HOSPITALITY AND LEISURE

Franchising and Industry Innovation

DLA PIPER

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INTRODUCTION

The majority of hotels operate under a global brand either owned by the operator, leased by the operator, run by the owner (or its manager) under franchise or run by an operator on behalf of the owner under a management agreement. Many global operators have pursued asset-light strategies over the past decade, and franchise and management agreements have now become the preferred type of contract.

In this publication we will look at the asset light strategies of global hotel operators using a 'quick to view' educational referencing guide as well as looking at technology inter-operability issues within hotel franchising.

THE MARKET 2013

Whilst many protagonists described the hospitality market of 2012 as 'uncertain', the phrase being used for 2013 seems to be 'modest'. The uncertainty of the 'fiscal cliff' in the US (which inevitably effects all world markets) has been replaced by a 'fiscal ceiling'. Although Economic performance continues to vary greatly around the world, performance by some countries in Asia Pacific have largely remained stable and it is predicted this will continue in 2013. However, Hotels may achieve modest price inflation throughout the Asia Pacific region but specific results will vary widely by country.

Therefore whilst there will be growth, this growth will be patchy. The challenge for hoteliers will be to build, manage and differentiate their brands across all market segments and territories and in doing so to understand what customers are looking for to gain the all-important brand loyalty.

GAME CHANGERS

The power of brands (and thus the draw of franchising) remains a key influence on the hotel sector and whilst there are numerous challenges facing global hotel operators, these operators remain best placed to face those challenges. As we are all becoming increasingly aware, the volume and richness of data and information now available to consumers (and to the operators themselves) is huge. Traditional media (such as print) is no longer important, digital platforms like Expedia and Google Hotel finder are where the action is at. Add to this the consumers' requirement for mobile bookings and the rise and rise of social media platforms disseminating information ('likes'; 'dislikes' and twiterrati followers), it is easy to come to the conclusion that innovation will be the focus for the hotel industry in the coming years.

Innovation can come at a micro or macro level, however for obvious reasons (namely resources), the large hotel operators are best placed to take advantage of the technological revolution that has become embedded in the travel industry. The majority of global hotel operators are engaged in programs to decipher real time information and experiences and to define their particular brands with consumers.

A well-defined brand plus meeting customer expectations in terms of their experience are the cornerstone of the franchise system, therefore hotel franchising will remain critical to growth and geographical expansion in the hotel sector. Whilst adoption of technological change is seen as 'a must', the legal implications of doing so are numerous. The bigger players have the resources to invest in new media platforms, mobile booking systems, data harvesting and Wi-Fi access but they will have to be cognisant of the e-commerce, privacy and data protection, licensing, security, cookies and numerous advertising issues associated with it. Our series of '*Shifting Landscapes*' articles (www.dlapipershiftinglandscapes.com) provides an excellent overview of the main legal challenges organisations face in the context of new and emerging IT and digital technologies.

FRANCHISE vs MANAGEMENT AGREEMENT

Innovation can also be seen in the context of eco-friendly policies. Today's consumers are increasingly environmentally aware and expect the brands they affiliate with to be likewise engaged.

The combination of regulatory pressures and guest requirements for sustainable and value for money options make the hotel industry extremely challenging. Implementing sustainability policies across a portfolio of franchised hotels is particularly demanding for hotel operators and achieving the right blend of eco-friendly brand, with commercial realities and local regulatory compliance is no mean feat.

Towards the back of this guide we also consider other areas of innovation that may yet impact on the hotel industry and what this might mean for franchised hotels.

