ADDLESHAW GODDARD

CHECK-IN with AG

AG's bi-annual hospitality bulletin

2nd Edition:
October 2017

CHECK-IN with AG

Welcome to our second edition of CHECK-in with AG. It's been a roller-coaster six months since our inaugural edition. Despite continued uncertainty over Brexit and sadly, continued terrorist attacks across Europe, reports suggest that the British hotel industry is set for a record 2017 owing to a substantial increase in both domestic and international visitors planning holidays in the UK. Holiday makers primarily cite the weaker pound as a reason, as well as TV programs such as the The Crown (a Netflix drama) influencing international visitors, especially those from China.

As with the industry, our hotels team has had a busy 6 months working on a number of new hotel developments, financing, investment sales and disposals, commercial matters and developing a product to deal with the increase in the number of data subject access requests received, making it easier, quicker and cheaper for our hotel operator clients to deal with them.

This edition of CHECK-in with AG brings you the following articles, being issues which are on the fore-front of our client's and network's minds:

(i) For our investor clients considering investment in hotels, a table listing the pros and cons of traditional forms of hotel operation, from a hotel investor's perspective

(ii) The evolution of hotel management – the surge of third party hotel management

(iii) Modern hotels wake up to modular construction – the increasing popularity of modular construction

(iv) Data subject access requests – how AG's new product can help the sector deal with them (in the context of our wider Data offering)

(v) Management agreement disputes – case studies from our Dubai based dispute litigation team

(vi) Key employment law issues for the sector

(vii) Islamic financing and its applicability in the sector

(viii) Details of some key industry networking events and seminars over the next 6 months

The AG team hopes that you enjoy reading our sector bulletin. If you have any comments or queries on any of the articles, please get in touch with anyone from our team, whose details are on the last page.

Best wishes

Lucy Sturrock

Head of Hotels & Leisure at Addleshaw Goddard LLP

Traditional Forms of Hotel Operation – the Pros and Cons for Hotel Investors

There will never be a "one-size-fits-all" operating model. On considering investment into the hotel market, an investor should carry out a self-evaluation to establish the following:

- What is the investor's risk appetite?
- How much operational control over hotel operations does the investor want, if any at all?
- How experienced is the investor in operating hotels?
- Which brands are most suitable for the hotel and which of those are available under a lease structure, franchise or management contract?

These are just a few of the key factors which hotel investors should consider on investing into this dynamic market. The following table lists some of the pros and cons on the traditional forms of hotel operation.

Form	Advantages	Disadvantages
Leasing a Hotel to a Hotel Chain	▸ An investor has the relative safety of a definite return. Rent paid by an operator can be a fixed rental amount, a percentage of gross revenue, or a combination of the two. ▸ Leases enable hotel investment to investors with little or no hotel operational experience. ▸ Leases are suited to investors who are looking for a fixed return and limited financial risk. ▸ Financing is easier with a reputable hotel chain operator. ▸ All operational risk and liabilities are passed to the hotel chain operator.	▸ An investor has limited potential financial gains as the investor's returns are limited to the rent. ▸ The investor has limited control/influence over operations carried out by the hotel chain operator. ▸ The covenant strength of a hotel chain operator is an important consideration, though risk here can be mitigated by procuring a guarantee (or a bond). ▸ Hotel chain operators are becoming increasingly reluctant to take the grant of leases, being under pressure to move away from leases (to lighten their balance sheets to become more "asset-light").
Self-Operation	▸ Self-operation is suitable for an investor with strong operational experience and ideally, a market consisting of significant repeat business. ▸ An investor operating independently enjoys the maximum freedom to operate and to maximum returns if the hotel is efficiently managed. ▸ No fees are paid to a second party. ▸ Expertise in hotel operations can be showcased.	▸ Investors lack the advantages of national affiliation, referral, reservation and operational systems provided under other forms of hotel operation. ▸ Financing may be difficult to obtain without having the benefits of a referral, franchise, or recognized hotel chain. ▸ The investor bears all financial and operating risk alone. ▸ Most hospitality consultants agree that the appropriate brand on a hotel may increase RevPAR by up to 21%.

Form	Advantages	Disadvantages
Owner-Operation with Association to a Referral System	▸ A referral system offers international and/or national affiliation and referral; access to a reservation system; ability to take advantage of the cost of lower cost FF&E, equipment, insurance and access to a network of other owner-operators. ▸ Subject to compliance with the Referral System's brand standards (which are typically minimal compared to brand standards required by hard brands), the investor can maintain the hotel's distinct identity, individuality and operational flexibility. ▸ Virtually complete freedom to operate (subject to minimal brand standards). ▸ The hotel benefits from any loyalty programme which is run by the Association.	▸ Usually only worthwhile if association generates the additional volume of business to cover the referral costs and other expenses (such as maintenance to brand standards). ▸ Hotels will be required to adhere to the Referral System's brand standards. ▸ Investors must have the operational and financial capability to maintain the required standards, to monitor and enforce standards consistently and to provide effective system-wide services. ▸ Association fees are typically between 2%-3% of rooms revenue.
Owner-Operation under a Franchise Agreement	▸ Subject to compliance with the hotel chain's brand standards, the investor has full control and flexibility in the hotel's management. ▸ An investor benefits from the hotel chain's services, such as training, technical and design services and brand operational support. ▸ The investor benefits immediately from the hotel chain's global distribution systems. ▸ Most hospitality consultants agree that the appropriate brand may increase RevPAR by up to 21%. ▸ The hotel benefits from any loyalty programme which is run by the hotel chain. ▸ Investors with limited hotel operational experience can appoint a third party operator to operate the hotel, therefore, hotel franchising is enabled to investors with little or no hotel operational experience. Please refer to our article "The Evolution of Hotel Management – The Surge of Third Party Management" for details.	▸ Investors have no control over brand reputation – the hotel may suffer negatively if the brand weakens. ▸ The investor is subject to a large degree of uniformity and operational controls. For an investor with little or no operational expertise, this may be beneficial; for a strong investor, this standardization may be considered an impediment. ▸ Investors must have the operational and financial capability to maintain the required standards, to monitor and enforce standards consistently and to provide effective system-wide services. ▸ The investor bears all operational and financial risk (e.g. the investor is the employer of all hotel staff and all contracts are entered into by the operator for and on behalf of the investor). ▸ An investor will be required to comply with the franchisor's brand standards, as they apply from time to time. ▸ Franchise fees vary greatly depending on the licensed brand. Fees are often ramped up until the hotel stabilises at around year 5 of operation.

Form	Advantages	Disadvantages
Management Contract with Hotel Chain Operator	▸ Management enables hotel investment to investors with little or no hotel operational experience. An investor can literally 'hand-over' the hotel to the operator to manage on its behalf. ▸ The operator licences use of a brand to the investor, as well as providing operating know-how, technical and design services and access to reservation systems. ▸ Some operational costs can be lower (compared to other forms of operation) if a hotel is efficiently operated e.g. cluster costs and central marketing. ▸ A hotel chain operator uses its large scale operations to procure discounted operational insurance and favourable terms, FF&E, operating equipment and supplies. ▸ The hotel benefits from any loyalty programme which is run by the hotel chain.	▸ The investor completely relies on the operator's discretion and has very limited influence in operation of the hotel. ▸ Hotel chain operators charge a management fee, incentive fee plus a pro-rata share of their system-reimbursable expenses. After paying these fees and reimbursable expenses, provided that the hotel is generating positive cash-flow, the investor keeps any additional cash flow. ▸ Operating terms typically range from 15 years to 30 years. ▸ Investors must have the financial capability to maintain brand standards, fund capex and to also fund shortfalls in working capital. ▸ Management contracts can be drafted in a way so as to make it virtually impossible for an investor to terminate. ▸ Management fees and system-reimbursable expenses charged under a management contract are significantly higher than those charged under a referral or a franchise agreement. ▸ The investor bears all operational and financial risk (e.g. the investor is the employer of all hotel staff and all contracts are entered into by the operator for and on behalf of the investor).

