

C/M/S/

Law . Tax

Hospitality matters

Current topics in the hotel industry

Spring 2020

Contents

- 3** Welcome to Hospitality Matters – Spring 2020
- 5** Regional Focus: Saudi Arabia
- 9** Changes ahead for Hotels & Leisure
- 13** Are investments in Hotels Shari'ah-compliant?
- 15** Leisure Deals
- 17** Hotel hot topics
- 19** Green practices and hotel lease agreements in France
- 21** Rooftops for rent?
- 23** Hotel Deals
- 25** Don't be caught out – Allergens
- 29** The Slovenian Government's plans for the Tourism Investment Fund
- 31** Upcoming events

Welcome to

SPRING 2020

Welcome to the first Hospitality Matters of 2020 and the new decade.*

For those of us in the UK, 2019 was a slightly quieter year, compared to those that went before, as confirmed by Savills' research showing that hotels M&A volumes were down 42% year-on-year, although still comfortably above the ten-year average. CMS still managed to be on most of the high-profile transactions, including the 17-hotel portfolio sold by Marathon, the Fairmont St Andrews, the Como Metropolitan and the former NH Harrington Hall.

Savills are predicting a more active transactional market in 2020, with some of the political uncertainty now settled. At CMS, we like to be #futurefacing, so we are looking forward to seeing what the new decade brings.

Across Europe, we were also involved in some of the more notable 2019 transactions, including the former Boscolo hotel portfolio sold to Covivio and NH Hotels, a portfolio of Mövenpick hotels sold by Accor, the Capri Palace and the Amistat hostel portfolio, amongst many others.



Thomas Page
Global Head of Hotels & Leisure Group

After having doubled in size in the UK in 2017 as a result of our three-way merger and expanded significantly in South America in 2018, CMS focused on Africa in 2019 with local firms in both Kenya and South Africa joining CMS, to add to our existing offices in North Africa and Angola. The new African team has included hotels & leisure as one of its key target sectors for growth across those markets.

Facing forward to 2020, the CMS Hotels Group is looking to expand in the Asia Pacific region, so I hope we will have some good news from that region during this year.

Finally I would not want to leave out the Middle East, which although facing some tricky geopolitical challenges, is still a massive opportunity for growth, especially in Saudi Arabia, the subject of our regional focus in this edition and where I will be speaking at the Saudi Hotel Investment Conference next week. See you there?

*I am aware that, technically, the new decade starts in 2021



Saudi Arabia

The hotels & leisure sector in the Kingdom of Saudi Arabia (the “Kingdom”) has been in the news recently. As part of the government’s Vision 2030 strategy designed to diversify the economy away from hydrocarbons, a series of major changes has been announced aimed at opening the Kingdom for tourism through relaxation of visa requirements and opening of various historical sites and areas of natural beauty, and boosting the entertainment sector through opening the Kingdom for cinemas, open-air concerts and other live performances. Within the tourism sector, this is intended to diversify the Kingdom away from business and religious tourism to attract both domestic and international travellers, where the Kingdom has a lot to offer.

Underpinning these announcements, and the government’s Vision 2030 as a whole, is the Kingdom’s “Giga Project” initiative. In basic terms, Giga Projects are massive-scale developments of large swathes of Saudi coastline and inland areas, building new cities and tourism hubs in what were previously undeveloped/greenfield sites. Funding the Giga Project initiative is the long-term project of floating Saudi Aramco on the Saudi Tadawul Stock Exchange, the prospectus for which was released on 9 November 2019. The funds from the Aramco IPO are intended to be used to help fund the Kingdom’s diversification via its sovereign wealth fund (the Saudi Public Investment Fund, or “PIF”), including the implementation of their Giga Project initiative and other aspects of the Vision 2030 initiative.

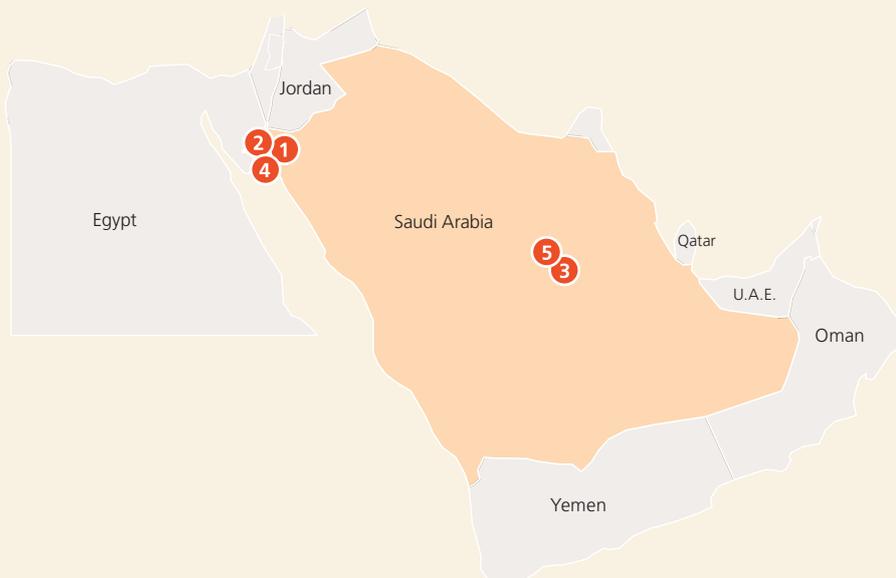


Vision 2030 – Giga Projects

We have described below some of these Giga Projects and what they are seeking to achieve for the tourism sector.