Theme	Franchise Agreement	Management Agreement
What is granted?	Hotel owner is licenced a package of IPRs, essentially relating to the 'brand' of the hotel operator. These IPRs are to be used in the management and operation of the hotel. Centralised marketing, advertising and reservation services are provided for a further fee (see below). Management and operation of the hotel remains the obligation of the owner.	Operator will: Manage and operate the hotel on behalf of the owner; • Provide technical services (eg in relation to the design and development of the hotel); • Licence its brand; and • Provide centralised advertising, marketing and reservation services. Clearly under this structure the hotel benefits from the 'hands on' experience of the operator.
What are the owner's obligations?	Whilst overall management of the hotel remains with the owner, the owner is required to: • Adhere to the operator's 'brand standards manual' in terms of both the brand and the standards applicable to that brand; • Participate in group marketing and advertising; • Participate in the group's reservation system; • Where the hotel is being constructed or renovated, obtain the operator's approval for the relevant plans and specifications; • Open the hotel on the specified date (some operators may require 'grand opening event(s)'; • Prepare and maintain records and accounts to be shared with the operator; and • Comply with all legal requirements and provide the operator/franchisor with protection against any claims.	Although management and operation of the hotel is provided by the operator, the owner will remain responsible for: • Compliance of the hotel with the operator's brand standards (and the cost of renovations associated therewith); • The cost of maintenance and repairs; • Insurances; • The employment of non-management employees; • Obtaining regulatory licenses for hotel operation, such as liquor licence etc; • Real estate issues, such as lease renewals, zoning requirements, etc; • Although not an obligation per se, owners will often seek the right to approve annual budgets, capital and FF&E budgets, approve key personnel positions, review the hotel's accounts, apply performance tests and for a reasonable non-compete restrictive covenant.

Theme	Franchise Agreement	Management Agreement
What is provided by the operator?	The operator will typically provide: • Training on the operation of the hotel according to the 'system' (some training may be incorporated in the fees, some may involve additional charges); • Providing and updating the brand standards manual(s); • Occasionally pre-opening services (which may form part of the fee structure or could be payable separately); • Access to the operator's marketing, advertising and reservations system; and • Technical services may be provided on other areas albeit this is likely to be for additional fees.	The operator will typically: • Operate the hotel according to the Brand Standards; • Include the hotel in the operator's marketing, advertising and reservations system; • Have authority to conduct day-to-day operation of the hotel including purchasing goods and services, conducting litigation, managing staff etc; • Provide technical services relating to the design and development of the hotel (this is often subject to a separate technical services agreement and fee).

What are the fee structures?	A typical fee structure involves:
	• An initial fee (this is often linked to the size of the hotel). In some cases this fee is non-refundable;
	• Continuing or royalty fees – this is based on room revenue. Typically this is between 3% and 5% of room revenue;
	• Advertising/marketing contribution – again commonly based on room revenue. This fee generally goes towards a fund for group (not necessarily local or regional) marketing. Typically between 2% to 4% of room revenue;
	• Reservation fee(s) (can be combined with above) – supports cost of operator's reservation and/or loyalty system(s). Rates and calculation vary between different operators and the systems they operate.
		A typical fee structure involves:
		• 'base fee' – typically between 2% to 4% of gross revenue;
		• 'Incentive fee' – typically around 10% of gross operating profit;
		• Technical services fees – lump sum or payable on a time and materials basis for relevant services;
		• Centralised services fees – often made up of:
		  – Marketing fees – typically in the region of 2% of room revenues;
		  – Reservation fees – calculated per room or against room revenue;
		  – Loyalty and other programmes provided.

Standards applicable	Hotel operators commonly have a brand standards manual or operating manual. Compliance is key.	Brand standards manual. Again compliance is key.
Applicable restrictions	Whilst post expiry/termination restrictive covenants can be enforceable in a franchise agreement, the underlying principle is that the restriction must be reasonable. In the context of an asset run as a hotel it is difficult to consider a situation where it would be reasonable to place such a restriction on the hotel/owner.	HMAs typically contain a restriction on the operation of similar hotels within a prescribed area.
Personnel	As management and operation of the hotel remains with the owner, the owner will employ all people associated with the operation of the hotel.	Operator will usually provide key management personnel (at a cost to the hotel). Most operators will require that the owner remains the employer of the remainder of hotel staff.

