

# TRENDS IN ASIAN LEISURE AND HOSPITALITY DEVELOPMENTS - MANAGING CONSTRUCTION RISKS

By Patrick Daley & Colleen Galbraith

**Summary:** The Asian hospitality and leisure industry has seen significant growth in recent years resulting in new developments. As of June 2018, according to Lodging Economics, the region (without even accounting for China, itself a critical market) could boast a total of 1,673 current development projects providing for the creation of 349,081 guestrooms.

## Hotel Developments in Asia

The Asian hospitality and leisure industry has seen significant growth in recent years resulting in new developments. As of June 2018, according to Lodging Economics, the region (without even accounting for China, itself a critical market) could boast a total of 1,673 current development projects providing for the creation of 349,081 guestrooms.

## New Development Methods

Alongside this development activity, the impact of new trends affecting the design specification of leisure and hospitality projects has intensified. There is a growing expectation that hotels and other leisure developments seamlessly integrate information technology and connectivity and prioritise environmental protection and sustainability. New construction and design methods are similarly changing the way in which leisure and hospitality projects are designed and completed, the use of prefabricated and modular construction techniques being a prime example.

These exciting changes present the industry with new opportunities to differentiate their products and achieve cost savings. However, new practices in design and construction can create new legal risks or intensify existing ones. Whether you are a property owner, investor or developer, on new

builds or redevelopment projects, care should be taken to ensure that change is implemented with an eye to mitigating the potential for legal entanglements.

## Innovative, sustainable... and clearly drafted documents

Increasingly, people's lives exist online, and guests want this to be reflected in their hotel experience. To meet this need, hotel developers are embedding technology and connectivity into their developments, enhancing and personalising guest experiences. From hotels in China which allow guests to check-in using facial recognition, to digital keys stored on guests' phones and smart hotel rooms which automatically adapt to guests' lighting, climate and entertainment preferences, increasingly hotels are incorporating cutting-edge and complex technological systems.

Sustainability and carbon footprint issues are also growing in importance as the eco-conscious Millennial generation obtain more spending power. Leisure and hospitality developments across Asia are responding to this demand, integrating energy and water efficiency technologies, such as rainwater harvesting systems, LED lighting and photovoltaic panels into projects.