This table is a brief overview and comparison of the different traditional forms of hotel operation. There are many combinations of operating models that can be used and when the right questions are asked to establish an investor's short, medium and long term objectives; the appropriate operating model can be implemented to increase profitability; provide an exceptional guest experience which the modern-day traveller expects in today's experimental society and which will also make the hotel more attractive to lenders.

The Evolution of Hotel Management – The Surge of Third Party Management

There are numerous factors to consider when deciding the most suitable form of hotel operation. The third party hotel operator (TPO) or "white label" hotel operator is a model that is well established in the US and is gaining more traction throughout EMEA. The model is partly behind the accelerated growth of the franchised hotel brand. It has the benefit of allowing hotel investors to run hotels with an experienced operator under the flag of a global brand.

A TPO is a service provider that is appointed by a hotel owner to manage the hotel. TPOs allow hotel investors to franchise a hotel brand where TPOs manage the hotel in accordance with the franchise agreement and they are also suitable to manage independent (unbranded) hotels. TPOs are a commercially attractive alternative to the traditional forms of hotel operation. TPOs are particularly suitable for the following types of hotel investor:

(i) with limited hotel operational experience;

(ii) who own small, focused-service or mid-market hotels, especially those which are in secondary markets; and

(iii) who have a strained relationship with their hotel operator under a traditional management contract where the brand is working for the hotel and there is an opportunity to flip to a franchise.

This table is a brief overview and comparison of the different traditional forms of hotel operation. There are many combinations of operating models we can recommend once we have established an investor's short, medium and long term objectives.

Peter Hales, Managing Director Managed Hotels at Michels & Taylor, has commented:

"Michels and Taylor has grown as a TPO, driven mainly through the client relationships of our Consultancy and Asset Management businesses. Having 28 hotels currently managed under a variety of brands – Marriott, Choice Hotels, IHG, Best Western and Hilton – a key advantage to the hotel investor of an independent TPO is to be able to optimise performance from the respective brand systems, coupled with the ability to compare delivery and initiatives between the brands to further challenge performance.

With 40% of the portfolio operating independent of a brand, there is also the expertise and knowledge within Michels & Taylor of how to drive performance through channel management, marketing initiatives and marketing consortia. This breadth of experience helps all hotels including branded hotels."

1950

Hotel chains start to become "asset light" hotel operating companies

Hotel chains changed from being "asset-heavy" real estate companies to being "asset-light" operating companies, thereby enabling growth with limited equity investment and virtually no risk.

1960

Hotel chains sought rapid growth amidst increasing competition

Hotel chains sought rapid growth of their international footprint through traditional management contracts and their (current) preferred method of growth, franchising. For example, franchising is now the largest part of IHG's business with over 4,300 franchised hotels and 845 hotels operating under a management contract. Nowadays, more and more of the larger hotel chains are seeing their owners wanting to flip to a franchise or wanting to enter into franchise agreements as opposed to a management contract. Our TPO clients are often presented with opportunities to manage by hotel chains who want to franchise to inexperienced hotel investors.

1970

Lenders started to require branding

From the 1970s, lenders started to insist on hotel investors branding their hotels as a condition to financing. This could be done in one of two ways, through (i) a management contract with a hotel chain, or (ii) a franchise agreement. As hotel chains were losing supervisory control over their franchised properties, lenders began to insist that inexperienced hotel investors enter into management contracts with them, or employ a TPO.

1980

Major hotel chains start 'spinning'

In its heady growth years of the 1980s, Marriott borrowed heavily to build hotels which it then sold, profitably, whilst retaining lucrative management contracts. Marriott was one of the first hotel chain companies to spin off its financially healthy-hotel management business in the early 1990s from its ailing real estate operations to create two separate publically trading companies.

1990

Recessions of the 1970s, the 1990s and the financial crisis in the late noughties

The recessions, coupled with over-building and increasing operational costs (in particular, utility and staff costs) strained the relationships between hotel investors and the hotel chains who were managing hotels through management contracts. Hotel investors were forced to make unanticipated cash injections to hotels. As hotels became loss making, investors became frustrated by disappointing financial results and became critical of the quality of management offered by some hotel chains. In their search for alternatives, the TPOs became a dominant force throughout the US and have risen to prevalence in Europe. For example, Ambridge Hospitality now manages over 490 properties in the U.S. alone and Interstate Hotels & Resorts manages over 350 hotels in the US, handling over US$3.4 billion of revenue in each year.

2000

2010

Late noughties to the present day

The decline of the leasehold structure: Chain operating companies are moving away from the leasehold structure as they are under pressure to lighten their balance sheets. Hotel investors are more inclined to share further in a hotel's profits and are moving away from fixed rent leases. As at 31 December 2016, only 2% of hotels in the U.S. are leased to chain operators. In Europe, the level is much higher, at 20% (primarily due to local cultural reasons where leases are still a viable operating model in countries such as Spain and Germany) but the majority of these leases are historic and chain operators becoming increasingly reluctant to take on liability and risk which comes in hand with leases.

The importance of hotel brands: As at 31 December 2016, 85% of hotels in the US are franchised and 50% of hotels within Europe are franchised. Hotel franchising is certainly a trend which is "on the up" and with hotel brands becoming more important than ever, opportunities for brand growth can be accelerated through hotel franchising.

Growth of soft brand franchising: As the presence of brands in secondary locations grows, small and independent hotels are finding it increasingly difficult to compete. This has helped spur franchising of soft brands amongst such independent hotels. These hotels are being compelled to franchise and in doing so, instantly gain a flag, brand recognition, access to the franchisor's global distribution network and loyalty scheme.

With major hotel chains focusing on franchising as a means of accelerated growth, both hotel chains and investors need to ensure that the operation of hotels are left in capable hands. Hotel management experience is crucial for a hotel to be successful - all hotels, whether large or small, whether budget, focused service or luxury, require strong and expert management. TPOs bring many benefits to both hotel investors and also to hotel chains:

1. INCREASED INVESTMENT OPPORTUNITIES FOR HOTEL INVESTORS

Historically, hotel investors without any (or with limited) hotel operational experience who wanted a brand over the door, had to rely on the traditional management contract with a hotel chain. As the large hotel chains strive to grow their global footprint, their hotel operational resources have become stretched and their focus is on the upscale segment of the market and the smaller regional and focused service hotels do not receive the same attention.

Hotel investors can now grow their portfolio (whether on a branded or independent basis) and appoint a TPO in new destinations; from luxury hotels in primary City centre locations to budget hotels in secondary locations which need focused management and a significant level of control over operating expenses. This should help spur budget, focused and mid-market hotel development in markets, especially in secondary locations within markets such as Dubai and Qatar, which are over-saturated with luxury and high-end hotels.

2. ACCELERATED GROWTH OF FRANCHISED HOTEL BRANDS – BENEFITS TO HOTEL CHAINS

TPOs are not a competitor to hotel chains – they are complimentary. TPOs are proactively being given leads by hotel chains who want to franchise to hotel investors, without any hotel operational experience, in secondary markets. TPOs will help spur the growth of franchised hotels for the following reasons:

(i) With TPOs assuming the role of the expert hotel manager, hotel brands can concentrate on delivery of the brand whilst knowing that their franchised hotels are in safe hands of the TPOs who are pushed by the hotel chains to act exactly pursuant to brand standards.

(ii) Franchising started at the economy/focused service end of the market with hotel brands being reluctant to leave their high-end and luxury brands in the hands of hotel investors – with TPOs being caretakers of high-end and luxury brands, hotel chains can be more thorough in their enforcement of brand standards with the TPOs. Consequently, franchising is moving up the high-end/luxury end of the market enabling high end/luxury brands to grow. For example, Conrad by Hilton, Ritz-Carlton and Four Seasons are now all franchised luxury hotel brands. HEI Hotels & Resorts, a TPO based in the U.S. manages only 62 hotels in the U.S. although it managed revenues over US$1.6 billion in 2016. The properties it manages include high-end brands such as Le Meridien (in Dallas, San Francisco, Cambridge and Philadelphia), Sheraton (in Austin, Music City, Pentagon and North Houston) and several Marriott and Hyatt branded hotels.

