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The Ten Page Hotel Management Agreement - Feasible or Folly?

Introduction

Long time readers of this newsletter will be aware that we tend to pick a topic and then discuss ten issues relevant to it. Why ten issues? No particular reason. It has just evolved that way.

In this newsletter we are going to use the concept of "ten" in a somewhat different way.

In our experience, irrespective of wherever in the world we are negotiating hotel management agreements, it is common practice that it comprises substantially more than ten pages and numerous annexures. Everybody agrees that management agreements should be shorter but nobody yet seems to have become sufficiently comfortable with the concept to actually put one into the market or seriously discuss it as a possibility.

So let's assume that we have been instructed by an innovative client to prepare a hotel management agreement that must not be more than ten pages (normal print size of course!), excluding essential annexures. The question then becomes - can it be done and if so what would it need to contain?

We consider that it can be done and set out below our thoughts on suggested contents. Views of course will differ on what we have indicated to be necessary inclusions as well as omissions which currently are contained in the vast array of standard templates currently in circulation. We welcome that debate.

Our views on what a 10 page hotel management agreement should contain

Clause	Purpose
1. Operator to manage the hotel	Hotel identified by title details and other relevant descriptors
2. Brand	Relevant brand specified
3. Term	Term of the contract to be specified together with any option renewal provisions
4. Operator's obligations	Operator shall control all aspects of the Hotel's operations including: <ul style="list-style-type: none"> • Pre-opening period (if applicable) • Oversee staff • Operate bank accounts • Prepare regular budgets and operate consistent with such budgets • Provide profit and loss accounts on a regular and timely basis • Supervise repairs and day to day maintenance • Select and purchase operating supplies and equipment • Maintain books and records • Supervise sales and marketing • Work with Owner to obtain and maintain all licences and approvals
5. Owner's obligations	<ul style="list-style-type: none"> • Hotel to comply with all relevant laws • Responsibility for all establishment and ongoing funding for operations and capital expenditure consistent with operator's relevant brand standards • Maintain appropriate insurance
6. Operator's Fees	Typically fees are based on a percentage of Gross Revenue and/or Gross Operating Profit
7. Claims and liability	Any Operator indemnity to be specified
8. Liaison Committee	The role and powers of a liaison committee between owner and operator representatives
9. Termination Rights	Each party's early termination rights (if any)
10. Applicable Law	Applicable law of the agreement to be specified
11. Dispute resolution	Dispute resolution procedure(s) to be specified if other than court adjudication, such as expert determination
12. General provisions	<ul style="list-style-type: none"> • Representations and warranties as to authorisation • Nature of the relationship (e.g agency) • Operator's contractual authority • Assignment and subcontracting • Notices • Changes • Severability • Interest • Reimbursement of costs (if any) • Travel and out of pocket expenses • Legal fees and other costs

Summary

In our view it is feasible to contemplate the prospect of a ten page hotel management agreement.

Some provisions commonly found in management agreements are not referred to above. For example there is no non-compete provision. We would argue that the rationale and practical benefit of such a provision has passed and therefore it is not required to be included in the above.

Equally we would argue that all currently utilised performance based tests are in practice very difficult to enforce so we also do not see any point in including such provisions.

Imagine the competitive advantage that an operator would have using such a document when all other potential operators are using template documents which are far more voluminous and complex. The document could also be drafted in a "plain English format" facilitating easy reading by everybody who needs to understand the contents of the document - not just the lawyers - which would be very different from the legalise drafting we see today in most template hotel management agreements.

Some might wonder why lawyers would suggest a document which would have the capacity to generate significantly less in fees than conventional documents. The reason is simple - it is an initiative which should have been implemented by now. In any event it is a legal document and who better than a lawyer to suggest that there may be a better way to do things than is currently the case.

At the very least this should generate some interesting discussion by owners, operators, consultants and hotel lawyers and challenge all interested parties to review the content of the hotel management agreements that they are currently using.

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