While deploying new technologies may be

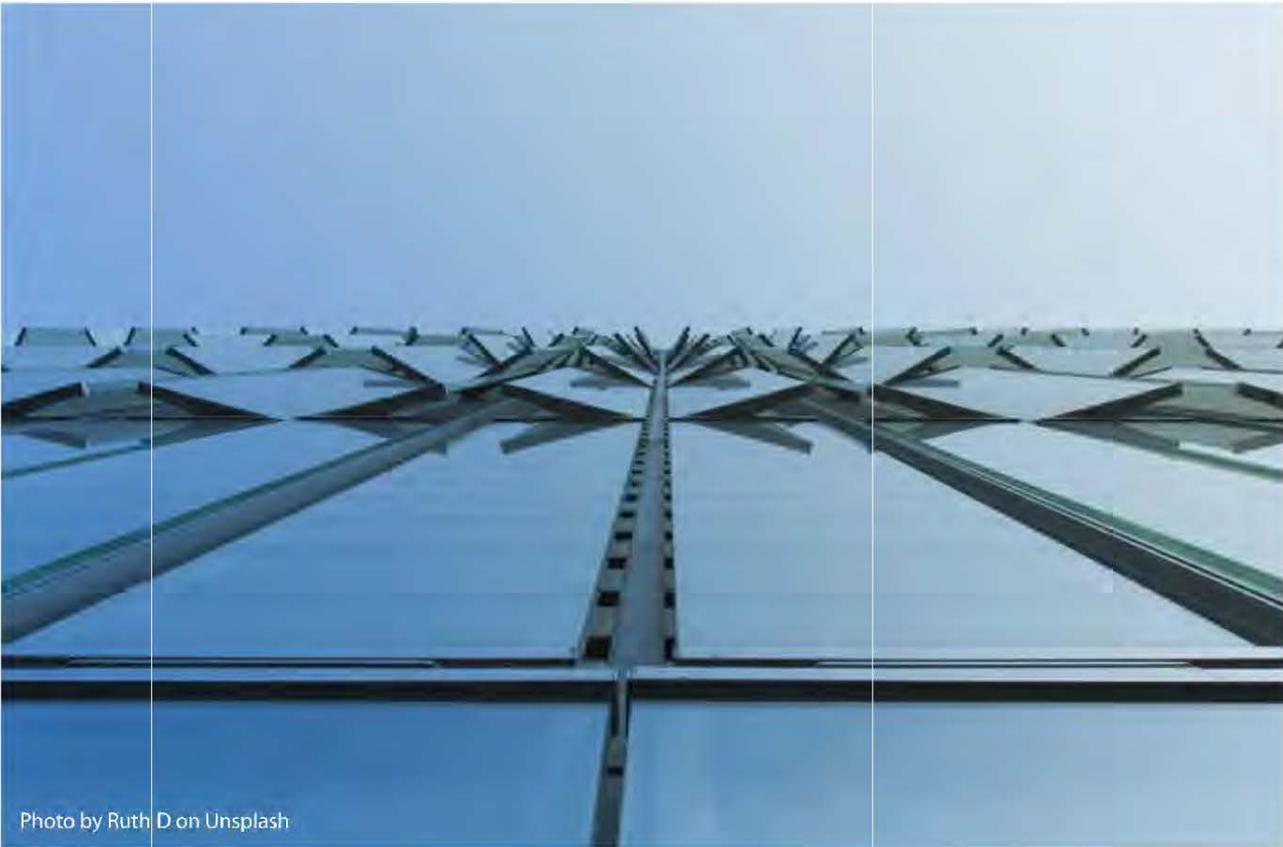


Photo by Ruth D on Unsplash

tempting, doing so may increase risk of uncertainty and miscommunication as to the developer's requirements. Innovative ideas which are unfamiliar to one or more parties, developing language to describe novel systems and concepts, and unrealistic expectations as to what a new technology can deliver can all lead to unexpected outcomes, costs and disputes.

To avoid or mitigate this increased risk of miscommunication, it is (even more) important that any project is well developed and documented before construction commences. Specifically, owners and developers should ensure that project documents are clearly drafted and include:

- A defined and comprehensive construction programme along with an agreed allocation of responsibility for any delay suffered;
- Accurate rates and/or cost estimates with appropriate contingencies;
- A clear project scope or brief – with

sufficient detail about unique project features to avoid disagreement as to exactly what is to be delivered and minimise contested variations;

- A detailed description of performance and quality expectations;
- Allocation of responsibilities between Owner (as Employer), Contractor and Operator for the procurement of materials, labour and FF&E; and
- Effective and agreed processes for project management and co-ordination – including clear responsibility allocations, communication protocols and reporting obligations.

Unexpected costs and delays are a regular element on large construction projects - even when the project is properly documented. However, careful planning, thoughtful drafting and expert advice at an early stage is critical to ensure that these risks are mitigated. Where new, sometimes untested, technologies are to be incorporated into a project, the risks are

heightened and the potential upside to be gained by adopting a prudent approach is greater.

When incorporating technologically complex elements into a project, owners and developers should also consider:

- Requiring designers to warrant that the advanced systems will be fit for purpose for additional protection against undesirable design outcomes. To avoid dispute, developers should take care to ensure that the purpose of the system is clearly and consistently specified.
- Ensuring intellectual property provisions cover novel materials, systems and processes. Traditional IP licences granted by contractors to developers should be reviewed to ensure they cover all IP required to operate, maintain and (if required) modify the materials and systems. Parties should also consider whether a full transfer of IP ownership is desirable in lieu of a licence - for example, to protect against any licence becoming invalid in the event of contractor insolvency.

- The allocation of liability for the provision and use of data. Developers should consider who is best placed to carry the data related risks, such as the use of inaccurate data, data corruption and cyber-attacks. Any contract should also detail the permissible uses of commercially sensitive and/or personal data and expressly require compliance with all applicable data privacy laws.

- The availability and adequacy of insurance to cover risks created by new technologies and which party is to pay for it. Embedded systems may not be covered by traditional CAR and PII insurances and developers should review insurances carefully to determine whether additional specific insurances are required.

### Build it better - in pieces?

Innovation is not confined to the end product of the development process. Leisure and hospitality projects are deploying modular and off-site construction processes in order to obtain time and cost savings. Such processes range from fully finished components or pods (for example,



complete bedroom and bathroom components) to panelised systems and facades.

When deciding whether to adopt modular construction processes, the potential time and cost advantage needs to be weighed against the possibility of increased costs. If sufficient economies of scale are achieved, modular construction may allow for cost savings and the ability to flexibly locate construction activities can result in a significantly shorter programme. However, modular construction often requires significant investment with a primary contractor designing and manufacturing the modular elements; placing that contractor in a strong bargaining position and increasing default or insolvency risks.

Modular construction can also create additional quality control and interface risks – if the modules are defective, or unable to be integrated with the development. These and other risks can be addressed, although the best way to do so will vary from project to project. Key measures include requiring the provision of adequate manufacturers' warranties and, where modular components are paid for before delivery to site, ensuring that title transfers on payment. Transfer of title should be addressed at all levels of the supply chain to protect against contractor and sub-contractor insolvency<sup>1</sup>.

New technology presents an exciting future for industry participants, provided that potential risks are kept in view and proactively managed.

## About the Authors



**Patrick Daley**  
Senior Associate, Hong Kong



**Colleen Galbraith**  
Senior Associate, Hong Kong

Formed by the combination of Bryan Cave and Berwin Leighton Paisner, global law firm Bryan Cave Leighton Paisner LLP is purposely structured in a way few other law firms are, as a fully integrated international team that provides clients with clear, connected legal advice, wherever and whenever they need it.

**BRYAN  
CAVE  
LEIGHTON  
PAISNER** **BLP**