The Government has announced five main Giga Projects, namely:

- 1 **NEOM** – the flagship Project of Vision 2030, set to be built from scratch over a total area of 26,500 square kilometres including territory from Jordan and Egypt and forming the world's first independent international zone extending over three countries. NEOM is intended to be a futuristic city that will include areas dedicated to future technologies in sixteen diverse sectors, this Project is set to cost PIF USD 500bn;
- 2 **The Red Sea Project** – a luxury tourism Project neighbouring NEOM being built with ecological considerations over 30,000 square kilometres including natural islands, beaches, mountains, canyons and a dormant volcano. The first phase of this Project is set to be completed by 2022 and will include 3,000 keys, a marina and an airport, with the Project expecting to add 8,000 new keys in total once fully completed;
- 3 **Qiddiyah Entertainment City** – this Project will be built on the outskirts of Riyadh and will include the Kingdom's first theme park, Six Flags Qiddiyah, which is set for completion at the end of Phase 1 of the Project (in 2023). This Project is the least developed among the Giga Projects and is expected to include a safari park, a motor sport facility among 45 total entertainment developments/parks;
- 4 **Amaala Resort** – an ultra-luxury touristic Project built on an area of 3,000 square kilometres within Prince Mohammed Bin Salman Natural Reserve bordering the Red Sea Project in efforts to build a tourism hub by the Kingdom. This Project will add 2,500 keys and 700 private residential villas and a retail area with 200 outlets; and
- 5 **Ad Diriyah** – a cultural Project build on the site of the first Saudi state on the outskirts of Riyadh. This Project includes the UNESCO listed site of At-Turaif, the original seat of power of the Al-Saud family, which will be re-opened to the public in 2020 after being closed since 2010. The tourism infrastructure of this Project will consist in 30 new hotels and 8 new museums.



Each of the major five developments presents intriguing prospects for all involved in the hotels & leisure sector. On the one hand this is an entirely greenfield opportunity to develop new assets and bring in new concepts to some of the most interesting developments the Middle East has seen in years. On the other hand, which of the Giga Projects should investors back? Which will finish first? What will the regulatory landscape look like and what is the project's master plan? What does the transport, logistics, telecoms, energy and other key infrastructure look like and when will this go "live"?

Driving Major Players into the Saudi Hotels Market

The Giga Projects and the latest policy efforts are expected to drive the major players in the hospitality sector to expanding their footprint in the Saudi market, diversifying their brands away from religious and business tourists to wellness resorts, adventure concepts, eco-tourism, luxury coastal concepts and other options. Press releases indicate more than 2,000 keys have entered the Saudi Arabian market in Q2 2019 but through development of the Giga Projects, we anticipate this number growing much higher over the coming years. This increase is likely to come via new assets in Giga Projects, but also through the diversification of concepts away from religious and business tourism in the Kingdom's other larger well established cities like Riyadh and Jeddah, facilitated by relaxation of the regulatory regime in the Kingdom, opening of entertainment markets and the Government's increasing focus on healthcare tourism, amongst other drivers.

CMS comments

Foreign Direct Investment (FDI) into real estate in the Kingdom remains subject to considerable restrictions, such as committing to aggressive total project budgets and a requirement to start the project within a specific period of time after acquiring or renting the land among other requirements and conditions. We expect that this approach will remain in place for the short term at least in areas outside of Giga Projects, however for assets located within the boundaries of Giga Project areas, we understand that new laws will be implemented for each Giga Project designed specifically to boost the ability for hotel owners/investors and operators to develop assets on a conventional and reliable basis, within a framework that will be familiar to them (and investible).

However, while these announcements are widely regarded as being very welcome to the industry, a key issue many investors and operators will need to consider is Political Risk, and what happens if for example the Aramco IPO does not raise the level of funds expected, and/or PIF or the Giga Project owner runs into liquidity issues. These issues are common to the Middle East region and bring into sharper focus key clauses in management contracts such as force majeure, waiver of sovereign immunity (though this is obviously of questionable enforceability), condemnation or compulsory acquisition of the asset by the State and so on.

With PIF being the main developer for the five Giga Projects, whether directly or through a subsidiary established for each separate project, hotel operators will likely be contracting directly or indirectly via PIF as Owner in the short term. As the investment regulations for Giga Projects develops, we expect this will open opportunities for real estate investors/developers to acquire land (or long-term leases/musatahas for development of land), and step into the shoes as a hotel "owner" opposite the operator.

Hotel owners in the region usually opt for the traditional structure of hotel management agreements agreed with international operators, and we would expect this model to continue to dominate the Saudi market. However we have recently witnessed an increasing number of structures with alternative models giving owners more flexibility in their relationship with their hotel operator, such as franchise arrangements and white label structures. While we expect those models will not be seen for some time yet, in due course it seems likely that these options will become more commonplace across Saudi, especially where the owner is a private (non-Government) entity.

Overall, however, liquidity and capital will remain a big area of concern both in terms of Government spending and also the capital available in the domestic debt market, which we understand is under considerable pressure at the moment. These issues will be familiar to those involved in developing the legislative frameworks for the Giga Projects, so it will be interesting to see how the regulations develop and how investor (and lender) friendly these are when published.



John O'Connor

Partner, Dubai

T +971 4 374 2806

E john.oconnor@cms-cmno.com



Karim Fawaz

Partner, Dubai

T +971 4 374 2836

E karim.fawaz@cms-cmno.com



Fawzi Oueidat

Paralegal, Dubai

T +971 4 374 2852

E fawzi.oueidat@cms-cmno.com



Changes ahead for Hotels & Leisure

This year has been filled with scientific reports explaining the consequences of global warming, Parliamentary declarations of a climate emergency and the actions of Extinction Rebellion. Business as usual is not on the menu. Reducing resource consumption particularly relating to the production and supply of food, packaging, single use plastic and food waste is of increased legislative scrutiny and action. Hotels and leisure facilities are impacted on many levels. We set out the key developments either incoming or expected to gain traction for the sector in the forthcoming year. Consultations should be monitored as they will have far reaching impacts economically, reputationally and operationally for all businesses in the sector.

