



# HOSPITALITY AND LEISURE

Franchising and Industry Innovation



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# INTRODUCTION

In previous years this publication has given an insight into the asset light strategies of global hotel operators, an overview of some of the trends in hotel franchising and provided a brief appreciation of the issues affecting hotel franchising. This year we have retained some of the “quick to view” educational references and the focus on technology inter-operability issues within hotel franchising as well as looking at the current economic environment. We hope you find this 2014 Guide an interesting read!

## THE MARKET

Looking back at 2013, the by-word seems to have been “momentum”. In general terms the momentum gained in 2013 has created a positive outlook and a favourable transaction climate for 2014 across the globe. There will always be regional variances, however we are now seeing transactions coming to the market that in the recent past may not have been conceivable. Looking forwards the challenge for hoteliers is still the need 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 consumers’ requirement for mobile bookings and the rise and rise of social media platforms disseminating information (“likes”; “dislikes” and twitterati 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 programmes 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 cognizant 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](http://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.

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.

# FRANCHISE vs MANAGEMENT AGREEMENT

The key question for owners is “will my asset benefit from brand affiliation?” There are significant benefits of association with a brand, including a higher likelihood of success, brand awareness, increased access to financing and access to centralised systems. Taking a franchise is one of the quickest and simplest methods of achieving this, whilst allowing the owner to retain control of its asset.

From the operator’s perspective, particularly when considering the current global economic climate, franchising is very appealing. It offers a method of quickly expanding a brand, it is lean and it generates a consistent revenue stream.

Franchising does, however, leave open the question of who will operate the hotel. Most owners will not be in a position to manage the hotel and thus require the services of a third party, the non-branded management

company, that will manage the day-to-day hotel operations. Such arrangements are now commonplace, with non-branded management companies offering major operators crucial local market knowledge. In countries where operators are in the process of establishing their presence this is vital for early success, and in certain markets franchising offers a mutually beneficial partnership for local non-branded management companies and established global operators with a brand to promote.

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; <ul style="list-style-type: none"> <li>Provide technical services (eg in relation to the design and development of the hotel);</li> <li>Licence its brand; and</li> <li>Provide centralised advertising, marketing and reservation services.</li> </ul> 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: <ul style="list-style-type: none"> <li>Adhere to the operator’s “brand standards manual” in terms of both the brand and the standards applicable to that brand;</li> <li>Participate in group marketing and advertising;</li> <li>Participate in the group’s reservation system;</li> <li>Where the hotel is being constructed or renovated, obtain the operator’s approval for the relevant plans and specifications;</li> <li>Open the hotel on the specified date (some operators may require “grand opening event(s)”;)</li> <li>Prepare and maintain records and accounts to be shared with the operator; and</li> <li>Comply with all legal requirements and provide the operator/franchisor with protection against any claims.</li> </ul>	Although management and operation of the hotel is provided by the operator, the owner will remain responsible for: <ul style="list-style-type: none"> <li>Compliance of the hotel with the operator’s brand standards (and the cost of renovations associated therewith);</li> <li>The cost of maintenance and repairs;</li> <li>Insurances;</li> <li>The employment of non-management employees;</li> <li>Obtaining regulatory licenses for hotel operation, such as liquor licence etc;</li> <li>Real estate issues, such as lease renewals, zoning requirements, etc;</li> <li>Although not an obligation per se, owners will often seek the right to approve annual budgets, capital and FF&amp;E budgets, approve key personnel positions, review the hotel’s accounts, apply performance tests and for a reasonable non-compete restrictive covenant.</li> </ul>

