

The Thailand “Hotel Tax”

The surprising increase of the so called “local tax” for hotels from 1% to 2% in Phang Nga Province created a fear among hotel business operators in other provinces of Thailand that they could also be affected by an increase or the establishment of such “local tax”. In the following we would like to explain briefly the legal basis of such local “tax” and whom it affects.

In 1997 Thailand enacted the Provincial Administrative Organization Act (“Act”). In accordance with such Act, the Provincial Administrative Organization, or the “Orborjor”, was created. The Orborjor is an administrative organization existing in every Thai province. The Orborjor is responsible for certain provincial administrative matters.

Sections 45(1) and 51 of the Act empower the Orborjor of every province in Thailand to issue regulations applicable to that specific province. Section 65 of the Act further empowers the Orborjor to collect a certain fee (“Fee”) from the hotel guests (as defined under the Hotel Act (A.D. 2004) (“Hotel Act”)) at a rate to be defined by a Ministerial Regulation(s) issued under the Act. Article 2 of Ministerial Regulation No. 4, (A.D. 1998) (“M.R.”) issued under the Act introduces a maximum Fee at a capped rate of 3% of the hotel room charge. Therefore, currently no province is entitled to implement a Fee in any amount exceeding 3% of the price the hotel charges a guest for the room. However, every provincial Orborjor in Thailand does have the authority to set the applicable rate, up to 3%, at their sole discretion.

To illustrate how the Fee is implemented under the Act, we will use Phuket Province as our example. The Phuket Provincial Administration Organisation Bye-Law Re: Collection of Contribution Fee of Provincial Administration Organisation from Hotel guests (A.D. 2002) (“Bye-Law”) further regulates the exact amount of Fee (currently 1% of the hotel room charge) payable within Phuket Province. The Fee is payable by

the hotel guest. The “**Hotel Manager**” (defined by the Bye-Law as “the operator of a hotel business under the Hotel Act”) has the duty to collect the Fee from the hotel guest on behalf of the Orborjor. The Hotel Manager must then remit the collected Fee to the Orborjor within the 10th day of the following month.

Note, the hotel guest *and* the Hotel Manager are *both* separately liable under the Bye-Law for payment of the Fee to the Orborjor. A hotel guest who refuses to pay the Fee may be punished by imprisonment for a term of one month or a fine not exceeding Thai Baht 2,000 or both. Whereas a Hotel Manager who fails to collect the Fee may be punished by up to three months or a fine not exceeding Thai Baht 5,000 or both. Additionally, a Hotel Manager who fails to remit the collected Fee to the Orborjor as required may be punished by up to three months or a fine not exceeding Thai Baht 5,000 or both. If anyone fraudulently avoids payment, collection or remission of the Fee may be punished by up to six months or a fine not exceeding Thai Baht 10,000 or both.

The Fee is payable by hotels as registered in accordance with the Hotel Act. Section 65 of the Act only entitles the Orborjor to collect the Fee in relation to a “Hotel” as defined by the Hotel Act. Small guest houses and other establishments that are offering temporary stays to guests and travellers that are excluded from the definition “Hotel” under the Hotel Act are apparently outside of the scope of the Act. It should be noted, however, that if such small guest house or establishment is operating without having registered with the local authorities as required, then they are operating not only in violation of the Hotel Act but also quite likely in violation of the Act if no Fee is being collected and remitted.

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