Checking in

Implementation of the Paris Agreement

The 2015 Paris Agreement committed 188 nations to keep global temperatures below 2°C above pre-industrial levels. In June 2019, the UK government committed to a legal target of achieving net zero greenhouse gas emissions by 2050. To achieve this, a wide range of policy measures will need to be implemented across every sector, underpinned by legislation to drive change. One step are proposals to raise the minimum energy efficiency standard of rented commercial buildings from EPC band "E" to "B" by 2030.

“ Reducing resource consumption particularly relating to the production and supply of food, packaging, single use plastic and food waste is of increased legislative scrutiny and action.

Potentially premises with an EPC rating below "B" will no longer be able to be rented out without undergoing energy efficiency improvements.

Circular Economy Action Plan and the EU Plastics Strategy

The European Council recently called upon the European Commission to create a new Circular Economy Action Plan with targeted actions to drive a carbon neutral, resource-efficient and competitive economy. A particular focus is on circularity systemically across the value chain.

The key objective of the Strategy is to ensure that all plastic packaging on the EU market is reusable or easily recyclable by 2030. It proposes a set of measures to improve product design, increase recycled content and reduce single-use plastics, tackle marine litter and microplastics pollution and introduce compostable and biodegradable standards and the separate collection of plastic waste. Be prepared to see more devices for refillables and reusable containers and separate waste collection facilities.

Extended Producer Responsibility (EPR)

Under UK-wide proposed plans for the reform of the producer responsibility packaging waste scheme, producers will be responsible for the full net cost of managing their packaging waste from 2023 (currently producers only meet 7-10% of this cost). This also covers any own label packaging. It will cover all consumer-facing packaging but not packaging used for commercial or industrial applications (such as shrink wrap and pallets). This is expected to significantly increase costs to producers. The proposals also include the introduction of mandatory labelling requirements and closed loop packaging waste recycling targets for 2025 and 2030. A consultation on the detailed design of the EPR scheme is planned for early 2020.

“ Those wishing to attract investment will be under scrutiny to demonstrate compliance with ESG.

Plastic Packaging Tax

The UK government plans to introduce a tax on unfilled, imported or UK manufactured plastic packaging with less than 30% recycled content from April 2022. Initial proposals were consulted on in 2019. The technical consultation and draft legislation are expected to be published in early 2020, which will also consider whether filled plastic packaging imported into the UK should also fall within the tax. The tax is likely to be passed on through the supply chain.

Deposit Return Schemes (DRS)

Both Scotland and the rest of the UK are currently considering DRS. Scotland is further ahead and may have a separate scheme, subject to consultation, by April 2021. In Scotland, a 20p deposit will be applied to PET, aluminium and glass drinks containers between 50ml – 3l, and producers will have to comply with registration, record keeping and mandatory collection obligations and targets. Businesses that sell drinks to be consumed on-premises will have the choice as to whether to charge the deposit to their customer and will only be required to return containers sold on their premises. Every obligated container will be subject to the deposit fee as between producers, wholesalers and retailers. The UK government consulted in February 2019 on the implementation of a DRS in England and Wales by 2023. Further consultation on the detail is expected in early 2020.

Circular Economy Bill

The Scottish government launched a consultation on 7 November 2019 on proposed legislation for a Circular Economy Bill, which is expected to include measures to impose charges on single-use plastics and introduce a “latte levy” on single-use beverage cups, restrict the supply of certain plastics and require mandatory public reporting of waste and unwanted surplus stocks by Scottish businesses.

Checking out

Single-Use Plastics (SuP) Directive

The SuP Directive imposes a ban on oxo-degradable products and the supply of plastic straws, cutlery, plates, balloon sticks, food containers and cups made of expanded polystyrene and plastic beverage

stirrers within the EU market. The ban is to be implemented by EU Member States with effect from July 2021. Other measures include the requirement for beverage containers up to 3L in volume to have caps/lids that remain attached and for PET bottles to incorporate 25% recycled plastic by 2025 and SuP beverage containers 30% by 2030. This is likely to increase the supply costs of beverages in these containers. Legislation specifically banning plastic straws and drink stirrers in England (subject to certain exceptions including the supply of straws by a catering establishment together with food or drink for immediate consumption) is expected to come into force in April 2020.

EU Action Plan on Sustainable Finance

In March 2018, the European Commission adopted an Action Plan on Sustainable Finance to integrate Environmental, Social and Governance (ESG) considerations into its financial policy framework and mobilise finance towards sustainable investment. Legislative changes are expected to impact business from 2020 onwards.

Commentary

There are developments at international, EU, UK and devolved administration level, which will impact at every stage of the supply chain. In addition to legislative and policy change, businesses must also adapt to the shift in consumer behaviour. Those wishing to attract investment will be under scrutiny to demonstrate compliance with ESG. Understanding the connection between the various developments, anticipating future changes and undertaking strategic planning to allow for adaptation will be crucial to avoiding any adverse impacts. It will also allow businesses to identify and leverage opportunities arising from such developments, of which there could be many.