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Personnel	As management and operation of the hotel remains with the owner, the owner will employ all people associated with the operation of the hotel.	Operator will usually provide key management personnel (at a cost to the hotel). Most operators will require that the owner remains the employer of the remainder of hotel staff.
Legal requirements	Franchising is a regulated activity in a number of countries and the franchisor or brand owner is commonly required to disclose detailed information about the franchise it offers. See overleaf for more detail in relation to European disclosure requirements.	The HMA is a contractual document that is not regulated by specific laws, however, local laws will apply notwithstanding the governing law of the HMA.
Multiple operations	Whilst it is common for operators to offer a 'direct franchise' (ie between hotel owner and operator), franchising also offers the potential for operators to grant third parties with a 'master franchise' or 'development rights' for a specific territory.	
Term	Typically between 5 to 15 years but can be more. Often includes options to renew.	HMAs are typically between 15 to 25 years and often incorporate renewal provisions.

From this table it can be seen that management agreements generate more revenue per hotel for the operator. However, the costs associated with managing hotels, particularly on an international basis, is an awkward fit with the rationalised, lean model which is currently preferred.

This said, there are still many instances when management agreements are preferable. Flagship hotels, new and emerging brands and hotels in emerging markets are more likely to flourish under the tighter brand controls offered by a management agreement.

FRANCHISING & DISCLOSURE

Where a hotel operator seeks to licence its brand by offering franchises it may be required to meet certain mandatory regulatory requirements depending on the jurisdiction in which the franchise is to be offered. The US market is highly regulated, and operators or franchisors are required to provide a franchise Disclosure document (or UFOC) to owners looking to bring their hotel under the particular flag. Aside from the US, a number of countries across the globe have specific franchise laws (for example, Australia, Belgium, China, France, Italy, Malaysia, Indonesia and Spain) but even in countries where specific franchise laws do not exist there still may be a requirement (or good practice) to disclose information on the franchise being offered. In jurisdictions where a franchisor is a member of a franchise association, such association may impose a disclosure obligation on its members through a non-statutory code of practice.

Outlined below is a high level summary of the filing and disclosure obligations in some key Asia Pacific jurisdictions.

Country (Regulations)	Filing Obligations	Disclosure Obligations
Australia (The Franchising Code of Conduct - 1998 as amended; Competition and *Consumer Act 2010, The Australian Consumer Law 2010*)	There are no specific franchisor filing obligations. The offer and sale of franchises is generally affected by the principles of common law and, in particular, contract law. It is also regulated by the Competition and Consumer Act and The Australian Consumer Law (which contains provisions regarding misleading or deceptive conduct).	There are specific disclosure obligations. The requirement for the franchisor to give to prospective franchisees and to franchisees renewing, extending or extending the scope of their agreements a disclosure document at least 14 days before receiving any non-refundable money from the franchisee or before the franchisee enters into a franchise agreement or an agreement to enter into a franchise agreement. Matters that require disclosing include details of the franchisor and its directors and associates, including their business experience, details of litigation involving the franchisor or its directors, the franchisor's financial information, a summary of the various payments and costs associated with buying, establishing and operating the franchise and a summary of the obligations of the franchisor and franchisee under the relevant franchise agreement. The disclosure document must be in the prescribed form not only as to the information to be disclosed but also as to the layout of the document. A copy of the franchise agreement (in the form in which it is to be executed) and the Code must also be included with the disclosure document. Franchisors must update their disclosure document at least annually within four months of the end of each financial year. For most franchisors the financial year concludes on 30 June, and therefore the update must take place by 31 October each year.

