



Welcome to

HOSPITALITY MATTERS

Spring 2017

Welcome to Hospitality Matters, our regular bulletin for the hotels and leisure industry. CMS has continued to perform strongly in the sector since the last edition. Highlights include CMS continuing to top the European-wide Hotels & Leisure M&A rankings and advising on both the UK's largest hotel portfolio deal (Atlas Hotels) and largest single asset hotel deal (DoubleTree Tower of London).

Geopolitics continues to dominate the headlines. Whilst the US has been thrown into turmoil by President Trump's surprise win, we are heading into a major election season across Europe. The growing strength of nationalist anti-European parties is becoming a recurring theme and the United Kingdom itself is on the verge of triggering Article 50 – starting the process to leave the European Union. At a time of economic, social and political uncertainty, we analyse in this issue how Brexit may impact the hospitality industry.

Technology and distribution continue to be the hot topics of discussion in our sector. Airbnb has been a worldwide success story in recent years. Its low prices, ease of use and wide range of properties has allowed the company to pose a significant threat to the more traditional hotel industry. In this edition we look at what Belgium is doing to regulate this new area of the travel sector.

While the political trend is towards isolationism, CMS is moving the opposite way. In January, we added offices with around 200 lawyers across Chile, Peru and Colombia, adding to existing offices in Brazil and Mexico. And, in May 2017, CMS will combine with Nabarro and Olswang, thus doubling our UK turnover and expanding our presence in the Middle East and South East Asia. We are excited by the strengths and expertise that our new colleagues will bring and we look forward to the many opportunities that this venture will offer for us and our combined clients.



Thomas PageGlobal Head of Hotels & Leisure Group

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Brexit Q&A

As the triggering of Article 50 approaches, we take a closer look at some of the key issues affecting the sector as a result of Brexit.

No European Union Member State has ever left the EU. As such, the complex process of untwisting the UK from the intricate web of political, legal, financial, regulatory (and other) relationships and obligations is entirely untested.

This uncertainty may prove troublesome for the hospitality industry, which has considerable cross-border exposure concerning issues ranging from employment to investment, regulations to revenue. As Europe's largest law firm – soon to grow larger following our combination with Nabarro and Olswang in the UK – CMS brings you analysis and commentary on some of the key concerns facing the sector.

Issue Impact Areas of law affected

How will exchange rates affect inward travel into the UK?

The significant reduction in the value of the pound following the vote to leave the EU makes the UK more attractive as a destination for foreign visitors who might otherwise have travelled to other destinations. This could increase demand for UK-based hotel and leisure businesses. But, the UK receives fewer travellers than it sends out. The inbound increase is likely to be smaller than the impact of a weaker pound on outbound travel. The size of the impact will depend on the value at which the pound levels out following this initial period of volatility. EU visitors' attraction to the UK as a holiday destination will also be affected by general sentiment towards the UK as a result of this process.

How will exchange rates affect outward travel from the UK?

Exchange rate shifts will make travel from the UK to all countries more expensive, therefore reducing demand for outbound travel. This will impact France and Spain the hardest, as they receive around 12-13 million visitors a year from the UK. This constitutes around 18% of all visitors to Spain and 14% for France. Italy, Greece and the Netherlands all receive significant numbers of UK visitors each year. Even a relatively modest percentage reduction in British tourists could have a significant economic impact on these countries' tourism economies. Those British travellers deterred from leaving the UK may decide to travel within the UK instead, boosting demand for UK-based hotel and leisure businesses.

What effect will a fall in UK GDP have on operational activity? The hotel market demand curve has traditionally tracked GDP very closely. If Brexit does have a material adverse impact on UK GDP in the short-medium term, we would expect domestic demand for hotel services to fall equally. This may offset some or all of the gains arising from the exchange rate shifts outlined above.

All

ΑII

ΑII



Issue

What effect will the UK's legislative autonomy have?

Impact

The UK will be free to make its own laws on matters previously covered by the EU, such as health and safety, food labelling, energy efficiency and certain employment rights. However, there is no indication that the UK would seek to make any material changes in these areas. The minimum wage and the National Living Wage have had the biggest economic impact of all recent employment laws on hotel and leisure businesses. Both were introduced by the Conservative government rather than imposed by EU legislation. We do not expect Brexit to have any effect on these laws. Any other UK employment laws (except for immigration – see below) that change as a result of the UK leaving the EU are unlikely to have a material impact on UK businesses.

Areas of law affected

Employment

Health & Safety

What effect will a loss of freedom of movement have on the industry? Hotel and leisure businesses in the UK tend to have very high numbers of non-UK employees. This is partly driven by requirements for a steady supply of relatively young, hardworking, low-paid staff and wide-ranging language skills. It is unclear what immigration and work permit rules will be put in place after Brexit, with conflicting statements coming out of the government in recent weeks. If similar rules apply to EU citizens as apply now to non-EU citizens, UK businesses could experience similar recruitment difficulties to those suffered by, for example, Indian and Chinese restaurants that are unable to recruit suitably qualified chefs from India and China because of restrictions on available work permits for non-EU citizens. This problem could be multiplied if inward migration from the EU is also restricted.