Olivia Jamison

Partner, London

T +44 20 7367 2055

E olivia.jamison@cms-cmno.com



Alex Ibrahim

Of Counsel, London

T +44 20 7524 6569

E alex.ibrahim@cms-cmno.com



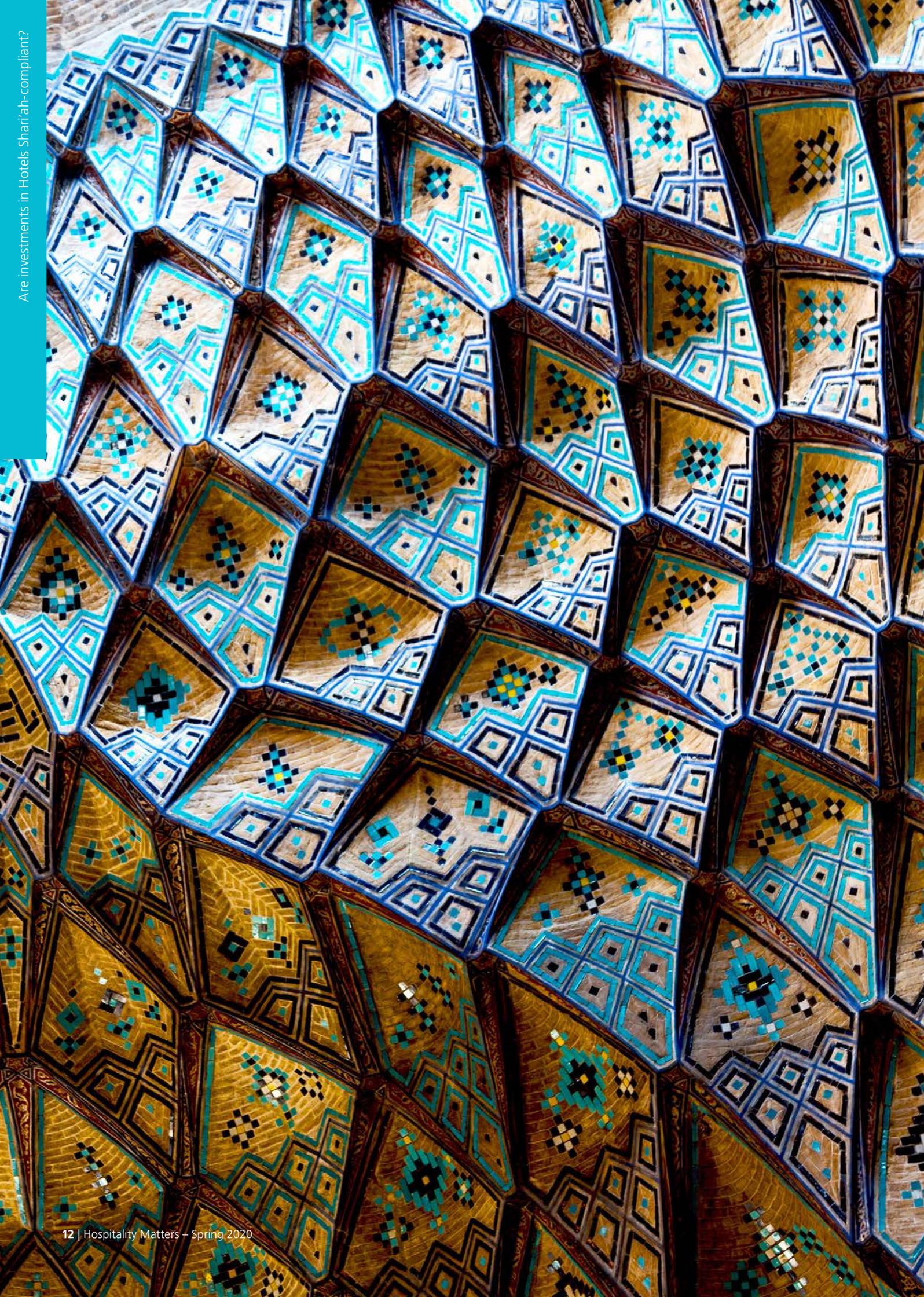
Laura Swithinbank

Associate, London

T +44 20 7524 6031

E laura.swithinbank@cms-cmno.com





Are investments in Hotels Shari'ah-compliant?

In the world of Islamic finance, commercial real estate continues to be the most dominant investment type. An investment in a commercial real estate asset is usually an equitable, tangible and certain transaction with little room for speculation, uncertainty or unjust gains – all of which are impermissible pursuant to Shari'ah law. However, whilst hotels are a familiar asset class for Islamic and Middle Eastern investors, from a Shari'ah perspective, hotel financing can give rise to certain complexities, principally due to prohibited underlying revenue streams.

Nonetheless, the Islamic finance industry is quickly gaining momentum globally and with Shari'ah-compliant assets projected to reach \$3.8trnn by 2023, we are seeing a considerable and growing interest from our Islamic finance clients in the hotels and leisure sector.

Why is investment in hotels problematic from a Shari'ah perspective?

Islamic finance transactions must comply with Shari'ah law, which is derived primarily from the holy Qur'an and Hadith (reports describing the words, teachings, actions and behaviours of the Prophet Muhammad (peace be upon him)). Shari'ah principles of Riba (the prohibition of the payment or receipt of usury or interest), Gharar (uncertainty) and Maysir (parties to a contract must have knowledge of the contract, its objects and its implications) are now well-known precepts within Islamic finance.

Most significantly in relation to hotel financing, however, is the prohibition on dealing in products and industries that are not compliant with Shari'ah law. This includes businesses which involve the sale

and/or promotion of alcoholic beverages, tobacco, gambling, adult entertainment or pork (or otherwise non-halal meat products) as they are considered haram (forbidden). This is clearly problematic when considered in the context of most hotels (particularly in the Western world) that rely on bars, restaurants, casinos and in-room mini bars for a significant portion of revenue.

How can it work?

The concept of 'halal hotels' has recently become popular with Muslim consumers and, at least from a Shari'ah perspective, would likely be an attractive proposition for Islamic investors and funders. Halal hotels typically serve halal food and drink, have segregated-gender recreation facilities (including women-only beaches) and entertainment tailored to Muslim families. Online travel agents such as halalbooking.com offer opportunities to structure this type of trip.