(iii) Hotel chains can now franchise to hotel investors with limited hotels operational experience with the certainty that the hotel will be efficiently run under a TPO.

(iv) Hotel brands can now be franchised to investors with hotels in secondary markets. For example, Aleph Hospitality (one of the first TPOs to launch in Dubai) manages a number of hotels throughout Africa, including the Monrovia in Liberia (Liberia's first internationally branded hotel) and Days Hotel & Suites Dakar in Senegal.

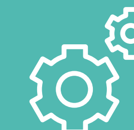
Soft brands are also expanding at a rapid pace through franchising, especially throughout the U.S. and Europe into previously untapped markets. (Soft brands are hotel brands associated to independent hotels enabling a hotel to benefit from the franchisor's global distribution network and marketing whilst the soft brand allows the hotel some flexibility in the hotel having its own, individual look and feel.) Examples of soft brands include Marriott's Autograph Collection, Ascent Collection by Choice Hotels and Best Western's Premier Collection. In contrast to the soft brands, the traditional hard brands dis-incentivised hotel investors who may have had to spend significant capex to bring the hotel up to brand standards (to ensure uniform guest experiences across every hotel with the same brand). With hotel chains expanding their brands and finding new opportunities, the TPO can again, "fill the gap" and help accelerate the growth of soft brands and hard brands.

3. FLEXIBILITY IN CONTRACTING ARRANGEMENTS

There is increased flexibility with TPOs who tend to be extremely flexible and agile in their ability to negotiate bespoke terms which suit both the hotel investor and the TPO. For example, we have negotiated bespoke TPO management contracts on behalf of many of our hotel investor clients, as follows:

Involvement in hotel operations

Hotel investors can be involved in the hotel's daily operations, marketing and staff recruitment. Compare this to the traditional management agreement with hotel chain operators who typically do not permit any investor involvement (save for approval of the annual budget and recruitment of the GM) and who may accuse hotel investors of breach of contract for attempting to be involved in hotel operations.



Operating term

The operating term of an agreement with a TPO can be as little as one year. Compare this to the traditional management agreement where the operating term is typically for between 15 to 20 years and for as long as 50 years, at the luxury end of the market.

Performance tests

Enforceable and sensible performance tests can be included in agreements with TPOs where the TPO fails to meet an agreed performance criteria. Although hotel operators under the traditional management contract may include performance tests, these are often two pronged and are virtually impossible to terminate.

Fees

TPOs typically take more of a vested stake in a business than traditional operators where the interests of the TPOs and hotel investors are aligned through performance-related remuneration structures. TPOs take a significantly lower base management fee based on GOP typically between 1.5% to 3%, with the majority of their fee being comprised in incentives fees which is based upon AGOP, typically between 5% to 8%. Compare this to hotel chains whose base fee is typically between 2% to 4% of GOP and incentive fees, which is typically between 6% to 10% of AGOP. We have negotiated scaled incentive fees based on the level of AGOP margins which are achieved by the TPO – this fee structure rewards the TPO for a more efficient performance and incentivises the TPO to control operating expenses.

4. TPOS' OVERHEADS ARE LOWER THAN HOTEL CHAINS' OVERHEADS

Although hotel investors who franchise a hotel brand pay franchise (and other fees) to the hotel chain and also a second fee to the TPO, collectively the fees are typically cheaper than appointing a hotel chain operator under a management agreement.

Hotel investors have been migrating over to TPOs as the hotel chains' operational costs and central overheads increase which are passed onto investors. TPOs have lower overheads than hotel chains and are able to control their costs. With TPOs concentrating on improving the bottom line, lower management costs being paid to TPOs (and where applicable, franchise fees to hotel chains) and with performance related remuneration structures, the potential ROI to the hotel investor has the potential to be significantly increased.

5. FRANCHISING A HOTEL BRAND AND APPOINTMENT OF A TPO

TPOs provide a tried-and-tested route to hotel investors without any hotel operational experience to securing franchises as they can be a trusted intermediary. It has been reported that securing an appropriate brand on a hotel can increase RevPAR by as much as 21%.

By securing a brand through a franchise and also by securing a TPO, this method of hotel ownership offers investors an opportunity to brand and outsource management to an experienced TPO who is focused on driving profitability. The hotel investor can benefit from all the pros of franchising from a hotel chain and also benefits from the TPO's hotel management expertise.

6. APPOINTMENT OF A TPO FOR INDEPENDENT HOTELS

TPOs are also making an impact in the higher end of the market, on luxury unbranded properties. As travellers move away from all inclusive holidays for more intimate properties, with their own distinct brand, authentic independence and flavour, hotel investors do not need to rely on the acquisition or franchising of a brand to differentiate their properties and build their reputation. By engaging TPOs, hotel investors can maintain their hotel's individuality whilst the TPO provides them with flexible management at a cost which is significantly less than that offered by hotel chains (and without franchising any brand) through the traditional management contract. Issues within distribution can be alleviated through effective international and local marketing and distribution through OTAs.

7. TPOS ARE LOYAL TO INVESTORS

Peter Hales has commended *"The key focus of our management team is the investor return and delivering their objectives whether these be the operational style of the hotel, cashflow, property development or the exit goal."*

Hotel chains are typically loyal to the brand and to hotel guests – this is where their priorities lie. Consequently, hotel chains strive to present their brands in the best light possible at the cost of the hotel investor. TPOs, on the other hand, are loyal to the hotel investor and their priority is to achieve the most profitable operation for the hotel investor, as is possible.

The TPO concept is well established in the US where hotels of all shapes and sizes are appointed for their hands-on approach, operational expertise, to improve guest experiences and overall hotel performance.

TPOs are not for everyone. The appointment of a hotel chain operator may be best suited to a hotel in a key city centre location, or where the hotel is reliant on conferencing business or group business. There are numerous factors to consider when deciding on which form of hotel operation is best for a hotel and there is certainly no "one-size fits all" concept of hotel operation. Certainly in the short term, the growth of hotel franchising looks set to continue and the proliferation of the TPO is set to continue Eastwards...

Modern Hotels Wake Up to Modular Construction

Lionel Benjamin, Topland Hotels

Modular construction will continue to increase in popularity in the construction of mid-scale economy hotels.

Richard Farrar, Head of Leaf Hospitality

To ensure bespoke quality in each pod, have a good designer and ensure effective due diligence throughout the design process. Once the design is done, check your sample room/module before mass production. Even if that means going to China...

What is modular construction?

In the past, modular construction has been described as prefabrication, or off-site construction. The modular process entails entire rooms being pre-built in a factory and then craned into the building. The UK government is particularly interested in modular construction, in its aim to construct more homes to keep up with population growth. The term modular construction has been described as the 'buzzphrase' of the UK housing industry. Recently, however, several hotel chains have also welcomed this innovative approach into the construction of hotels, which has numerous benefits.

The benefits of modular construction

The potential for cost savings in modular construction is one of its main advantages as compared to traditional construction. Recent cost estimates suggest that modular construction could be 10-20% more cost effective than traditional methods. This is as a result of the significantly reduced project length and the fact that modular companies can mass produce the units, as the rooms do not have to be redesigned each time. The reduced time frame is also beneficial to developers, as they can market the property earlier thus incurring reduced finance charges. Richard Farrar of Leaf Hospitality is a fan of the modular process, and notes that the key to modular construction is two fold (i) the time saved during construction, and (ii) the consistency of workmanship within the modules – if the right contractor is used, snagging time is heavily reduced.

Contractors are attracted by the greater health and safety benefits gained from having less heavy and time-consuming construction work occurring on site and the fact that logistical obstacles are reduced. This is especially prevalent in inner-city sites, where space can be tight and storage space limited. Another key benefit is that less waste is associated with this form of construction, as the off-site assembly promotes an efficient use of building materials in a controlled manufacturing environment, resulting in reduced waste.