Employment

Will Brexit affect crossborder investment from non-UK investors into the UK? Hotels have increasingly become a recognised real estate investment asset class over the last 15 years. Over this period, large numbers of institutional investment funds, private equity funds, sovereign wealth funds, private investment companies and high net worth individuals have acquired assets in the hotels and leisure sector. In the short term, exchange rate shifts make UK assets cheaper to buy for foreign investors, encouraging inward investment. However, this draw may be outweighed by market uncertainty, which means that international investors may not have confidence in the market, notwithstanding the lower asset price. Asset values are made up of a combination of the market investment multiple (or yield) and the operating profits of the underlying businesses. In growing markets, both factors will increase, leading to fast growth in asset values. However, in times of recession both components are likely to fall, meaning that hotels and leisure assets may devalue much faster than other types of real estate that benefit from less volatile income streams. Any downward pressure on asset values due to shifts in multiple/yields or reductions in profitability may be partly offset for foreign investors by the exchange rate movements referred to above. Conversely, income streams in pounds generated by hotels and leisure assets will be worth less for foreign investors.

Corporate

Private Equity

Real Estate

Issue

How will access to debt from non-UK lenders to fund investment and capital expenditure be affected?

Impact

In recent years, the hotels and leisure investment market could access a steady supply of cheap bank debt to support investment and boost investment returns for equity investors. In small and mid-cap deals, these are mostly UK-based high street lenders, who we would expect to remain active at existing levels. However, larger deals rely on the European debt syndication markets to allow transaction risk to be spread over a wider pool of syndicated lenders. It is not clear whether the UK leaving the EU will have any adverse impact on these European lenders' willingness or desire to do business in the UK, or whether they will seek to keep their activity within EU boundaries. If availability of debt for larger deals were to reduce or if pricing were to go up (e.g. to hedge increased exchange rate volatility) then this would decrease investment activity and hence asset pricing. It may also inhibit existing investors from borrowing to fund capital expenditure and other improvements to UK assets.

Areas of law affected

Banking

Financial Services

How will investment decisionmaking be impacted by the postreferendum political and legislative environment? There will be high levels of uncertainty until the UK has completed any process it undertakes to leave the EU. The triggering of Article 50 (expected in March 2017) starts a two-year process leading to Brexit. Deferrals or cancellations of investment decisions are likely while the renegotiation process is ongoing. The UK currently has one of the lowest corporation tax rates in Europe and the UK government is committed to ensuring that it remains one of the most competitive corporate tax jurisdictions in the G20, a position reiterated in 2017 by the Chancellor, Philip Hammond. A significant increase in the rate of corporation tax is unlikely.

Corporate

Private Equity

Real Estate

Taxation

Are there likely to be any security issues for international travellers?

Terrorist attacks and other adverse security incidents can have major short-term impacts on city and country destinations. North African countries such as Tunisia and Egypt have seen devastating falls in visitor numbers and revenues from inward travel; Turkey has been heavily affected by the ongoing war in neighbouring Syria and repeated terrorist attacks; and Paris and Brussels both saw rapidly reduced visitor numbers following their attacks. However, we do not believe that Brexit will have a major effect on the safety or security of the UK and, therefore, visitor numbers will not be significantly affected in this regard.

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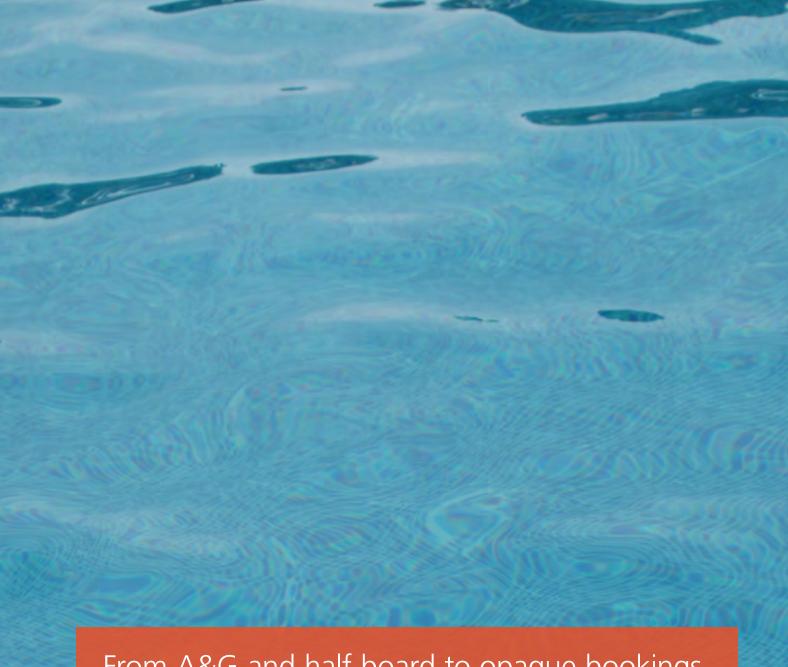
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From A&G and half board to opaque bookings and VR – the Hotel Industry Jargon Buster provides you with a comprehensive list of the most current terms in the hotel industry.