We are also seeing interest from certain of our Islamic banking clients in financing budget hotels. This is largely because such hotels do not usually have a bar or restaurant (or mini bars) and as a result do not face the same compliance issues

“...whilst hotels are a familiar asset class for Islamic and Middle Eastern investors, from a Shari'ah perspective, hotel financing can give rise to certain complexities, principally due to prohibited underlying revenue streams.



relating to underlying revenue streams. Subject to the view of their Shari'ah scholars or advisers, some of these funders will also invest in conventional hotels provided that income from non-halal items falls below a set threshold, typically 5% of the hotel's total income. The condition around this widely accepted de minimis threshold is usually that any income produced from haram items is given to charity as zakat and is therefore 'purified'. It is important to note that in practical terms, the estimation of this income to be distributed is a complex task, which requires deep knowledge of accounting and finance as well as an exceptional ability to handle Shari'ah concepts and issues.

CMS is well versed in advising Islamic banks and investors on transactions involving hotels and has worked closely with Shariah scholars in structuring such transactions in a Shariah compliant manner.

Given the interest in the hotels and leisure sector from affluent Islamic investors who have the ability to deploy significant capital, the Islamic finance industry is certain to continue its development in order to cater to this rising demand.



Shakeel Adli

Partner, Dubai

T +971 4 374 2816

E shakeel.adli@cms-cmno.com



Shayan Malad

Associate, London

T +44 20 7367 2481

E shayan.malad@cms-cmno.com

Leisure Deals

Bydand Sports

On its acquisition of a majority stake and investment in Hibernian Football Club.

Ei Group

£1.3bn recommended all-cash offer from Stonegate Pub Company.

LARS Pasta

The company behind the fast casual pasta concept Pastaio on its fundraising in connection with a new restaurant site at Westfield, London.

The Gamesys Group

Advising the leading online gaming group, and its majority shareholders, on its c.£490m sale to JPJ Group plc and pre-sale carve out of its sports betting and games content business.

Queens Park Football Club

On the sale of National Stadium plc, the company that manages Hampden Park, and the park and stadium itself to the Scottish Football Association.

Reedtz Limited

Acquisition of Notts County Football Club, a founding member of the Football League and the oldest professional football club in the world.

Mecca Bingo

On its sale of five bingo clubs.

The Rank Group

£115.3m agreed takeover of online gaming company Stride, creating the number two player in UK online bingo and the number six player in UK online gaming.

Social Entertainment Ventures

On a \$20m fundraising from investors in the US, BVI and the UK.

The Entourage Group

Negotiating and agreeing the F&B management agreement for two luxury restaurants trading at the EDITION Milan, Italy luxury lifestyle hotel.

Wonderland Restaurants

Advising on a fundraising.



Hotel hot topics

Hotel Investment in Iberian Peninsula – Expansion & Evolution – What’s Next?

A joint report by CMS and Cushman & Wakefield has reported that hotel investment remained high in Spain last year, with figures showing total deals worth EUR 3.7bn. However, this represents an 18.7% YoY drop following Spain’s record year in 2017, where investment totalled EUR 4.6bn. Making up the lion’s share of last year’s figure was US investment fund Blackstone’s acquisition of a Hispania portfolio for almost EUR 2bn. The package included 42 hotels housing close to 13,000 bedrooms, many of which at beach resorts. To read the full report go to, <https://bit.ly/2TsBCuu>.

Scottish Tourist Tax: Solution or Setback?

The Scottish Government has opened consultation on its proposed transient visitor levy, or “tourist tax”, until 2 December 2019. Although Scotland has embraced its status as a centre for tourism, this proposed tax may ease concerns over the increasing strain caused by growing visitor numbers. To read more go to, <https://bit.ly/3adrgEv>.

The rise of the new luxury economy

Travel has always played host to dramatic and often disruptive changes. At CMS’s annual technology conference, Innovate to Survive, onefinestay’s CEO, Javier Cedillo-Espin delivered a keynote, to read the summary and watch the video go to, <https://bit.ly/2FSmGO7>.

Urban Being

Urbanisation, new lifestyles, different work patterns and increasing mobility are changing Europe’s cities. What used to be referred to as ‘generation rent’ has become a phenomenon that goes well beyond a narrow demographic group. This has prompted growing investor interest in Private Rented Sector, later living and co-living in particular. To read our full ‘Urban Being’ report go to, <https://bit.ly/2FT338x>.

ASA rules Casumo ad was targeted irresponsibly

On 9 October 2019, the Advertising Standards Authority concluded that a sponsored Google search result for Casumo Services Limited offering free spins had been irresponsibly targeted. It was held that the ad for the gambling app breached the UK Code of Non-Broadcast Advertising because the ad was served to customers whose search terms might suggest they were looking to self-exclude. To read more go to, <https://bit.ly/30pBzko>.



Green practices and hotel lease agreements in France

On a global scale, the hospitality industry is becoming more conscious of the importance of green practices and has increased its involvement in finding practical solutions to tackle environmental issues. Initially, it seemed like green practices were merely a way of increasing hotels' performances and, in the long run, reducing their operating costs. In the future, green practices will undoubtedly become a key element of any successful hotel. This is partly because the next generations and therefore future hotel guests will likely tend to be more and more demanding regarding sustainability.

In France, we have recently observed a growing interest in green practices from both project owners and hotel operators when negotiating their lease agreements. At the same time, the French Government has made environmental issues one of its top priorities. For these reasons, parties should meticulously review environmental clauses and appendixes and be aware of applicable statutory provisions when negotiating lease agreements for hotels.

Firstly, the French legislator has been increasing the environmental obligations borne by landlords (i.e. hotel owners in the context of hotel deals) when executing a lease agreement.

For example, under Article L.125-5 et seq. of the French Environmental Code, a statement of risks and pollution ("état des risques et pollutions") dated of less than six months must be attached to every commercial lease agreement. Since 1 July 2018, this statement must additionally include a note on the potential risk of radon exposure depending on the location of the property.

The so-called "ELAN Law" No. 2018-1021 dated 23 November 2018, indicates that, as of 1st January 2021, a tenant (i.e. the hotel operator in the context of a hotel deal) could potentially invoke the information provided in the energy performance certificate (EPC), which must be attached to the lease, against the landlord (i.e. the hotel owner in the context of a hotel deal). In other

words, the hotel owner could be liable in case of incorrect information contained in the energy performance certificate.