Modular construction of hotels

This type of construction is already popular in Sub-Saharan Africa and the USA. Marriott, in particular, have made a significant investment in modular technology in the construction of their new hotel rooms. In the UK, hotel chains have also started to adopt this new approach to construction, given its numerous benefits. A delevoper has recently partnered with modular provider CIMC to construct a hotel at Bristol Airport, (which will be branded under one of the Hilton Worldwide brands) formed from modular pods built in the factory in China and then shipped to the site for assembly.

Lionel Benjamin of Topland Group was involved in the construction of Holiday Inn Express Manchester, the first hotel in the North-East of England to be made entirely of pre-constructed pods. Speaking about the project, Lionel explained that the carbon footprint in this method of construction is reduced and that the green credentials associated with the hotel is something Topland is especially proud of. As a self-proclaimed advocate of modular pods, Lionel has praised the reliability, safety, security and speed of construction.

Travelodge Hotels Limited have also utilised modular construction in some of their hotels, and have noted the time, cost and quality advantages of this approach for schemes with over 80 bedrooms.

Lionel anticipates that modular construction will continue to increase in popularity in the construction of mid-scale economy hotels. Leaf Hospitality plans to have 20 hotels under management by 2025 and envisages the majority, certainly of new builds, being constructed by modules. Richard Farrar has commented that he sees modular construction of hotels soon surpassing traditional building methods as long as the practicalities of modular construction can be overcome. Practical issues facing modular construction include ensuring that the site allows for it and there is plenty of access to place the modules in the appropriate locations, as swinging modules around existing structures can be tricky.

As one of the UK's largest and most experienced specialist construction law teams (ranked tier 1 in the Legal 500), our Construction, Engineering and Environment Group can advise on all types of construction, engineering, projects and procurement issues both in the UK and internationally across the breadth of our regional and international offices. Headquartered in London, our Construction practice have teams based in our offices in Doha, Dubai, Hong Kong, Glasgow, Edinburgh, Leeds, Manchester, Muscat, Singapore and Tokyo. Our team have a broad range of clients including 39 FTSE 100 companies and some of the UK's largest contractors, sub-contractors, public authorities, developers, employers, insurers and funders both nationally and overseas. If you would like to know more about our sector knowledge, such as our capabilities in the retail and consumer, hotels, hospitality and leisure, energy and transport and real estate finance sectors please speak to Luke Baines.

Getting Ready for the General Data Protection Regulation

Many organisations within the hospitality sector are currently busy preparing themselves for the General Data Protection Regulation (GDPR) which comes in next May.

Businesses would be forgiven for focusing on the eye-watering fines that are being introduced by the GDPR – 4% of global turnover or £17 million. There are many aspects to the GDPR which may have a significant impact on organisations, and particularly those which by their nature hold a significant amount of personal data, such as those within the hospitality sector. One such change relates to the data subject access request (DSAR) regime that will make it easier - and free - for individuals to require an organisation to disclose the personal data that it holds on them.

What is the issue?

Experience tells us that organisations in the hospitality sector are already seeing an uptick in the number of DSARs being made and that they are increasingly becoming more cumbersome. There are several reasons for this:

- Individuals, generally, are becoming more aware of the need to protect their personal information (and the media attention surrounding the GDPR is only increasing this awareness)
- Making a DSAR is easy – it can be done informally, costs next to nothing (the fee is £10) and can be done with impunity
- DSARs are being used tactically, as a simple means of gaining potentially helpful material to pursue a grievance or litigation
- Data volumes continue to grow exponentially – so there is much more data to look at in order properly to respond
- Innovation and the ever increasing use of technology mean that there are multiple sources of data, all of which might need interrogating

When the GDPR comes into effect, organisations will no longer be able to charge a £10 fee. While this may not seem significant, a Government impact assessment estimates that the abolition of the fee may result in a rise in the number of DSARs of between 25-40%.

In addition, under the GDPR, organisations will be required to respond to a DSAR within a month rather than the current 40 days. Both the increase in the number of DSARs and the shorter timeframe to respond are likely to place an increased burden on already stretched resources.

There have also been a number of recent court decisions which have been "data-subject friendly". Previously, if the DSAR regime was being used for collateral purposes e.g by a litigation opponent, then it might have been possible to simply refuse to respond to the DSAR. Now, it seems that is much more unlikely, so businesses can expect more DSARs being made for tactical reasons, such as to gain an advantage in litigation. We have even seen some instances of vexatious litigants making DSARs in the hope that organisations do not respond properly, before then initiating a claim for damages for the distress suffered (it is not necessary to show financial loss to bring a claim).

What are the consequences for failing properly to respond?

The consequences may include regulatory investigations and/or enforcement, litigation, and, of course, more generally, damage to reputation. The Information Commissioner's Office (ICO) issued nine enforcement notices in 2016 for failing to respond to a DSAR without undue delay, which is more than in previous years. That also needs to be viewed in the context of the GDPR which gives the ICO greater powers to issue fines.

Organisations should also prepare for an increase in litigation because if a person can demonstrate that they have suffered damage in the form of distress, then they may be entitled to damages. While any damages awarded would likely be minimal, there is obviously a nuisance value - and a financial value - to dealing with such claims, and if one succeeds, it may open the floodgates, including to group actions.

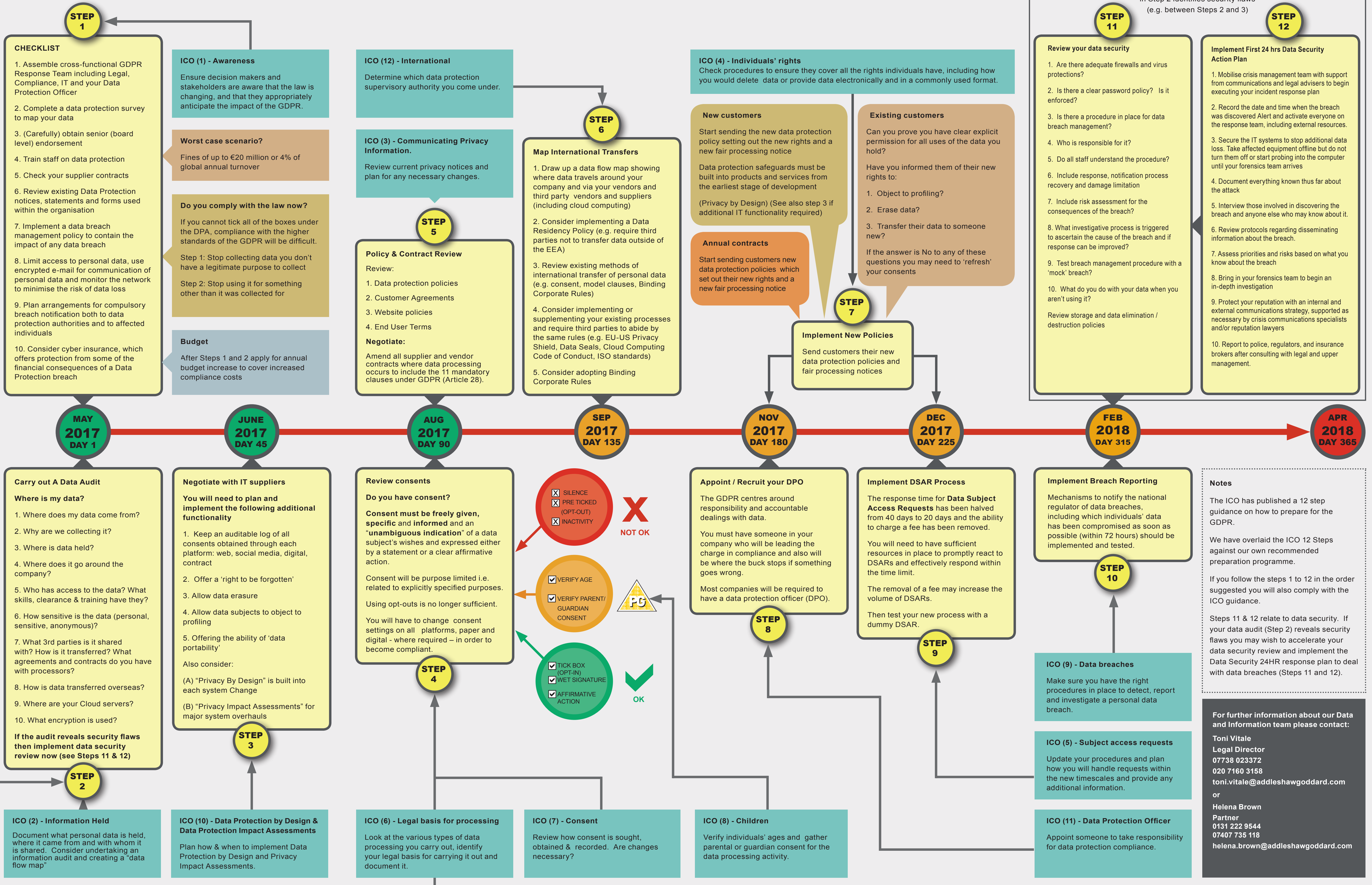
Perhaps more importantly, businesses must bear in mind the potential reputational damage of non-compliance, particularly when it comes to two large groups of stakeholders who are likely to make most use of the DSAR regime: employees and customers. More so than ever before, people are taking seriously the need to protect their personal information and any business seen not to be taking appropriate steps to do likewise, is likely to suffer as a result.