Theme	Franchise Agreement	Management Agreement
What is provided by the operator?	<p>The operator will typically provide:</p> <ul style="list-style-type: none"> <li>■ Training on the operation of the hotel according to the "system" (some training may be incorporated in the fees, some may involve additional charges);</li> <li>■ Providing and updating the brand standards manual(s);</li> <li>■ Occasionally pre-opening services (which may form part of the fee structure or could be payable separately);</li> <li>■ Access to the operator's marketing, advertising and reservations system; and</li> <li>■ Technical services may be provided on other areas albeit this is likely to be for additional fees.</li> </ul>	<p>The operator will typically:</p> <ul style="list-style-type: none"> <li>■ Operate the hotel according to the Brand Standards;</li> <li>■ Include the hotel in the operator's marketing, advertising and reservations system;</li> <li>■ Have authority to conduct day-to-day operation of the hotel including purchasing goods and services, conducting litigation, managing staff etc;</li> <li>■ Provide technical services relating to the design and development of the hotel (this is often subject to a separate technical services agreement and fee).</li> </ul>
What are the fee structures?	<p>A typical fee structure involves:</p> <ul style="list-style-type: none"> <li>■ An initial fee (this is often linked to the size of the hotel). In some cases this fee is non-refundable;</li> <li>■ Continuing or royalty fees – this is based on room revenue. Typically this is between 3% and 5% of room revenue;</li> <li>■ 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;</li> <li>■ 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.</li> </ul>	<p>A typical fee structure involves:</p> <ul style="list-style-type: none"> <li>■ "base fee" – typically between 2% to 4% of gross revenue;</li> <li>■ "Incentive fee" – typically around 10% of gross operating profit;</li> <li>■ Technical services fees – lump sum or payable on a time and materials basis for relevant services;</li> <li>■ Centralised services fees – often made up of: <ul style="list-style-type: none"> <li>– Marketing fees – typically in the region of 2% of room revenues;</li> <li>– Reservation fees – calculated per room or against room revenue;</li> <li>– Loyalty and other programmes provided.</li> </ul> </li> </ul>
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 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 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 disclosure obligations in some key European jurisdictions.

Country (Regulations)	Disclosure Obligations	
	Contract Summary	Commercial Disclosure
Belgium (The Law of 19 December 2005 as modified on 27 December 2005)	<ul style="list-style-type: none"> <li>■ summary of the obligations of the parties (including consequences of not meeting them);</li> <li>■ description of non-compete clauses and all exclusive rights granted; grounds available for early termination;</li> <li>■ summary of the conditions which apply to a renewal of the franchise.</li> </ul>	<ul style="list-style-type: none"> <li>■ details of the franchisor's identity;</li> <li>■ summary of the nature of the activities of the franchisor and the IPR rights;</li> <li>■ annual accounts of the last 3 years;</li> <li>■ summary of the historic development of the franchised network and the number of franchisees;</li> <li>■ description of the investment required to be made by the franchisee and the period of amortisation;</li> <li>■ a market study.</li> </ul>
Czech Republic (Civil Code)	No specific regulation but again the Civil Code implies a duty of "good faith" and "fair dealing", meaning that although disclosure is not a strict legal requirement, it is recommended to disclose key facts to avoid claims of misrepresentation later in the relationship.	
France (Loi Doubin Law/ Commercial Code)	<ul style="list-style-type: none"> <li>■ term and renewal conditions;</li> <li>■ termination provisions;</li> <li>■ transfer clause and the scope of the exclusivity granted.</li> </ul>	<ul style="list-style-type: none"> <li>■ details regarding the company granting the franchise and its directors;</li> <li>■ banking references;</li> <li>■ summary of the professional experience of the managers;</li> <li>■ copy of the accounts for the last two years;</li> <li>■ details of investments and expenses to be borne by the franchisee;</li> <li>■ a market study.</li> </ul>
Germany (s.242 German Civil Code)	No specific requirement but "good faith" obligations under the Civil Code would make it advisable for early contract disclosure (or a summary)	All important information and documents relevant to the franchise relationship should be disclosed within a reasonable time span prior to the signing of the contract. For example, relevant IPR, investment requirements; general information on the brand and associated standards.
Greece (Civil Code)	There is no specific regulation although the Greek authorities have long discussed implementing specific regulations. As with other jurisdictions, the Greek Civil Code implies a duty of "good faith" which itself implies a duty on franchisors to disclose key facts.	
Hungary	There is no specific regulation but the Hungarian Civil Code will apply. Note that Hungarian laws draw heavily on the German and Austrian legal systems and so again disclosure is recommended.	