Secondly, it is now common for project owners to require commitments from the prospected hotel operators to obtain and maintain certain environmental certifications (e.g. BREEAM, LEED, BiodiverCity, HQE...). Moreover, in France we are coming across more lease agreements that entail specific contractual obligations, such as the use of renewed energy during the daily operation of the hotel.

In comparison with what has been seen in the UK over the past few years, the construction sector in France might have been more cautious on zero carbon buildings, but they are now on the rise especially in the hotel sector. For example, we have recently assisted the developer of a hotel within the first zero carbon neighbourhood in central Paris. A key aspect of the lease negotiation was the environmental commitments of both the developer and the hotel operator to achieve the goal of zero carbon in construction and in operation.

Advisors involved in managing and negotiating hotel lease transactions will need to derive creative solutions and update their templates of lease agreements. This will be essential in order to keep up with the expectations from the legislator and the industry regarding green practices.



Aline Divo

Partner, France

T +33 1 47 38 56 95

E aline.divo@cms-fl.com



Arnaud Valverde

Associate, France

T +33 1 47 38 55 00

E arnaud.valverde@cms-fl.com



Rooftops for rent?

The Digital Economy Act 2017 containing the new Electronic Communications Code which came into force on 28 December 2017 changed the way income can be made from unused hotel rooftops. Previously, particularly in inner-city locations, hotels could generate additional income by allowing mobile network companies to locate equipment on the rooftops. This has all changed now.

The Code is there to facilitate a faster roll out of the UK's electronic communications network and we cannot overlook the fact that the UK needs investment in this area. We are all familiar with 'not spots'; areas of the country where we have little or no coverage. However, there is a tension between Site Providers (in the context of a hotel, the hotel owner or operator depending on the legal structure) retaining flexibility over their rooftops and Code Operators. Reflective of that tension between Operators exercising their new rights and Site Providers getting to grips with the new world there has been more litigation under the new Code since its introduction in 2017, than there was under the old Code which was in force from 1984! So what does this mean for the hotel sector?

Survey requests

Many hotel owners and hotel operators are likely to have received a request from a Telecoms Operator to attend the hotel to inspect the roof and other areas to establish whether it is a suitable location for the citing of equipment. This is what is known as a Multi Skilled Visit (MSV). The case of *CTIL v University of London* [2018] UKUT 356 (LC) confirmed this as a Code right. Refusing such an access request is likely to result in an application to the Tribunal, an adverse Tribunal decision and costs order. Therefore, when met with a request to conduct an MSV documenting what can and

cannot be done (e.g. intrusive survey or not, times of access), the recovery of costs and any indemnity will often be the best way to proceed.

However, before agreeing to an MSV or indeed any other Code right, check that you are the party who has the power to grant such rights, and if so, that you have the requisite authority under any property documents.

Applications to position equipment

There are limited grounds on which a Site Provider can object to the placing of equipment on land. The Site Provider must satisfy the Tribunal that the prejudice it will suffer is not capable of being adequately compensated in money and the public benefit likely to result from the making of the order does not outweigh the prejudice to the relevant person. In addition, if the Site Provider can demonstrate that it intends to redevelop all or part of the land and could not do so if communications apparatus was situated on the land then the Tribunal may refuse the Operator's application.

Under the new Code the amount of income that can be generated from the apparatus has been vastly reduced. The valuation method now required in calculating the price to be paid is on a "no scheme" basis i.e. as if there is no Code. Any rents payable will be assessed by reference to the value of the land to the landowner, and not to the Operator. In calculating the amounts payable the following will apply. It will be assumed that i) there is more than one site available ii) the agreement itself does not relate to the provision of a telecommunications network and the fact the Operator has a right to freely share, assign and upgrade will be disregarded. This has the potential to significantly reduce the amount of income hotel owners and hotel operators can receive.



Hotels should therefore consider what the rooftop is used for, whether there are any concerns with the positioning of equipment on the roof, how access is obtained, in particular in relation to guest areas, and whether there are any redevelopment plans for the rooftops (whether immediate or not). These should be discussed up front with the Operators. It is considered that the Tribunal will look to grant an Operator’s request and therefore unless there is a strong and justifiable reason to refuse consent, there will be a risk of ultimately losing if the matter were to go to Tribunal.

“ ...The valuation method now required in calculating the price to be paid is on a “no scheme” basis i.e. as if there is no Code.

That said, there is nothing to stop negotiation. Hotel owners and hotel operators should be aware that if proceedings are commenced, and be in no doubt that Operators are very quick to commence proceedings, the Tribunal has a statutory obligation to deal with Code applications for new sites within six months.

The new Code is still settling down and there are likely to be many more cases before the Tribunal as Operators test their new powers. Hotels will remain an attractive location given that often the roof is not utilised for anything other than plant. Code notices should not be ignored and advice should be taken upon receipt of a notice to ensure all rights are protected.



Danielle Drummond-Brassington
 Partner and Head of Real Estate Disputes
 T +44 20 7367 2768
 E danielle.drummond-brassington@cms-cmno.com

Hotel Deals

Accor HotelInvest

Acquisition of two Novotel and Ibis hotels on Blackfriars Road, London, from German investor Commerz Real HausInvest.

M&G Investments

Sale and lease-back of the "Atlas" portfolio of 40 Holiday Inn Express/Hilton branded hotels throughout the UK.

Ness Walk Hotel, Inverness

Acting for Aberdeen Standard Investments on the purchase of a ground lease interest in this new five star hotel on the banks of the River Ness in Inverness.

Banco de Sabadell

Refinancing of the hotel and residences development of Admiralty Arch, a landmark building in London due to be opened under Hilton's Waldorf Astoria brand.