Country (Regulations)	Filing Obligations	Disclosure Obligations
China (Regulations on Administration of Commercial Franchise 2007 as amended; Administrative Measures for Information Disclosure Of Business Franchise; Measures for the Administration of Record-Filing of Commercial Franchises)	There are specific franchisor filing obligations. The franchise regulations require that the franchisor satisfy several conditions, inclusive of the registration of its core trademarks in the PRC and evidence that the franchisor has owned and operated at least '2 units for 1 year' immediately prior to the application. In the case of hotel franchising the PRC will accept as proof of 'ownership and operation' the fact that the franchisor has exclusively managed at least 2 hotels.	There are specific disclosure obligations. The Franchise Regulation requires the franchisor to provide the disclosure document to the perspective franchisee at least 30 days before the franchisor and the franchisee sign the franchise agreement. Matters required to be disclosed include details of the franchisor and its directors and associates, including but not limited to their business experience, details of litigation involving the franchisor, the franchisor's financial information, a summary of the various payments and costs associated with buying, establishing and operating the franchise and a summary of the obligations of the franchisor and franchisee under the relevant franchise agreement.
Hong Kong The offer and sale of franchises is generally affected by the principles of common law and, in particular, contract law. It is also regulated by the consumer laws that contain provisions regarding misleading or deceptive conduct.	There are no specific franchisor filing obligations.	There are no specific disclosure obligations.
Indonesia Franchise Law in Indonesia is governed by Law No. 42 of 2007 dated 23 July 2007 on Franchising (Regulation No. 42) and its implementing regulation, Regulation of the Minister of Trade No. 31/M-DAG/PER/8/2008 dated 21 August 2008 on Implementation of Franchising (Regulation No. 31), and the Decree of the Director General of Domestic Trade No. 138/PDN/KEP/10/2008 dated 31 October 2008 on the Technical Guidelines for the Implementation of Franchising (Decree No. 138). The Indonesian Supervisory Commission on Business Competition (the Commission) has formulated franchise guidelines (Regulation No. 6 of 2009 on Guidelines for Exemptions from the Implementation of the Anti-Monopoly Practices and Unfair	There are specific franchisor filing obligations.	There are specific disclosure obligations. Prior to entering into a franchise agreement, a franchisor must provide a prospectus disclosing its business data or information to a franchisee at least two weeks before the execution of the franchise agreement, including but not limited to the identity of the franchisor, the business history of the franchisor, the organisational structure and management hierarchy and the balance sheet for the past two years.

Country (Regulations)	Filing Obligations	Disclosure Obligations
Business Competition Law for Agreements Related to Franchises (Guidelines)). Early in 2013 the Indonesia government implemented additional regulations such as MOT Regulation on Franchise Partnership Development for Food and Beverage Businesses. Such regulations will have a significant impact on franchisor's activities in Indonesia		
Japan The Medium and Small Retail Commerce Promotion Act (Law No. 110 of 1973 – MSRCPA); The Guidelines Concerning the Franchise System (Franchise Guidelines) under the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Act No. 54 of 1947 – Antimonopoly Act). The Japan Franchise Association ('JFA') has also implemented voluntary rules, such as the Japan Franchise Association Code of Ethics and the Voluntary Standard Regarding Disclosure and Explanation of Information to Prospective Franchisees.	There are no specific franchisor filing obligations	The Guidelines set out disclosure obligations. Under the MSRCPA, when a franchisor intends to negotiate a franchise agreement with a prospective franchisee, the franchisor must provide written documents describing the prescribed items and explain the contents of the written documents to prospective franchisees. There are no regulations regarding the frequency of updating disclosures. Some of the information that must be disclosed includes but is not limited to the name and address of the franchisor, number of full-time employees and, if the franchisor is a company, the title and names of officers; the amount of capital, names of the principal shareholders and, if the franchisor is conducting another business, the type of business, the name of any entity of which the franchisor holds a majority of the voting shares, the balance sheet and profit and loss statement, or other documents equivalent to these with regard to the past three business years of the franchisor's business and if the franchisees need to remit all or part of the sale proceeds periodically, the timing and method thereof.