Country (Regulations)	Disclosure Obligations	
	Contract Summary	Commercial Disclosure
Italy (Law Number 129/04)	<p>The law does not require a specific summary. However the contract must contain details concerning key elements including:</p> <ul style="list-style-type: none"> <li>the fee and investment expected of the franchisee;</li> <li>the territory granted to the franchisee; and</li> <li>a description of the know-how and services to be provided by the franchisor.</li> </ul>	<ul style="list-style-type: none"> <li>the franchisor's balance sheets for the three previous financial years;</li> <li>documentation relevant to the franchisor's trade marks;</li> <li>a list of all the franchisees belonging to franchisor's network.</li> </ul>
Netherlands	There is no specific regulation. General contract rules still apply and best practice is to disclose.	
Norway	There is no specific regulation. General contract rules still apply and best practice is to disclose.	
Poland (Article 56 KC)	No specific regulation but under general principles of civil law franchisor has a duty to disclose key facts of the franchise offered.	
Portugal	There is no specific regulation, however general Portuguese contract law protects franchisees and therefore best practice is to disclose material facts on the franchise offered.	
Romania (Government Ordinance 52/1997)	Contract summary not legally required, however "full awareness" requirements suggest early contract disclosure (or a summary).	<p>Romanian regulations provide for general duties of disclosure on the franchisor such that the franchisee is in "full awareness" of its participation in the relevant franchise.</p> <p>The regulations also provide for specific requirements in the context of the Franchise Agreement itself.</p>
Russia	There is no specific regulation. General contract rules still apply and best practice is to disclose.	
Slovakia (s.43 of the Civil Code)	No specific regulation but again the Civil Code implies a duty of "good faith" and "fair dealing", meaning that although disclosure is not a strict legal requirement, it is recommended to disclose key facts to avoid claims of misrepresentation later in the relationship.	
Spain (Law 7/1996 and Royal Decree 419/2006)	<ul style="list-style-type: none"> <li>no specific requirements, must comply with basic contractual requirements.</li> </ul>	<ul style="list-style-type: none"> <li>franchisor's statutory identification data (filing details, register number);</li> <li>description of the franchisor's experience (starting with the date the franchisor company was incorporated and describing the different phases of the network's development);</li> <li>a general description of the franchise (system, knowhow and the technical assistance that the franchisor will provide);</li> <li>proof of ownership of the relevant IPR;</li> <li>an estimate of the investment the franchisee will have to make.</li> </ul>

Country (Regulations)	Disclosure Obligations	
	Contract Summary	Commercial Disclosure
Sweden (Disclosure Act 2006)	<ul style="list-style-type: none"> <li>■ information on in term and post term non compete clauses;</li> <li>■ information on the term, conditions for amendment, renewal or termination;</li> <li>■ information on how contractual disputes are to be resolved.</li> </ul>	<ul style="list-style-type: none"> <li>■ description of the franchise;</li> <li>■ information on the fee to be paid by the franchisee;</li> <li>■ information on the categories of goods or services that the franchisee is required to purchase;</li> <li>■ information regarding the IPR.</li> </ul>
Switzerland	There is no specific regulation. General contract rules still apply and best practice is to disclose.	
Turkey	There is no specific regulation. General contract rules still apply and best practice is to disclose.	
Ukraine (Commercial Code/ Civil Code)	<ul style="list-style-type: none"> <li>■ must be a single written document;</li> <li>■ contain summary of the obligations of the parties;</li> <li>■ general contract rules still apply.</li> </ul>	There are no specific rules governing the disclosure in franchise agreements and best practice is to disclose.
United Kingdom	There is no specific regulation. General contract rules still apply and best practice is to disclose.	

## OUTSIDE EUROPE

This section of the publication focusses on European Disclosure requirements, however, it is widely accepted that the genuine growth markets are further East. Franchise and disclosure laws across Asia are a mixed bag. China for example has had franchise laws since 2007 which were updated just over 12 months ago, and is seen as a tight regulatory environment. Malaysia has one of the most comprehensive franchise legislation systems outside the US,

fraught with complexities for the foreign operator entering the market. Vietnam, another hotspot for growth and development has established franchise disclosure laws which are broadly based on the Australian (as opposed to US) approach. A little closer to home, we also understand Abu Dhabi is considering implementing laws applicable to all franchisees operating in the Emirate.





# 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

<b>Area development</b>	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.
<b>ADR</b>	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.
<b>Advertising Fee</b>	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.
<b>Asset-light strategy</b>	The movement by operators away from hotel ownership towards management structures that include franchising, sale and lease back and, most notably, management agreements.
<b>BAR</b>	Best available rate.
<b>Base Fee or Basic Fee</b>	The fee payable by the owner to the operator, usually a percentage of revenue.
<b>Brand Standards</b>	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).
<b>Buying cooperatives</b>	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.
<b>Clustering or Complexing</b>	A group of hotels in a small area operated by a single company which share costs by, for example, sharing staff.
<b>Departmental expenses</b>	Expenses specific to one of the three Operated Departments; Rooms, F&B and Other Operated Departments.
<b>Disclosure documents</b>	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.
<b>EBITDA</b>	Earnings Before Interest, Tax, Depreciation and Amortisation. More commonly referred to as Net Operating Income (NOI).
<b>F&amp;B</b>	Food & Beverage.
<b>FF&amp;E</b>	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.