DTZ Investors

Acquisition of the freehold interest in the COMO Metropolitan hotel on London's Old Park Lane.

Maldron Hotel, Glasgow

Acting for Aberdeen Standard Investments on the forward funding of a new 300-bedroom Maldron Hotel in Glasgow city centre.

Kennedy Wilson

Sale of Fairmont St. Andrews, a luxury 211-bedroom hotel resort set over 520 acres along the coast of Scotland. This sale was one of two properties sold.

Schroder Real Estate

Acquisition and leaseback with BAE Pension Funds of the Sofitel London Gatwick hotel from Arora Group.

Azure

Acquisition of the Holiday Inn Manchester from Starwood.

Dominvs Group

Various financings, including a refinancing of The Dixon Hotel.

DTGO Prosperous

Acquisition of 17 hotels in the UK from Marathon.

IBIS and Holiday Inn Hotels, Manchester Airport

Site acquisition, development and development financing of two hotels at Manchester Airport.

Invesco

Acquisition of a major European luxury hotel.

Park Tower Hotel, Knightsbridge

Advising the incoming funder on a refinancing of a prime location hotel.

**100%
WHEAT
&
GLUTEN
FREE**

Don't be caught out – Allergens

In the last year or so, the headlines have been full of some dreadful stories of injuries suffered by members of the public as a result of the purchase and consumption of food containing undisclosed allergens. Some of the worst cases include the fatality of a teenager due to incorrect information on a restaurant menu, a young child suffering a dairy allergy due to a member of staff incorrectly processing an order, local take-away restaurants failing to protect customers with nut allergies and a large-scale food contamination at a single supplier which tragically caused several fatalities at NHS Hospitals.

As a result, the restaurant industry (and in particular the “grab and go” sub-sector) have doubled their efforts to address these real concerns and there is increased public awareness of the issues of food safety on the back of several claims being pursued against food business operations for failures in control of allergies has shot up. In 2018, the Ministry of Justice reported a 500% increase in gastric illness claims brought against travel companies and hotels since 2013

The duties placed upon food business operations have been tightened and non-compliance of the legislation can lead to both criminal and civil

“ The duties placed upon food business operations have been tightened and non-compliance of the legislation can lead to both criminal and civil liability.

liability. It is important for owners, directors and operators of businesses that sell food to the public that they have a duty to ensure that food is fit for human consumption and not injurious to health. Communication about food must be accurate (not false or misleading). A failure to comply with these principles will potentially deem a product unsafe and injurious to health, punishable by an unlimited fine.

There are several things that restaurant and food vendors have been doing more recently to address this heightened level of awareness and liability.

This includes:

1. de-constructing their entire menu to ascertain which, if any, of the main [14] allergens may be present in any dish on the menu
2. creating an allergen matrix for staff to be able to readily access on site in case a guest enquires whether there are “nuts” or “dairy” in a particular dish
3. placing warning on the menu where allergens might be present in dishes urging customers to raise any concerns whilst ordering
4. changing the order of service for front of house staff so that they pro-actively raise the allergen issue during the ordering stage; and
5. considering whether existing insurance coverage extends to loss or claims flowing from allergen based claims.

Earlier this year, the UK government announced that further legislation with respect to food labelling will come into force by summer 2021. This move has been welcomed by the Food Standards Agency and will incorporate new directives for pre-packaged food for direct sale. Direct Sale items are goods which are prepared and sold on the same premises and such items do not currently have any obligation to include allergy information on their packaging there is an assumption currently that a customer purchasing a product would ask the staff directly for any allergen information. Under the proposed new regulations this position will change and the obligation will be on the food business operator to provide mandatory information on the labels of all packaged items setting out all potential allergens which the product may contain. This will apply even those products made and sold on the same premises.

In anticipation of the new legislation companies are already making changes to their operations including enquiring with customers for any potential allergies prior to service, providing appropriate training for staff on the new guidelines and ensuring procedures are followed by bringing disciplinary actions for failure to comply with the same.

This is not only an issue for all hospitality based industries across the country, be they hotels, bars, restaurants, take away stores but extends to schools, hospitals and the like. All such businesses need to understand precisely the make up of every item on the menu and understand further whether there are allergens present. Clearly labelling and proper communication is critical here as is making the entire staff aware of the duty of care that all food businesses owe to their customers.

“ All hospitality based industries need to understand precisely the make up of every item on the menu and understand further whether there are allergens present.



David Roberts
 Partner, London
 T +44 20 7067 3537
 E david.roberts@cms-cmno.com



Nicholas Draper
 Senior Paralegal, Sheffield
 T +44 114 279 4157
 E nicholas.draper@cms-cmno.com





The Slovenian Government's plans for the Tourism Investment Fund

The Tourism Investment Fund

The Slovenian Government is currently starting the merger of merging major and strategic tourism and hotel companies by transferring their shares onto the Tourism Investment Fund, registered as a holding company held by the Bank Assets Management Company (the so-called "Bad Bank") on 18 September 2019.

The establishment of the tourism holding company and the subsequent first transfer marks the beginning of the state consolidation of ownership and management of state-owned tourism companies.

Tourism in Slovenia

In 2018 the total contribution of tourism to the Slovenian GDP increased by 6% and accounted for 12.3% of the total GDP in Slovenia.

One of the main goals of the national strategy for sustainable growth of tourism is to increase the total revenue from EUR 2.3bn in 2016 to 4bn by 2021.

One of the key disadvantages of Slovenian tourism detected in a 2015 study was the obsolete and old equipment of hotel buildings overdue for renovation.

The Significance of Transferred Hotel and Tourist Companies

The Fund's portfolio is predictably going to be composed of Istrabenz Tourism, Terme Olimia, Sava Tourism, Hotels Bernardin, Adria Ankaran, Unitur, Thermana Laško and Hit Alpinea, which in 2018 jointly generated EUR 230m in sales.

