

Goodmans^{LLP} Update

Licensing Arrangements for Branded Restaurants in Luxury Hotels: Considerations for Hotel Owners, Operators and Restaurateurs

The hospitality industry has witnessed a growing trend in the number of “marquee” or “destination” restaurant brands opening in luxury hotel properties around the world. In this context, it is important for restaurant licensing arrangements among hotel owners, hotel operators and restaurateurs to align with the hotel’s operations and the terms of its hotel management agreement. Negotiation of licensing agreements in this context requires careful consideration of the (1) integration of certain hotel operations and hotel personnel with the licensed restaurant operations, (2) integration of accounting and finance systems and other financial matters; and (3) continuity of food and beverage offerings at the hotel in the event of termination, or default under, the restaurant licensing agreement.

Integrating Operations and Personnel

In a typical luxury hotel management agreement, the hotel operator is retained to manage all hotel operations, including food and beverage operations. When a hotel owner wishes to introduce a branded restaurant as part of the hotel’s food and beverage offerings, consideration must be given to whether the hotel operator will have some active role in the operation of the restaurant or whether all aspects of the restaurant operations will be the exclusive responsibility of the restaurant owner/licensee. For example, will hotel food and beverage employees be involved in the restaurant operations and, if so, who is liable for the acts of those employees? There are numerous other considerations relating to the integration of the restaurant operations with hotel operations. Among these are:

- the hours of operation of the restaurant and whether they accommodate the hours of operation required by the hotel operator to meet its standard for operating a luxury hotel;
- whether the restaurant will make food service/catering available for banquet and function rooms in the hotel, or provide room service to hotel guests;
- whether there will be a need to integrate some of the hotel employees with the restaurant employees to provide food service/catering and hotel room services; and
- how expenses of hotel employees will be allocated as between the hotel and restaurant operations.

Integrating Accounting and Finances

The integrated nature of the restaurant operations within the hotel operations also gives rise to a number of accounting and financial issues. In a typical luxury hotel management agreement, food and beverage revenue is included in the hotel’s gross revenues, which drives the management and/or incentive fees payable to the hotel operator. In the context of a branded restaurant licensing arrangement, the hotel management agreement may have to be amended to reflect whether all food and beverage revenues are to be included in hotel gross revenues and/or to include as an alternative some other form of compensation for the hotel (e.g., a negotiated lump sum amount as a “deemed rent”).

The hotel owner, hotel operator and restaurateur must also determine how and to what extent shared facility costs are to be apportioned between the hotel premises and the restaurant premises. Where expenses for the restaurant cannot be separately metered, the parties often agree on a percentage allocation based on a formula (e.g., square footage of the respective premises).

Finally, hotel owners and operators need to consider payment processing issues and integration of the restaurant payment software system with the hotel systems. Most restaurant operators have specialized restaurant software systems, and the parties need to consider whether and how those systems are to be integrated with the hotel accounting systems for items such as room service, processing of credit card charges, and integration of those restaurant charges with the hotel guest’s room charges.

Ensuring Continuity of Food and Beverage Offerings

Hotel owners and operators must also consider the possibility for interruption in the food and beverage offerings at the hotel in the event the restaurant closes or the restaurant license arrangement is terminated. Given the hotel operator's overriding desire to protect its brand from the impact of a possible cessation of those restaurant operations, the hotel operator typically negotiates rights to control and approve whether and when the restaurant license agreement might be terminated due to an event of default by either the hotel owner or restaurateur, including rights to prior notice and cure rights. The greater the notice period and lead time before the restaurant license agreement is terminated, the better the opportunity for the hotel operator to ensure an alternative food and beverage operation continues seamlessly.

Further Considerations

This update highlights a few of the many considerations in negotiating and implementing restaurant licensing arrangements within the context of the operations of a luxury hotel. For further information about these and other considerations, contact any member of our [Hospitality Group](#).

Authors



Jeffrey A. Citron
jcitron@goodmans.ca
416.597.4256



Mario Di Fiore
mdifiore@goodmans.ca
416.597.4158



David Nadler
dnadler@goodmans.ca
416.597.4246

All Updates are available at www.goodmans.ca. This Update is intended to provide general comment only and should not be relied upon as legal advice. © Goodmans LLP, 2019.