Country (Regulations)	Filing Obligations	Disclosure Obligations
Korea The Franchise Act that was enacted on 1 November 2002 and most recently amended on 22 March 2010, and its Presidential Decree, are the primary statutes applicable to the franchisor-franchisee relationship.	There is no specific franchisor filing requirement	There are specific disclosure obligations. A franchisor must provide a disclosure document to the prospective franchisee even if the franchisee does not specifically request it in writing. The franchisor must register the disclosure document with the Korea Technology Finance Corporation (KTFC) first and then provide the registered disclosure document to the prospective franchisee. The acceptance of a franchise fee or execution of a franchise agreement is prohibited unless the franchisor provides the registered disclosure document and 14 days have elapsed from the date of provision of the registered disclosure document. The following broad categories of information are required to be contained in the disclosure document information: the general status of the franchisor; the current status of the franchisor's franchise; any legal violation by the franchisor and its executive; the obligations of the franchisee; conditions of and restrictions on business activities; detailed procedures and the period required in respect of the commencement of franchise business; and education and training programs (it must be specified if there is no plan for education and training).
Malaysia *Franchise Act - 1998* as amended.	There is a specific franchisor filing obligation.	There are specific disclosure obligations. The franchisor must submit to a franchisee a copy of the franchise agreement, together with the disclosure documents, at least ten days before the franchisee signs the agreement with the franchisor. The disclosure documents must contain information including: name, business address and type of business, including the franchisor's business experience; details of the intellectual property rights granted to the franchisee; types and amount of fees imposed on franchisees; other financial obligations, including advertising, training or service fess payable; whether the franchisee is required to purchase equipment or products from the franchisor; the franchise term, terms for renewal and termination of agreement by the franchisor or franchisee, and the parties' obligations upon termination; and the franchisor is required to submit audited financial statements for the past three financial years and financial forecasts for five years pursuant to the Franchise.

Country (Regulations)	Filing Obligations	Disclosure Obligations
Thailand There are no specific laws governing franchises in Thailand; other laws will govern the franchise relationship, including the Civil and Commercial Code (related to the establishment and enforcement of contracts), the Trademark Act (related to the licensing of trademarks), the Trade Secrets Act (related to know-how), and the Revenue Code (related to withholdings on royalty payments). A draft Franchise Act has been proposed, though not yet enacted.	There are no specific franchisor filing obligations.	There are no specific disclosure obligations. This landscape will likely change if the most recent draft of the Franchise Act is enacted into binding law. The draft includes a requirement that after a franchise agreement is fully executed and delivered, the franchisor must reveal all information that is necessary for operating the franchise business to the franchisee within 60 days. The draft does not specify the type of information considered to be 'necessary' however, so unless future drafts of the bill address this omission, the requirement will exist but will remain fairly vague. Since there is no legislation forcing specific information disclosure, no specific government agencies are responsible for enforcing disclosure requirements.
Vietnam The basic regulations on franchising are provided in the Commercial Law adopted by the National Assembly in 2005 (Commercial Law). These regulations are elaborated in Decree 35 of the Government (Decree 35), and Circular No. 09/2006/TT-BTM (Circular 09) of the Ministry of Industry and Trade (MOIT).	There is a filing obligation.	There is a franchise disclosure obligation. The franchisor must provide a prospective franchisee or master franchisee with a disclosure document entitled 'Introduction of the Franchise Business' and a copy of the draft franchise agreement at least fifteen working days prior to the execution of a franchise agreement, unless the parties otherwise agree to a longer time. Introduction of the Franchise Business must be prepared according to the standard form provided in Circular 09. Information to be disclosed is specifically described in the standard form of the Introduction of the Franchise Business attached to Circular 09.

OUTSIDE ASIA PACIFIC

This section of the publication focussed on Asia Pacific franchise Filing and Disclosure requirements, however, Europe and the United States have comprehensive franchise laws and regulations that have been in place for many years.

FUTURE TRENDS

HYBRID AGREEMENTS

A global 'one size fits all' approach to hotel management styles does not work. Franchising is the mainstay in the US, whilst in Europe there is a broad mix of leasing, ownership, franchising and management agreements. International operators in China and other emerging markets currently favour management agreements as they allow tighter brand control, though recently we have seen experimentation with different approaches which may or may not become preferable.

'Franchise light' or **'minifranchises'** are being offered in Continental Europe. These agreements give the owner the benefits of 'system affiliation' associated with an established brand, but based on softer branding than that envisaged under a standard franchise with a big operator and at considerably less cost. Whilst this is clearly a reaction to the current economic climate and the nature of the European market, given the compromises that need to be made on branding it is questionable how attractive the concept is to major operators.