Istrabenz Tourism owns six 4* and 5* hotels as part of Life Class Hotels & Spa Portorož on the Slovenian coast, that are located at the seafront and comprise approximately 800 hotel rooms. Hotels Bernardin also has six 4* and 5* star hotels in Portorož, Strunjan and Izola. Adria Ankaran, that is situated between Piran and Trieste, offers more luxurious accommodations and also camping facilities. Altogether these companies occupy a great portion of hotels and other accommodation types along 46km long Slovenian coastline, and therefore present the type of hotels of a greater added value and are considered important and strategic tourism investments at the seaside.

Unitur owns Rogla and Terme Zreče, popular destinations for activities in the nature and skiing, where in autumn 2019 also introducing Treetop Walk Pohorje.

Slovenia is well renowned for its spa tourism. Terme Olimia comprises of luxurious hotels, glamping, thermal park, and is famous for its Wellness Orhidelia. Sava Tourism also active in spa business, with its 9 hotels and spas stretching from Gorenjska to Prekmurje including high-end hotels in Bled.

Hit Alpinea covers Kranjska Gora, a very popular Alpine destination in Slovenia, with its hotels, wellness and congress facilities.

These tourist and hotel companies, situated in six out of ten best Slovenian destinations according to the number of overnight stays recorded in 2015, offer a wide range of accommodations, services and activities, providing added value and importantly contributing to Slovenian tourism.

Government's Strategic Plan

Once all of the mentioned hotel and tourism investments will be transferred to the Tourism Investment Fund, Slovenian Sovereign Holding is expected to hold slightly more than 50% of the shares, Bank Assets Management Company is expected to hold a 40% share, with Kapitalska družba and Property Management and Consultancy Company splitting the remaining share.

Following the completion of the business restructuring, the state ownership is planned to be reduced from 100% to 5% plus one share, while the remaining equity is expected to be available for purchase upon an initial public offering. This remaining equity represents an attractive opportunity for domestic and foreign investors.

In addition to this, it is planned that by the end of the project to demerge the real estate from the Fund to one or more HoldCo's, of which the Fund would expectedly hold 25% and the remaining share would be available to either pension funds or other investors.

Why Slovenia?

And why would foreign investors be interested in investing in Slovenia? The country's location in the heart of Europe, intertwining the Alpine, Pannonian and Mediterranean region, presents opportunities for high-end tourism all year round.

Slovenia is also very safe country, ranked eighth according to the Global Peace Index 2019. Such recognition is of high importance nowadays amidst of violence outbursts taking place worldwide and thus contributing to Slovenia's reputation as a tourist destination.

„...The valuation method now required in calculating the price to be paid is on a “no scheme” basis i.e. as if there is no Code.

The country's aspiration for sustainable development has also been recognized when the City of Ljubljana was awarded the European Green Capital in 2016, consequently contributing to the growth of tourism.

Conclusion

The governmental plan, once fully executed, will offer opportunities both for strategic as well as financial investors.

A first step is planned already in near future by the acquisition of the 43.23% stake of Sava Hoteli d.d. from York Global Finance.

Once the majority of sizable Slovenian hotels and tourist capacities in one hand the size of the transactions should be of interest also for international players.



Aleš Lunder

Partner, Ljubljana

T +386 1 620 5210

E ales.lunder@cms-rrh.com

Upcoming **events**

Jan
20

HOTCO

20–21 January 2020, Kempinski Hotel Corvinus
Budapest, Hungary

Jan
21

Saudi Arabia Hospitality Investment Conference

21–22 January 2020, Riyadh Airport Marriott Hotel

Feb
4

Women in Hospitality

4 February 2020, CMS, Cannon Place, London, UK

Feb
11

Global Restaurant Investment Forum

11–13 February 2020, NH Collection Amsterdam
Grand Hotel Krasnapolsky

Feb
8

Adria Hotel Forum

8–19 February 2020, Zagreb Cathedral, Zagreb, Croatia

Mar
2

IHIF Forum 2020

2–4 March 2020, InterContinental, Berlin

Mar
10

MIPIM

10–13 March 2020 - Palais des Festivals, Cannes, France

Mar
17

Hotel Investment Conference Asia Pacific (HICAP)

17–18 March 2020, Grand Hyatt Singapore, Singapore

May
21

Scottish Hotels Update

21 May 2020, CMS Edinburgh

Apr
14

Arabian Hotel Investment Summit (AHIC)

14–16 April 2020, Dubai, UAE

Sep
00

CMS Hospitality Conference

TBC September, Cannon Place, London, UK

Oct
7

The Annual Hotel Conference

7–8 October 2020, Manchester, UK



Law . Tax

Your free online legal information service.

A subscription service for legal articles
on a variety of topics delivered by email.

cms-lawnow.com

.....
CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF

T +44 (0)20 7367 3000
F +44 (0)20 7367 2000

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS Cameron McKenna Nabarro Olswang LLP is a limited liability partnership registered in England and Wales with registration number OC310335. It is a body corporate which uses the word "partner" to refer to a member, or an employee or consultant with equivalent standing and qualifications. It is authorised and regulated by the Solicitors Regulation Authority of England and Wales with SRA number 423370 and by the Law Society of Scotland with registered number 47313. It is able to provide international legal services to clients utilising, where appropriate, the services of its associated international offices. The associated international offices of CMS Cameron McKenna Nabarro Olswang LLP are separate and distinct from it. A list of members and their professional qualifications is open to inspection at the registered office, Cannon Place, 78 Cannon Street, London EC4N 6AF. Members are either solicitors or registered foreign lawyers. VAT registration number: 974 899 925. Further information about the firm can be found at cms.law

© CMS Cameron McKenna Nabarro Olswang LLP

CMS Cameron McKenna Nabarro Olswang LLP is a member of CMS Legal Services EEIG (CMS EEIG), a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices. Further information can be found at cms.law