<b>FF&amp;E</b>	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.
<b>Fixed Charges</b>	Under the Uniform System, these charges include rent, property taxes and insurance.
<b>Fractional</b>	A generic term for various forms of shared ownership models for residential and condominium properties.
<b>Franchise Agreement</b>	A contract covering the grant of rights by the franchise/brand owner to franchisees.
<b>Franchise disclosure</b>	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.
<b>Franchise-light</b>	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.
<b>Franchisee</b>	The individual or corporate entity appointed by the franchisor to run an individual franchised business.
<b>Franchisor</b>	The owner of the hotel brand being franchised.
<b>Global Distribution Systems</b>	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.
<b>GOP</b>	Gross Operating Profit, calculated as total revenue less operating expenses (including Departmental Expenses and Undistributed Operating Expenses).
<b>GOPPAR/GOPAR</b>	Gross Operating Profit per Available Room.
<b>Gross Rooms Revenue</b>	Revenue only from Rooms (i.e. excluding revenue from F&B, Other Operated Departments and other income).
<b>HMA</b>	See Management Agreement.
<b>IBFC</b>	Income Before Fixed Charges. Under the Uniform System this is Gross Operating Profit before management fees.
<b>Incentive fee</b>	A fee payable to a hotel operator, usually based on a percentage of profit.
<b>Initial Franchise Fee</b>	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.
<b>IMF</b>	Incentive Management Fee (see above).
<b>IPR</b>	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.
<b>IRR</b>	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).

<b>Keys</b>	The number of guest rooms in a hotel, measured by the number of keys.
<b>Licence fee</b>	A fee for use of a brand name (also known as a Royalty fee) and more common to franchising.
<b>MAC</b>	Material Adverse Change.
<b>Management Agreement</b>	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 as an operating agreement.
<b>Management Test</b>	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.
<b>Manchise</b>	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.
<b>Manual</b>	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.
<b>Master franchising</b>	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.
<b>Mini-franchises</b>	See franchise-light.
<b>MLA</b>	Mandatory Liquid Assets.
<b>NDA</b>	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.
<b>Net Operating Income or Net Operating Profit (NOI or NOP)</b>	The term used for EBITDA under the Uniform System. It is equal to Gross Operating Profit less management fees and Fixed Charges.
<b>Non-branded management companies</b>	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.
<b>Operator</b>	The hotel management company that manages a hotel under a management agreement. Under a franchise agreement the operator is the brand owner.
<b>Operating Agreement</b>	See Management Agreement.
<b>Operating Budget</b>	A budget produced by the operator, containing budgeted revenues, expenses and capital expenditure for the forthcoming financial year.

<b>Operating Equipment</b>	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).
<b>Operations Manual</b>	A manual that provides information to the Franchisee on how to operate a hotel in compliance with the System and the Brand Standards.
<b>Operated Departments</b>	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.
<b>Operating Plan</b>	See Operating Budget.
<b>Occupancy Rate (%)</b>	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.
<b>Owner</b>	The owner of a business which, under a management agreement, is counterparty to an operator. Under a franchise agreement the owner becomes the Franchisee.
<b>PBIT</b>	Profit Before Interest and Tax.
<b>PIP</b>	Property Improvement Plan, a document setting out the refurbishment required for an asset to meet the standard of a particular brand.
<b>Radius Restriction</b>	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).
<b>Rental and Other Income</b>	Revenue from non-Operated Departments, such as space rental.
<b>RevPAR</b>	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.
<b>Rooms Revenue</b>	Revenue only from Rooms (i.e. excluding revenue from F&B, other Operated Departments and Rental and Other Income).
<b>Royalty Fee</b>	See Licence Fee.
<b>System</b>	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.
<b>Total Revenue</b>	Total Revenue from all sources, including Rooms, F&B, Other Operated Departments, and Rental and Other Incomes.
<b>Undistributed Operating Expenses</b>	Expenses attributable to the whole hotel and not a specific department.

## ABOUT US

DLA Piper is a leading global law firm for the hospitality and leisure sector.

We are one of the world's largest law firms, with more than 75 offices in over 30 countries. We were one of the first firms to develop a dedicated global Hospitality and Leisure sector. We have over 200 lawyers with a proven track record in the sector advising businesses on a diverse range of issues.

Our knowledge and experience enable us to identify trends, create solutions and be consummate business advisors for our clients. We know the sector, the key players and the business and legal concerns in the market.

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 firstclass service to clients in their local and international investments and operations.

We provide a genuine one-stop-shop for the hospitality and leisure sector. Every legal skill is available to you, from acquisitions and franchising to employment and intellectual property. In short, we are one global team with no borders, providing a real advantage to you.

### FOR MORE INFORMATION

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