'Manchising' is, as the name suggests, a hybrid form of franchise and management agreements. The forms of contract can vary from a complete combination of both forms of agreement, to one that is initially a management agreement but which after an initial term, say five years, moves to a franchise relationship. The rationale behind manchising is that the operator has greater control over the operation of a hotel through their management at the outset of the relationship, which is not the case with a 'pure' franchise agreement. This approach has clear advantages for operators launching new brands and/or entering new territories.

TASTY COMBINATIONS

At the start of this guide we talked about 'game changers'. The most obvious at the current time is operator engagement with the technology revolution but another, which is highly relevant to franchising, is partnering with other 'brands' (most notably food & beverage related) to enhance the guest's experience. Examples abound, from the likes of celebrity chefs such as Gordon Ramsey to Dunkin Donuts and Costa Coffee. Many of these brands are operated on a franchise basis and give the hotel a point of difference to its competitors. However history is full of failed examples and the message has to be to ensure that brand partnering is mutually beneficial.

VIRTUAL BOUTIQUE EXPERIENCE

In the new era of mobile shopping and brand inter action maybe hotel operators will become cognizant of offering a retail experience to its customers within the walls of the hotel itself to further enhance the customer's experience. 'Click & Collect' branded stores already exist in the retail space, maybe the concept could be extended to City hotels? After all, this is merely an extension of partnering in the context of food and beverage and luxury commissions are already a part of the hotel industry's DNA.

GETTING CONNECTED

There was a time when technology in a hotel was better than that at home. This trend has somewhat reversed lately due to the domestic spread of technology such as smartphones and tablets tied with the significant infrastructure costs for hotels to 'get connected' and offer guests the experience they now take for granted. The prospect of seeing guest tablets in rooms now seems to be the future and research suggests there are potential benefits for operators – where used data suggests guests are more likely to use services such as room service or treatments where the services are electronically made available via tablet app or similar. The possibilities for operators (and/or their partners such as the luxury boutique owners per the above) seem vast and it will be interesting to see how operators seize the initiative.

GLOSSARY OF TERMS FOR FRANCHISING AND MANAGEMENT AGREEMENTS

Area development	The exclusive or non exclusive territorial rights granted to an individual by the hotel brand owner to exploit that brand and increase the flag's market penetration in a particular area or jurisdiction in accordance with a roll out schedule. Therefore, the 'developer' will have two roles: (i) as developer of the brand in the territory; and (ii) as franchisee of each hotel opened pursuant to the roll out schedule. The grant of development rights is more common to retail sector franchising than hotel franchising.
ADR	Average daily rate. This is used to measure hotel revenue and is calculated by dividing gross room revenue by the number of occupied room nights sold in a specified time period.
Advertising Fee	The Franchisee's contribution to the Franchisor's cost of international/national/regional advertising and marketing of the whole system. Commonly based on Room Revenue. This may also include room reservation or loyalty programme fees or this may be a separate fee payable by Franchisee.
Asset-light strategy	The movement by operators away from hotel ownership towards management structures that include franchising, sale and lease back and, most notably, management agreements.
BAR	Best available rate.
Base Fee or Basic Fee	The fee payable by the owner to the operator, usually a percentage of revenue.
Brand Standards	The operator's standards applicable to the use of a hotel's brand and its associated marks usually set out in the Manual (in management agreements) and the Operations Manual (in franchise agreements).
Buying cooperatives	Associated with franchises, whereby franchisees (sometimes with franchisor input) establish a member owned and controlled business devoted exclusively to purchasing and supply chain issues of franchisees under that flag.
Clustering or Complexing	A group of hotels in a small area operated by a single company which share costs by, for example, sharing staff.
Departmental expenses	Expenses specific to one of the three Operated Departments; Rooms, F&B and Other Operated Departments.
Disclosure documents	Documentation describing the franchise being offered, usually including a description of the brand, the investments required by a franchisee, the fees and a summary of the contractual requirements.
EBITDA	Earnings Before Interest, Tax, Depreciation and Amortisation. More commonly referred to as Net Operating Income (**NOI**).
F&B	Food & Beverage.
FF&E	Either (1) Furniture, Furnishings and Equipment, or (2) Fixtures, Fittings and Equipment, such as beds, tables and chairs. These items are accounted for as capital expenditure, and normally exclude Operating Equipment.