ADDLESHAW GODDARD

OUR 12 STEP 365 DAY PLAN TO COMPLY WITH THE GENERAL DATA PROTECTION REGULATION

TIMELINE TO MAY 2018

Accelerate these steps to earlier in the programme if the Data Audit in Step 2 identifies security flaws (e.g. between Steps 2 and 3)



Preparation and response

What should organisations be doing now and going forward?

- If it is not already happening, then how organisations respond to DSARs should be reviewed as part of their GDPR planning to ensure compliance by May 2018. Organisations need to map their personal data (i.e. what data is held and where) which will assist in the DSAR process.
- Internal practices and policies for responding to DSARs should be reviewed to ensure that they are up to date and reflect the recent and proposed developments outlined above.
- Consideration should be given as to who within the organisation is responsible for handling DSARs and whether the team has received appropriate training to ensure that they are aware not only of the changes but some of the more nuanced and tactical aspects – for instance, being alive to DSARs which are being made for collateral purposes.
- Organisations also need to consider how they will cope with an increase in demand and tighter timescales to review a significant amount of data.
- Consideration should also be given to the use of technology, including artificial intelligence based tools, and use it to assist with the review process. Used intelligently, technology can make responding to a DSAR both quicker and cheaper, or at least mitigate the effect that technology has had on the proliferation of data in the first place.

AG's approach

To address the issues outlined above, AG has put together a DSAR offering which will make responding to DSARs easier, quicker and cheaper. Our aim is to work collaboratively with our clients to make sure that we understand the organisation's general practices and attitudes to risk, any DSAR protocols that are in place, and work with the in-house team to respond to the DSAR challenges faced by it. We offer a complete package, which ranges from offering fixed price training for organisations to develop best practice and robust policies, to document review, hosting and processing requests. Our offering combines the following:

(1) legal expertise, with experts being well-versed not only in the intricacies of the law of data protection, but with a wider remit of related legal areas, such as the law of confidence and privilege

(2) the latest advances in technology, ensuring that even the largest of document reviews is conducted briskly, efficiently and correctly

(3) cost-effective resourcing for heavy document reviews, in the shape of our Transaction Services Team of over 130 paralegals

Management Agreement Disputes – A Dubai Perspective

The Dubai Hotel Market

There can be little doubt that the hotel industry in Dubai is one of the most vibrant and dynamic in the world. Having initially worked hard to market itself as a luxury destination, the hotel market is now moving towards a broader offering indicative of a more mature market.

Where once the landscape was dominated by 5 star hotels, a broader offering is springing up comprised of mid-market and family hotels to cater for the influx of visitors anticipated as a result of the new large scale theme parks, and the upcoming Expo 2020.

In addition to this anticipated growth, and already with an estimated 679 establishments and over 105,000 available rooms, Dubai already has a significant and growing hotel industry. However, with that level of growth and opportunity, the margins between success and failure being so slim, and the rewards for obtaining prestige status turning on such small issues, the potential for disputes to arise between owners and operators is on the increase.

We believe now is the right time to disrupt the hospitality industry. The people who actually provide a hospitality experience never receive the real benefits while most of the commercial benefits are taken in most cases by operators. This needs to change.

CEO of FIVE Hospitality LLC

The Dubai Hotel Market in the News

Nowhere is this potential for dispute more apparent than in the fierce battle currently being fought for control of the 'Viceroy' Palm Jumeirah Hotel, the US$ 1.2 billion hotel and residences which opened in March 2017.

The owner of the property is Dubai-based real estate development and hospitality group FIVE Holdings. Until June 2017, the property was operated by Viceroy Hotels and Resorts pursuant, it seems, to a long term hotel management agreement to brand and manage the Palm Jumeirah-based hotel agreed between the parties in 2013.

However, in June 2017, it is alleged that Viceroy's regional president and other staff were forcibly removed from their offices, and at the same time a statement was issued by FIVE Holdings confirming that it would be launching FIVE Hotels & Resorts to manage the hotel and residences on the Palm Jumeirah previously operated by Viceroy.

Since then, a bitter legal battle has ensued, with Viceroy at one point obtaining an injunction from the Dubai International Financial Centre (DIFC) Courts prohibiting the owner from taking any steps to prevent Viceroy from exercising its exclusive authority to manage the hotel.

In response, it has been reported that FIVE subsequently filed a case with the Dubai Joint Judicial Committee (the recently established body tasked with adjudicating conflicts of jurisdiction between the DIFC and onshore Dubai Courts) that the DIFC Court has no supervisory or supportive jurisdiction to make an injunction and order. Referrals to the Committee are not publically available, but the eventual judgment will be.

In a statement issued at the time of its take over of the Palm Jumeirah premises, the CEO of FIVE Hospitality LLC said:

"We believe now is the right time to disrupt the hospitality industry. The people who actually provide a hospitality experience never receive the real benefits while most of the commercial benefits are taken in most cases by operators. This needs to change."

Given the rhetoric that is coming from both sides in this dispute, and the fact that the legal wranglings are taking place before both the onshore and the offshore Court jurisdictions, the case is being watched carefully by lawyers, operators and owners.

The outcome of this case is likely to impact how such disputes are progressed in the future (although we note that the proceedings in relation to the validity of the management agreement are likely to take place in private arbitration proceedings).

Further, with talk of 'disrupting' the industry, and a call to change the 'commercial benefits' derived by operators, owners and operators alike will be watching carefully to see whether this is the beginning of a sea-change, or simply the public airing of an owner / operator dispute that would otherwise have been kept to the confines of confidential arbitration proceedings.

Our Experience

Whilst the current battle for the 'Viceroy' Palm Jumeirah is an ongoing and high profile dispute in the region between an owner and operator, it is far from the first dispute of its kind and, in light of the above, unlikely to be the last.

We have our own recent experience acting for an owner to assist it with the termination of a management agreement with a underperforming operator.

This threw up a number of issues, including:

- The interpretation of the original management agreement, entered into before construction of the hotel had even commenced
- Whether the dispute resolution procedure had been properly followed
- Amicable settlement options and attempts
- What, in reality, the owner could do to effect the removal of the operator from the hotel

In that case, we assisted the owner in successfully agreeing with the operator the terms of its exit from the hotel, and the terms of a handover to the incoming operator.

From our experience on that matter, and several others on which the team has assisted in the region, we consider that there are several key aspects which can assist parties in avoiding a dispute between an operator and owner in Dubai (and the wider GCC region) from becoming the next 'Viceroy' dispute.

