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Mitigating Risk During Hotel Construction Projects

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There are multiple areas of risk that come with the development of hotel construction projects and it's vitally important to be aware of them. If a setback occurs during the building process due to risk, it may have a negative effect on the development cost or influence the future return on investment. The more complicated the structure, the higher the development risk will be. For example, location, type of operator, physical characteristics of the building, construction design, timing of completion and financing can have a great impact on risk and the strategies taken to avoid it.

Tips to prevent risk

In particular, construction risk is most deeply felt in the areas of pricing, design, quality and possible delays. This risk may be potentially mitigated in several ways:

- Start with a building plan that has successfully been used in the past for similar projects if possible
- Hire a highly-skilled architect and an experienced project manager to oversee the project from beginning to end
- Have a detailed and complete set of drawings to set a clear picture of the overall building plan
- Seek an experienced local contractor who is knowledgeable in the specifics of hotel development projects
- Consider lump sum pricing (a single price agreed upon before the work begins) in order to risk share with the contractor
- Have adequate contingencies on hard costs (supplies, labor, etc.) and soft costs (design fees, insurance, etc.) to protect against unexpected changes that may arise
- Carefully draft, review and negotiate the construction contract documents, liquidated damages, milestones, scope and payment timing provisions

Effectively review your contracts

When reviewing construction contracts with an eye on controlling risk, there are typically three major areas in which mitigation should be maximized:

Transfer risk through indemnification. Indemnity is the right of a party who, without active fault, is compelled by reason of legal obligation to pay damages occasioned by the active fault of another and for which he himself is secondarily liable. Typically, through indemnity clauses, each party seeks to limit its own potential liability while passing on liability to others in the project chain (owner, contractor, subcontractor, design professional). It is necessary to scrutinize these clauses closely in order to make sure that the proper allocation of responsibility is undertaken.

[Tailoring Construction Contracts to Avoid Costly Repercussions](#)

Buy protection from risk with insurance. It is also important that contract provisions are scrutinized to ensure each party has the appropriate insurance coverage for responsibilities placed on them through the contractual process or otherwise. A shifting of responsibility without adequate assets on the part of the responsible party to shoulder the risk is useless.

Prepare for risk with a legal plan. Construction contracts typically provide provisions for mediation or arbitration or alternatively will designate that all disputes be resolved through the court system. There are pros and cons of

cost and efficiency for each model. Furthermore, alternative dispute systems such as mediation or arbitration give disputes a chance to be heard by an industry expert, which may be desirable. In any event, careful consideration in an agreement between the parties as to how or in what form their disputes will be resolved is of critical importance.

Consult an experienced attorney

It's always a good idea to consult with an attorney familiar with the intricacies of hotel development projects. An experienced attorney can help you identify areas of concern and make strategy recommendations. They can also counsel you through the day-to-day aspects of the construction process, including project planning, contract review and negotiation and provide legal advice if problems arise.

Saxton & Stump attorney [Ron Pollock](#) is available to discuss risk mitigation tactics for hotel construction projects and how our [Construction Law Group](#) can help your business avoid disputes and conflicts that may arise during development of any construction project.

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