FF&E	Reserve A sum of money which is used to fund replacements and additions to FF&E. The reserve is normally funded by a fixed percentage of revenue each month.
Fixed Charges	Under the Uniform System, these charges include rent, property taxes and insurance.
Fractional	A generic term for various forms of shared ownership models for residential and condominium properties.
Franchise Agreement	A contract covering the grant of rights by the franchise/brand owner to franchisees.
Franchise disclosure	In many jurisdictions across the globe, disclosure of the material components by a franchisor of the franchise being offered is a legal requirement. In jurisdictions without specific franchise laws it is often best practice to disclose this information or the obligation to disclose may be imposed by the code of practice to which the franchisor is a member.
Franchise-light	The provision of brand affiliation common to standard franchising but with less emphasis on branding common to standard franchising and usually at a lower cost.
Franchisee	The individual or corporate entity appointed by the franchisor to run an individual franchised business.
Franchisor	The owner of the hotel brand being franchised.
Global Distribution Systems	The electronic reservations network by which travel agents organise bookings with airlines and hotels. There are four leading GDS systems – Amadeus, Galileo International, Sabre and Worldspan.
GOP	Gross Operating Profit, calculated as total revenue less operating expenses (including Departmental Expenses and Undistributed Operating Expenses).
GOPPAR/GOPAR	Gross Operating Profit per Available Room.
Gross Rooms Revenue	Revenue only from Rooms (i.e. excluding revenue from F&B, Other Operated Departments and other income).
HMA	See Management Agreement.
IBFC	Income Before Fixed Charges. Under the Uniform System this is Gross Operating Profit before management fees.
Incentive fee	A fee payable to a hotel operator, usually based on a percentage of profit.
Initial Franchise Fee	A fee payable by a franchisee on execution of the Franchise Agreement associated with the initial grant of rights and costs incurred by a franchisor.
IMF	Incentive Management Fee (see above).
IPR	Intellectual property rights, such as trade marks, copyright, patents, design rights, know-how and other intangible rights that may or may not be capable of registration and/or protection.
IRR	Internal Rate of Return. A rate of return used in capital budgeting to measure and compare the profitability of investments. It is also called the rate of return (**ROR**).

Keys	The number of guest rooms in a hotel, measured by the number of keys.
Licence fee	A fee for use of a brand name (also known as a Royalty fee) and more common to franchising.
MAC	Material Adverse Change.
Management Agreement	An agreement between the hotel's owner and the hotel operator for the operation of the hotel by the operator on behalf of the owner. Also known and an operating agreement.
Management Test	A mechanism allowing a hotel owner to terminate a Management Agreement due to poor performance by the operator, often by benchmarking against similar hotels in the same market.
Manchise	A contract that can take various forms, but is essentially a hybrid of franchising and management contracting. Common forms include franchise plus outsourcing of management to a third party operator, a mix of franchise and management over a defined period and/or totally hybrid relationships.
Manual	The manual setting out of an operator's Brand Standards under a management agreement. See also 'Operations Manual' for franchise agreements. The Manual and Operations Manual will be similar, however an Operations Manual will likely be more detailed in relation to operational compliance with the system.
Master franchising	Subject to certain terms and conditions, the concept provides the individual with the right to grant franchises of the franchised business to others within a defined territory. This is more common in the retail sector.
Mini-franchises	See franchise-light.
MLA	Mandatory Liquid Assets.
NDA	A Non-disturbance agreement made between the hotel's owner, the operator and the owner's lender. The lender agrees that should the owner default and the lender forecloses the loan, the lender will keep the management agreement in place. The lender will usually have the right to step in and cure an owner's default under the management agreement.
Net Operating Income or Net Operating Profit (NOI or NOP)	The term used for EBITDA under the Uniform System. It is equal to Gross Operating Profit less management fees and Fixed Charges.
Non-branded management companies	A company operating the day-to-day management of a hotel on behalf of an owner that does not itself have a recognised brand to be utilised at the hotel. It is therefore commonly tied with a franchise to a recognised hotel brand.
Operator	The hotel management company that manages a hotel under a management agreement. Under a franchise agreement the operator is the brand owner.
Operating Agreement	See Management Agreement.
Operating Budget	A budget produced by the operator, containing budgeted revenues, expenses and capital expenditure for the forthcoming financial year.