Successful Partnering

Whether between an owner and operator, joint venture partners, or a supply agreement relating to hotel operations, we consider that there are key steps that can be taken to avoid a dispute arising, or, where a dispute cannot be avoided, to mange a dispute through to an amicable settlement:

1. First, and most importantly, get the set-up right. Ensure that you have a clear and detailed agreement, properly agreed by authorised signatories, which includes reporting obligations, defined communication channels, unambiguous targets and clearly documented steps that must be undertaken in the event that a dispute does arise.
2. Ensure that you agree an appropriate and effective dispute resolution clause. Where issues are likely to turn on sensitive commercial data, confidential arbitration proceedings are likely to be more appropriate, but consider how, if required any arbitration award can be rendered on an emergency basis, or supported by the Courts, and if so, which ones.
3. Have a clear exit/handover strategy agreed. That way if the dispute cannot be resolved, there is a clear and detailed process that you, and your owner/operator partner are obliged to follow and which, if necessary, the arbitration panel or Court can enforce.
4. Ideally, a dispute between an operator and owner will always be settled amicably. How can this be achieved? What are the commercial realities of the situation, particularly in a challenging jurisdiction such as Dubai? Unfortunately, there is no 'one size fits all' solution to owner / operator disputes, we always recommend seeking early legal advice in order to help you explore all angles to ensure that any dispute is resolved in a way which allows you to obtain the most commercially and legally satisfactory outcome to your dispute.

The Applicability of Islamic Finance in the Hotels Sector

The growth of the petro-dollar economies over the last two decades have partly contributed to increased investment by Islamic investors in real estate assets based in the West. Typically, an investor's objective is to diversify their income and preserve wealth by investing in assets in developed economies, using financial models which adhere to their religious and cultural beliefs.

Islamic and Middle Eastern investors have significant investment in the hospitality industry, acquiring a number of high profile hotels, such as the Kingdom Holding Company's acquisition of the Four Seasons Hotel George V in Paris and The Savoy in London, and Tejara Capital's investment in The Grosvenor House Apartments in London. Similarly, London's Bermondsey Square Hotel was purchased using an Islamic Finance structure.

Shariah compliant investment in hotels is an uncomfortable marriage, but one which we are seeing on a more regular basis.

Fundamental principles

The Shariah means the 'path' or Divine Law derived from the religious precepts of Islam from two main sources:

- **Quran** – the book of divine guidance revealed to Prophet Muhammad (peace be upon him); and
- **Hadith** – the reports describing the words, teachings, actions and behaviours of Prophet Muhammad (peace be upon him).

Islamic investments must comply with Shariah principles, the key relevant ones in this case being:

- **Riba** – Islam prohibits any dealing that establishes effortless enrichment, this is known as 'riba'. This is best known by the prohibition of payment and receipt of interest. Therefore, the investment documentation should stipulate that the investment is Shariah compliant and there should be no reference to interest. Equally, any debt used to finance the purchase of an asset must not involve the giving and taking of interest.
- **Gharar and Maysir** – refers to the interrelated concepts of chance, risk, uncertainty and speculation. Parties to a contract must have knowledge of the contract, its objects, and its implications. The absence of any of these elements would produce an element akin to gambling, which is prohibited under Islamic finance.
- **Asset class** – Islamic finance places an emphasis on ethical trade and there is a prohibition on dealing in non-Shariah compliant products. Ultimately, businesses whose core activities comprise of alcoholic beverages, tobacco, gambling and casinos, adult entertainment, non-Islamic financial products, insurance and pork products are considered prohibited business operations.

The provisions listed above directly impact the way Shariah compliant hotel investment can be undertaken, structured and implemented. A Shariah investor buying a hotel will usually appoint a Shariah board; engaged to ensure compliance on an on-going basis and issue a fatwa to confirm adherence to Islamic principles.

Asset class

Investments and assets acquired by an Islamic investor must be Shariah compliant. The hospitality industry may appear to be a Shariah compliant investment on initial consideration; however, this asset class may prove problematic once a business screening process is undertaken and close scrutiny is paid to the business operations. Activities such as the sale and consumption of alcohol, the operation of casinos, the consumption of non-halal meat and pork, the availability of adult entertainment, and mixed-gender recreation facilities, would prove to be fatal hurdles for potential Islamic investors who want to invest in hotels in Western jurisdictions.

Recently, a new market has developed with the emergence and spread of 'halal hotels', where there are none of the prohibited activities described above. The most obvious market is Saudi Arabia, being one the largest religious tourism industries. However, there are also growing markets in states outside the Arab world such as Turkey and Malaysia, which are developing Muslim travel markets. The Dubai Islamic Economy Development Centre outlined their commitment to Islamic tourism in their 'refreshed strategy'. Several factors have contributed to the growth of this sector including increased efforts to develop this tourism industry by the Organisation of Islamic Conference, increased bureaucracy in obtaining a visa approval in the West which has shifted Middle Eastern travellers to the East, and the spending potential of Middle Eastern travellers prompting hotels to pay closer attention to Muslim needs.

The purest form of halal-hotels focus on meeting the needs of Muslim tourists while travelling in accordance with the pillars of Islam. In consideration of this, these hotels would provide the services and facilitate the routine of the Muslim way of life. Examples of this would be prayer facilities, halal food, signs directing travellers towards the direction of Mecca in their hotel room, separate recreation facilities for men and women, private beaches for women and the absence of alcohol. The concept of Shariah compliant hotels has evolved from fulfilling religious needs and basic Islamic services to lifestyle option, with more extensive Islamic services. Whilst the target market can be extended to non-Muslim travellers who want a family or health focused holiday, such hotels are unlikely to be popular within the general context of Western culture.

Shariah compliance may be considered too restrictive and would render the business unattractive to customers in Western jurisdictions and potentially unviable to investors. The conflict of investing in hotels on a Shariah compliant basis in the Western world can be overcome in the following ways:

- **Consider the core source of income** – Guidance from the Accounting and Auditing Organisation for Islamic Financial Institutions and Islamic Scholars suggests that assets may still be considered Shariah compliant, provided only 5 per cent. or less of the income is from non-halal sales or activities. This de minimis rule has expanded the scale of Islamic investment.
- **Separate company holding the non-halal assets** – a separate company or special purpose vehicle may hold the parts of an investment that can be attributed to non-halal operations, such as the bars, minibars, and other entertainment, separating the non-halal operations from the investment.
- **Purification of investment earnings** – any earning that can be attributed to non-Shariah complaint sources or operations are deducted from income and distributed as 'zakat' which is a form of charitable giving seen to 'cleanse' the investment. However, estimating these earnings can be an arduous and complex task.
- **Use Islamic Finance** – Islamic finance structures such as Sukuk, Commodity Murabaha, and others should be considered to finance the investment in the hotel to avoid the giving and taking of interest.

The decline in the oil based economies in the Middle East and the search for new sources of revenue could mark the beginning of increased investment in the Islamic tourism industry. However, currently there is no clear agreed standard for Shariah compliant hotels, which has the potential to create uncertainty amongst investors. It is timely for guidance on a universal standard to be issued by the Islamic finance regulatory bodies in order to encourage investment and growth in the hospitality sector.

Islamic investors compete with each other and commercial investors in the West. Conventional investors have the advantage of a highly developed and sophisticated investment and debt market, whereas Islamic investors cannot leverage real estate acquisitions using conventional debt as this will require the giving of interest. However, the growth of Islamic banks and Islamic wealth chasing, trophy assets in the United Kingdom will no doubt mean an increased level of Islamic interest in this asset class.

