller.

(e) Purchase agreement and closing

After successful negotiation of the aforementioned matters, a purchase agreement (taking into account also the particularities of the real estate purchase and the hotel business) will be drawn up and signed by both parties.

In share deals, the share purchase agreement does not need to be notarized. Within this agreement all the contractual arrangements regarding the hotel transaction will be stipulated, such as warranties, indemnifications, conditions precedent to closing etc. At the closing of the deal, an additional share transfer agreement will have to be signed as an implementation agreement.

In asset deals where a hotel is being transferred as real estate, the purchase agreement must be a notarial deed. Some matters, such as the transfer of the assets, may also be included in the notarial deed. However it is also possible to use additional non-notarized agreements for matters that are not required to be notarized, or a framework agreement for the whole deal. The notarial deed must be registered at the competent Land Registry office. Naturally, it is important for any outstanding mortgages to be settled. At closing, the signing of a physical inventory of all transferred assets is also recommended.

What is usually reviewed and analyzed in Legal Due Diligence for a hotel purchase in Greece?

Due diligence is a key element of any acquisition, including hotel transactions. The more information collected and analyzed, the more risks can be excluded and a more realistic purchase price negotiated.

At a minimum, the scope of legal due diligence should include an analysis of the following:

i. Property

- The ownership status of the seller. In particular, it must be examined whether the notarial deeds are accurate and properly registered in the Land Registry office of the district where the property is located. The necessary examination should be carried out at the respective Land Registry office.
- Any encumbrances, claims or charges relating to the property (e.g. prenotations, mortgages, rights of way etc.).
- Any outstanding debts to public utilities or communal expenses that may be owed.

ii. Licenses / Notifications

The following licenses in particular shall be reviewed:

- Hotel operating license / Electronic publication, together with the hotel classification procedure:

  Since October 2017 the Greek National Tourism Organization's operating license approval procedure for tourist accommodation has been replaced by an electronic publication procedure. In order to operate a new tourist accommodation, a permit is no longer required. An electronic publication and the new classification procedure based on stars are sufficient. Operating licenses that were issued under the former legal framework are still valid but will expire on 31 October, 2019. Therefore, the old operating license plus the electronic publication will need to be examined.

- Certificate for the hotel star classification :

  In the new legal framework governing hotel operation, the star classification procedure plays a much more important role than previously. First of all, it requires the appointment of a certification company by the hotel operator, which will review the permits and licenses listed below. This means that before the issuance of the classification certificate, the certification company must also examine all related documents.

- Environmental permit:

  An environmental permit is required for buildings and activities that can potentially have an impact on the environment (Law 4014/2011), according to the following three categories:
  A1: risk of very significant impacts on the environment
  A2: risk of significant impacts on the environment
  B: only local and non-significant impacts on the environment

  In the case of hotels, allocation to the above categories depends on the number of beds, the location of the hotel and land planning issues (e.g. whether it is inside or outside a development plan or a NATURA 2000 site). As part of the due diligence process, it must first be examined whether the hotel requires an environmental permit, then, whether it fulfills the relevant legal requirements.

- construction permission for the buildings or legalization of constructions for which permission had not been granted
- notification of operation for swimming pools
- notification of operation for food and beverage facilities (restaurants, bars, pool bars, snack bars, nightclub etc.)
- fire safety certificate

iii. Material agreements

- agreements with tour operators, allotment agreements, guarantee agreements, etc.
- co-operation, technical assistance or similar agreements
- licensing agreements, concessions, franchises, commercial representation contracts, sub-contracting arrangements and conditional sales contracts to which the Company is (or may become) a party, etc.

iv. Employment

- number and types/categories of employees and whether they are represented by a specific union
- national and local collective employment agreements for the hotel employees
- whether there are special employment agreements signed with certain employees that would entitle them to a specific amount of severance pay
- amount of total compensation that may need to be paid
- Seasonal employment agreements and the number of employees that have to be re-employed

v. Litigation

- all court or administrative decisions affecting the company (including rulings imposing preliminary measures)
- all administrative proceedings or investigations by public authorities, either threatened or pending, which may affect the company

vi. Trademarks and other rights

Any trademarks, trade names or service marks.

vii. Insurance

Any insurance policies for civil liability, assets, fire, employer's civil liability, etc.

viii. Compliance with data protection legislation

Compliance with the General Data Protection Regulation (GDPR) in respect of the target.

Is there any alternative way to acquire a hotel in Greece?

Besides the above-described purchase of a hotel from a natural or legal person, there are also other ways to acquire a hotel in Greece, as set out below. Although these types of hotel acquisition differ in terms of deal structure and procedure, the preceding review of the legal considerations involved remains applicable.

(a) The acquisition of a seized hotel property through a public auction (foreclosure):

When a hotel property is seized, the operations of the hotel are closed down. Although such cases present an opportunity to purchase the property at a very low price, extensive renovation often has to be factored into the calculation. In addition, operation will have to be relaunched and certain permits may need to be re-issued. As of 2017, the Greek state has introduced electronic auctions, in which Greeks and foreigners (natural persons or legal entities) can participate online. The procedure is open to the public and the properties on offer are easily accessible via a weekly journal. In such cases, it should be noted that due diligence is normally limited to the examination of the hotel property.

(b) Through a public tender if the owning company is under special administration:

Unlike the acquisition described in the preceding paragraph, during this procedure the hotel remains in operation. However, the manager of the owner is no longer in charge and a court-appointed auditor takes over the operation of the hotel until the tender process has been completed. As part of this procedure, the investor has the right to examine the hotel (real estate and business part) in a due diligence process.

The advantage of this procedure is that the hotel remains in operation but can probably be purchased at a lower price than would have been possible through negotiations with the owner under normal conditions.

(c) Through a public tender of the Hellenic Republic Asset Development Fund (HRADF)

The HRADF has been assigned (by virtue of Law 3986/2011) to carry out a privatization program for assets of the Greek state, and its portfolio includes a number of hotel assets. In most instances it is only the hotel property itself, as in the case of the Xenia Hotels that are no longer operated. But there have also been privatizations of hotels that remained in operation, as in the case of the tender for 90% of the shares of Astir Palace Vouliagmeni S.A. Prior to public tenders of the HRADF, prospective investors can perform a due diligence review.

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