Operating Equipment	Equipment used in day-to-day operations, such as linen, china and uniforms. Such equipment is accounted for as a current expense rather than capital expenditure (see FF&E).
Operations Manual	A manual that provides information to the Franchisee on how to operate a hotel in compliance with the System and the Brand Standards.
Operated Departments	Three categories of classifications of Gross Operating Revenue under the Uniform System. The categories are Rooms, F&B and Other Operated Departments, which includes revenue from golf, spas etc.
Operating Plan	See Operating Budget.
Occupancy Rate (%)	A rate used to measure performance, the occupancy rate measures the number of hotel nights sold as a percentage of the number of room nights available. The rate is calculated by dividing the total number of rooms sold by the number of rooms available.
Owner	The owner of a business which, under a management agreement, is counterparty to an operator. Under a franchise agreement the owner becomes the Franchisee.
PBIT	Profit Before Interest and Tax.
PIP	Property Improvement Plan, a document setting out the refurbishment required for an asset to meet the standard of a particular brand.
Radius Restriction	A restriction in a management agreement preventing a hotel chain from owning, operating and/or franchising another hotel within a specified distance. Other terms include restricted or protected area(s).
Rental and Other Income	Revenue from non-Operated Departments, such as space rental.
RevPAR	Revenue Per Available Room, a key measurement metric for hotels. It is calculated by multiplying a hotel's average daily room rate by its occupancy rate.
Rooms Revenue	Revenue only from Rooms (i.e. excluding revenue from F&B, other Operated Departments and Rental and Other Income).
Royalty Fee	See Licence Fee.
System	A franchisor's methods, know-how and business format for the conduct of the franchised business. Operational elements of the System are set out in the Manual or Operations Manual.
Total Revenue	Total Revenue from all sources, including Rooms, F&B, Other Operated Departments, and Rental and Other Incomes.
UFOC	Uniform Franchise Offering Circular – a document containing information which the US Federal Trade Commission requires franchisors to provide to franchisees before a franchise agreement is signed. In other jurisdictions this is referred to as the Disclosure Document.
Undistributed Operating Expenses	Expenses attributable to the whole hotel and not a specific department.

ABOUT US

DLA Piper was one of the first firms to develop a dedicated global hospitality & leisure sector group and we now have over 200 lawyers with a proven track record, advising the industry on a diverse range of issues.

Our knowledge and experience enable us to determine trends, identify opportunities and threats to growth, create solutions and deliver commercially robust advice. In our role as business advisors for our clients, we know the sector, its key players, and its unique concerns.

We act for a broad spectrum of industry clients, including leading global, regional and national hotel and resort businesses; leisure and sports operators; on-line gaming and gambling establishments; hospitality and catering organisations and for the promoters and developers of major sporting events, including various Olympic authorities and the Commonwealth Games, as well as financiers and banks operating in the sector.

By aligning the breadth and depth of our key practice areas to the specific needs of the sector, we have the requisite focus and experience to provide a first-class service, coupled with international and national understanding, to our clients in their local and international investments and operations.

Every legal skill is available to you, and we are one team offering you unmatched global reach in your sector.

FOR MORE INFORMATION

To learn more about DLA Piper, visit www.dlapiper.com or contact:

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