Key Employment Law Issues for the Hospitality Sector

We may be on the countdown to Christmas but employment law never stops! Here we round up four key developments for employers in the hospitality sector to have on their radar:

1

The way we work: the Taylor Review recommends wholesale change of working practices in the UK:

The Taylor Review of Modern Working Practices (the Review) was published on 11 July 2017 and makes wide-ranging recommendations for the reform of working practices in the UK. The overriding ambition of the Review is to make the case for all work in the UK to be fair and offer a realistic scope for development and fulfilment. If implemented, the proposals will affect all employers across all sectors. However, the following proposals have the potential to have a particularly significant impact on working practices in the hospitality sector:

- New employment status of "dependent contractor" – the proposal is that workers who are not employees should be rebranded as dependent contractors and the test for acquiring this new status should place much greater weight on the control the employer has over the individual, than on a requirement for personal service. What this means is that those who are currently classified as self-employed contractors because of the presence of a "substitution clause" in their contract (i.e. a clause which allows them to send someone else in their place to do the work) could move to the new dependent contractor status in future. This will bring with it a set of enhanced obligations and costs for employers such as providing paid holiday, rest breaks and pensions auto-enrolment.
- New higher rate National Minimum Wage for non-guaranteed hours of work – the proposal is that there should be a new uplifted rate of National Minimum Wage payable for hours worked which are not guaranteed under the contract. As well as enhancing pay for those engaged on zero hours contracts, this proposal would also uplift the rate of pay for non-guaranteed overtime hours.
- Zero hours workers who have been engaged for 12 months or more to have the right to request guaranteed hours – this proposal would give long-serving zero hours workers the right to request a guaranteed hours contract which reflects the number of hours they typically end up working. Although this is only a right to request, rather than a right to have, employers will have to put in place appropriate procedures and consider such requests reasonably. The Review also proposes that employers should be required to publicly report on the number of requests received and how many were accepted.
- Change in the calculation of holiday pay for those who work irregular hours – the proposal is that the reference period used to calculate holiday pay should be increased from 12 to 52 weeks to take account of seasonal variations in work. This will benefit workers who work irregular hours by ensuring that their holiday pay is not depressed after a period of working fewer hours. Conversely, it would also help employers by ensuring holiday pay is not inflated after a period of working more hours, for example as typically happens in the hospitality sector over the Summer and Christmas periods.
- Better protections for agency workers – the Review makes a number of recommendations aimed at improving the position for agency workers, who are commonly used within the hospitality sector. The proposal include: providing clearer information on pay arrangements and giving agency workers the right to request a direct contract of employment after 12 months working for the same end user. Significantly, the Review also proposes the abolition of the "Swedish derogation" which allows agencies to avoid matching end-user pay rates. If abolished, employers could see the cost of engaging affected agency workers increase as they would become entitled to the same rate of pay as comparable employees after 12 weeks. The Review also suggest that employers above a certain size should be required to publicise their employment model and use of agency workers.

You can access our full report analysing the impact of the proposals contain in the **Review here**

2

Employment Tribunal fees system quashed – what next?

In 2013, the Government began charging claimants a fee to bring a claim against their employer in the Employment Tribunal. A further fee was payable in advance of the hearing of the claim. The amount payable depended on whether the claim was brought by a single claimant or a group, and whether the claim was classified as "Type A" (generally simpler claims) or "Type B" (this included claims such as unfair dismissal, equal pay and discrimination. A single claimant would pay £390 in total to bring a Type A claim or £1200 in total to bring a Type B claim.

The trade union, UNISON, instigated proceedings for judicial review, arguing that the system was unlawful and interfered with the right of access to justice. Despite evidence showing a sharp decline in the number of claims being brought each year (approximately 70%), the High Court and Court of Appeal declined to rule that the system was unlawful. This led many commentators to believe that the system was here to stay.

However, following a further appeal, the Supreme Court dramatically decided that the fees system was unlawful because it had the effect of preventing access to justice. The consequence was that the fees system was rescinded with immediate effect on 26 July 2017 and individuals no longer need to pay a fee to bring an Employment Tribunal claim. Furthermore, all fees paid since 2013 will have to be refunded by the Government at an estimated cost of £27 million.

So, what happens next?

- It's likely that the removal of the Tribunal fees system will lead to an increase in the number of claims brought against employers, although it may take time to reach the pre-fees level. As a consequence, employers may wish to take a more cautious approach in dealing with internal employment disputes given the higher risk of a Tribunal claim being pursued.
- It's possible that the Government will seek to reintroduce the fees system, with the fees being set at a lower level. However, this would require a new Act of Parliament to be passed and it is not clear when this would happen (given the focus on Brexit) or whether it would successfully pass (given the Government's minority position).

3

We're all going on a Summer holiday – but what do we need to pay our staff?

While we all paused to put our feet up over the Summer, employers may be forgiven for scratching their heads when it comes to working out what to pay their staff for their well-earned breaks. The law surrounding the calculation of holiday pay has been in a state of flux over the last few years. Here we summarise where things have got to on some key components of pay. Of particular interest to employers in the hospitality sector will be the recent ruling on the inclusion of voluntary overtime pay.

- Compulsory, non-guaranteed overtime payments – the EAT ruled in November 2014 that any payments made in respect of compulsory overtime not guaranteed by the employer should be included in the calculation of a worker's holiday pay provided it could be said that such payments are part of the worker's "normal pay". This means that the payment has to be one which is regularly received and made over a sufficient period of time to justify the label.
- Voluntary overtime payments – although several Employment Tribunal decisions had pointed towards adopting the same approach for voluntary overtime, none of these decisions were binding upon employers. Finally, in July 2017, a binding decision on the issue was given by the EAT. The EAT said that payments for voluntary overtime should also be included in holiday pay, where it could be said they represented "normal pay". The question will be whether the voluntary overtime extends for a sufficient period of time on a regular basis to justify the description of "normal". It is not yet known whether this decision will be appealed.
- Commission payments – the Court of Appeal ruled in October 2016 that results-based commission payments which can be said to be part of a worker's "normal pay" should be included in the calculation of that worker's holiday pay. They rejected the argument that our domestic Working Time Regulations 1998 did not allow for the inclusion of such payments.

Employers considering adjusting the calculation of holiday pay in light of these rulings should bear the following points in mind:

- These payments only strictly need to be included for EU-derived holiday (i.e. 20 days per year for a full time worker) and not the additional UK-derived holiday (i.e. 8 days per year for a full time worker). However, some employers may opt to make the changes on a wholesale basis on the grounds of administrative simplicity.
- It's possible that there may be a further appeal on the question of including voluntary overtime and so this may justify deferring a decision on this element of pay until the outcome is known.
- There are still uncertainties surrounding how the calculation should be made in practice. First, what is the correct reference period to be used to calculate pay? Is a 12-week reference period appropriate, or should a longer reference period (e.g. 52 weeks) be used? Second, when will a payment be considered sufficiently regular to warrant inclusion in holiday pay? How irregular does a payment have to be to fall out of scope (e.g. is once a year, every year, regular or irregular)? In the absence of any guidance from the Tribunals or the Government, employers will have to make their own judgement on these points.
- If the UK leaves the EU and does not have to comply with EU law, it is possible that the Government will rewrite the Working Time Regulations 1998 to provide that holiday pay should be basic pay only. Therefore, if adjusting, employers may wish to preserve a degree of flexibility by reserving the right to adjust the calculation of holiday pay in accordance with applicable law.

4

Brexit and your EEA migrant workers – where are we?

The UK has until March 2019 to negotiate and agree the terms on which it leaves the EU. What that departure looks like, and the ultimate impact of Britain leaving the EU on the immigration status of EEA migrants, is far from clear. The European Union (Withdrawal) Bill, also known as the Repeal Bill, was introduced to Parliament on Thursday 13 July 2017. However, the Bill was decidedly quiet on any issues relating to immigration, which will be set out in a separate immigration-specific bill.

The content of any such immigration bill and future immigration policy more widely is likely to depend on the extent to which the UK government is able to succeed in its negotiations with the remaining 27 Member States over the coming two years. To help inform those negotiations, in July, the government commissioned the Migration Advisory Committee (MAC) to examine the contribution made by EU nationals to the UK economy and society, and draw up proposals to align the UK immigration system with a modern industrial strategy. This will run alongside the government's own fact finding and evidence gathering.

The government outlined its ultimate objectives in its letter to the MAC, stating its intention to "achieve sustainable levels" of net migration and introduce a phased system away from the current free movement regime. The letter suggested that EU nationals will still be able to come to the UK during a transitional period after Brexit but will have to go through a "registration and documentation" process, which may last until 2022. This transitional period will be followed by the final, third phase, which will determine the long-term arrangements relating to the migration of EU citizens based on the UK's social and economic needs "and reflecting our future deep and special partnership with the EU".

The impassioned pre-General Election rhetoric, with various no-nonsense pledges to crackdown on immigration from the EU, therefore appears to have been tempered by the General Election result itself. The government's more recent stance – whilst still evolving– is more pragmatic and implicitly acknowledges that both EU citizens, employers and the UK economy will benefit from a longer transition than the two year countdown the triggering of Article 50 initiated.

In the meantime, the uncertainty has caused and is likely to continue to cause difficulty for recruitment, particularly in retail and hospitality sectors. Reports in the media have already identified a slowdown in applications for positions in the UK from EEA workers, and some businesses with high numbers of EEA migrant workers, such as Pret A-Manger are adapting their recruitment methods to appeal to British candidates.

Widening the scope of where employers in the hospitality sector advertise roles, as Pret have done, is likely to result in applications from a broader demographic of society and could lead to more applications from suitably qualified workers whose right to work in the UK is unaffected by Brexit. Another means by which businesses could perhaps tap in to increased sources of labour could be through programmes with schools and other education establishments, as well as through the use of apprenticeships.

So, whilst negotiations are afoot, and as long as the UK is within the EU, there is no change to the immigration status of EEA migrant workers based in the UK - they are able to continue to exercise their right of free movement, and work freely in the UK. Looking further forward, and as with many Brexit-related issues, what the UK immigration system looks like post-March 2019 is currently a case of watch this space…

Key Sector Events

Date	Event	Venue	Entry Arrangements
17-18 October 2017	Independent Hotel Show 2017	Olympia London, London, United Kingdom	*Invitation only*
16-18 October 2017	Mediterranean Resort & Hotel Real Estate Forum	Portaventura, Tarragona, Spain	*Delegate pass needed*
18-20 October 2017	Hotel Investment Conference, Asia Pacific	InterContinental, Hong Kong	*Delegate pass needed*
7-8 November 2017	Deloitte Hotel Conference	7 November at The FourSeasons, Park Lane, London 8 November at The Dorchester, Park Lane, London	*Invitation only*
18-22 November 2017	IGEHO 2017	Messe Basel, Basel, Switzerland	*Invitation only*
21-22 November 2017	Sleep 2017	The Business Design Centre, London, United Kingdom	*Invitation only*
4-7 December 2017	International Luxury Travel Market (ILTM)	Palais des Festivals et des Congres, Boulevard de la Croisette, 06403 Cannes, Cedex, France	*Invitation only*
25 January 2018	Addleshaw Goddard Hotel Conference	Milton Gate, 60 Chiswell Street, London, EC1Y 4AG	*Invitation only*
5-7 March 2018	International Hotel Investment Forum	Hotel InterContinental, Berlin	*Delegate pass needed*
5-8 March 2018	Hotelympia	ExCeL Conference & Exhibition Centre, London, United Kingdom	*Invitation only*
13-16 March 2018	MIPIM 2018	Palais des Festivals et des Congrès, Cannes, France	*Delegate pass needed*

Meet the team...

LEONA AHMED
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Leona leads our Real Estate Sector. She remains a fully transactional lawyer working on investment and development assignments. She has considerable experience across key sectors (retail, offices, logistics) and works with clients such as Threadneedle, Zurich, BMO Real Estate and Aberdeen. Leona also has a track record in mixed use and regeneration development projects including site assembly, development agreements, forward funding agreements, joint venture and promotion of schemes. Leona is a lead partner on our UK based Asia Business Group working closely with our offices in Hong Kong and Singapore. She and the team have been successful in securing a number of mandates from overseas investors acquiring assets in the UK from Malaysia, Singapore and Hong Kong

Favourite hotel amenity: Room service

LEE SHELDON
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Lee heads the Funds and Indirect Real Estate (FIRE) group which advises both managers of and investors in UK, pan-European and global investment funds operating across the real estate, infrastructure, private equity and renewable energy sectors. Lee also advises property companies (both public and private) and real estate GPs/ institutional fund managers on complex corporate wrapped/ indirect real estate transactions including investments/ divestments, co-investments, joint ventures and corporate restructurings. Clients advised by Lee include Hammerson, Aviva Investors, Hamilton Lane and HSBC Alternative Investments

Favourite hotel amenity: Casual meeting and workspaces

SALLY HULSTON
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Sally provides straight-forward, practical and commercial advice on the full spectrum of employment law, drawing upon the experience she has gained during two client secondments. She advises clients on their decision to outsource chefs and kitchen staff; the employee issues involved in the sale of hotels; holiday pay liability; gender pay reporting; complex grievance complaints; redundancy and change management, and helping clients to defend tribunal claims. Some of Sally's clients include Shearings Hotels Limited, Travelodge, Principal Hayley Hotels, Travel Counsellors, Hotel Du Vin, Malmaison and the De Vere Group.

Favourite hotel amenity: Spas

ABIGAIL HEALEY
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Abigail specialises in reputation and information protection for companies and individuals, with a focus on representing clients in the retail and hospitality sectors. She provides advice in relation to media crisis management, defamation, privacy and confidentiality, harassment, freedom of information and data protection. She has advised clients in the hospitality sector in relation to adverse coverage in the traditional media (including the BBC's Watchdog and Panorama programmes), social media and other internet sites such as Tripadvisor. She is recommended by the Legal 500 for reputation management, describing her as 'exceptionally intelligent and extremely skilled'.

Favourite hotel amenity: A swimming pool

JAMES SALFORD
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James specialises in advising banks and borrowers on all aspects of real estate finance. He has significant experience of structured finance, hotel financing, sale and lease back transactions, principal financing, Islamic finance, mezzanine and equity financing, as well as insolvency and restructuring work.

Favourite hotel amenity: Room service

LUCY STURROCK
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Lucy is a partner with experience in a broad spectrum of commercial property but with a specialism in the hospitality sector. Her clients include investors in hotels, hotel operating companies and pub and restaurant owners. Paul Harvey, the Managing Director at Travelodge has commented that "Lucy is great, we value her expertise and she goes above and beyond. She has consistently performed well for us."

Favourite hotel amenity: Casual meeting and workspaces

LUKE BAINES
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Luke is a partner in our construction, engineering and environment team. He specialises in non-contentious construction and engineering matters. He has a wide range of expertise in domestic and international construction projects, advising on procurement strategies generally as well as the preparation and negotiation of construction documents. Luke has acted on the development of numerous hotels including, most recently, for That Group, Village Urban Resorts and Travelodge.

Favourite hotel amenity: Free wi-fi

NADIA MILLIGAN
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Nadia joined us in January 2017 after spending 6 years in-house at Hilton Worldwide working on retention of their pipeline and trading managed and franchised hotels throughout E&A. Prior to that she worked for Clifford Chance's Dubai office representing owners against international operators and franchisors such as Starwood, Marriot, IHG and an international budget hotel brand throughout EMEA and Asia Pacific. Nadia is an expert in advising international and national financiers, hotel owners, operators, franchisors and lenders on hotel management and franchise agreements, referral systems and joint ventures.

Favourite hotel amenity: A good breakfast

PAUL HUGHES
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Paul specialises in joint venture and shareholder disputes as well as commercial fraud and regulatory work. He has acted for a number of international clients on high value disputes and substantial commercial court claims. Paul's practice is split between international arbitration and the DIFC Courts which he combines with in-depth knowledge of local UAE law. He has also acted on a number of disputes in the sector on hotel developments and hotel operational matters.

Favourite hotel amenity: Brunch

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Habib specialises in real estate finance and Islamic finance. He has almost 20 year of experience of working on some of the largest and most complicated conventional and Shariah compliant transactions in London, mainland Europe and the Middle East.. He has advised various banks on numerous real estate transactions, including investment and development transactions for financings and restructuring of trophy assets such as The Savoy Hotel, London, The Four Seasons, Park Lane in London, and the Beetham Tower in Manchester. He also advised the sponsor on the £400m Shariah compliant financing of The Grosvenor House Apartments in Park Lane, London.

Favourite hotel amenity: Executive lounges

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