This easy-to-use format allows you to look up terms easily and quickly, and can be a useful resource in your day-to-day work.

The list was compiled by CMS experts with the aim of providing you with easy access to the latest information, whether you are an owner, investor, lender or operator in the hotels and leisure sector.



Belgium – The Airbnb business model: from pressure to regulation

As Airbnb expands across the world, Belgium is taking steps to regulate the homestay industry within its borders.

Airbnb's business model offers travellers a more personalised and 'local' travel experience than the standard hotel room. The company's impressive expansion and its streamlined app and website have helped it to attract all types of customers, ranging from backpackers to businessmen alike.

While the short-term rental market has expanded rapidly, the laws that govern it have struggled to keep pace. This has allowed Airbnb a relatively flexible environment in which to provide its services, which benefits both those who let and those who rent through the company. As business is drawn away from the more traditional areas of the market, the hotel and housing agency sectors have heavily pressurised Belgian authorities to regulate the Airbnb business model. Following increased regulation in France and the Netherlands, Belgium has recently further focused its attentions on this area of law.

Due to the regionalised nature of the tourism sector in Belgium, the implementation of this law has been staggered across the country's three regions. Brussels took the first regulatory step in May 2014, passing a decree that caused homestay accommodation (the blanket legal term for Airbnb-type activities) to be regulated like a normal hotel.

This legislative change imposed various obligations on Airbnb hosts. Firstly, their accommodation must be registered on a database, so that the government can monitor the number of properties operating under that status and ensure regulatory compliance. Much focus was given to areas of health and safety, such as sanitation obligations and the requirement to install fire safety equipment and smoke detectors. Furthermore, Airbnb hosts must: have the Airbnb property registered as their home address; obtain third party liability insurance; enter into a written agreement with their guests; refuse to accept more than 15 guests at once; and provide guests with linen and towels.

The Walloon region followed suit in November last year, by passing a decree which came into effect on 1 January 2017 and brought homestay accommodation into the scope of the application of their current legislation. Thus, Airbnb hosts in Walloon are now subject to the same regulations as those that have been in force in Brussels since 2014.

The Flanders region is yet to extend its legislation to encompass Airbnb properties. Legislative developments in this area are anticipated in Spring 2017, but a proposal is yet to be negotiated.

Brussels has taken a fiscal approach to complement its regulatory focus. On 1 January 2017, a new tax was levied on the rent from Airbnb accommodations. As such, hosts must complete a monthly declaration, on the basis of which the Brussels authorities calculate the tax due. If a host fails to submit this declaration, a flat-rate tax is imposed. Walloon and Flanders are expected to introduce a similar tax in the near future.

Clearly, the Airbnb business has evolved from a loosely operated model to one more regulated and restricted, establishing it as no more unconventional than typical tourist accommodation. As increased red tape and taxes are gradually introduced across all regions, not only will Belgium see a real increase in the cost of tourist accommodation, but Airbnb will also lose the competitive and strategic advantage it once enjoyed.



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Hotel Hot Topics

Barcelona Cracks Down on Tourist Numbers with Accommodation Law

Following 25 years of promotion as a tourist destination, the city of Barcelona passed a law in January to curb tourism as visitors have begun to overwhelm the city and anger local residents. Under the new law, the number of beds on offer from hotels and tourist apartments will be limited, and a moratorium on building new hotels will be imposed, together with a halt in issuing licences for tourist apartments.

For more information, please visit: tinyurl.com/BarcaAccommLaw

US Hoteliers Keep Eye on Dip in Bookings from Europe

US hoteliers have reported seeing a decline in bookings from European travellers heading into 2017 and are looking to explain what has caused the drop. Possible factors include economic uncertainty in the continent, coupled with a new US president who is unpopular in several European countries.

For more information, please visit: tinyurl.com/USbookings

London Accounted for 50% of 2016 UK Hotel Transactions

Investment in the London hotel market reached GBP2 billion (USD2.47 billion) in 2016 and accounted for more than 50% of all United Kingdom hotel transactions during the year, up on the 45.2% share of the market in 2015. The increasing market share was helped by a number of large lot size deals including the GBP350 million acquisition of the former War Office by the Hinduja Group and Obrascon Huarte Lain for hotel redevelopment, and the GBP300 million purchase of the Hilton DoubleTree Tower of London by Gulshan Bhatia (in which CMS advised the Bhatia Family).

For more information, please visit: tinyurl.com/Londontransactions



New European Star Classifications Rules Apply to Dutch Hotels

On 1 January 2017, new European star classifications for hotels came into force, the previous mandatory hotel star classification having been abolished on 1 January 2015. Awarding stars to hotels has been delegated to Hotelsterren, which shall apply the European Hotel Classification criteria, with the new system being deemed to be better and fairer than the old.

For more information, please visit: tinyurl.com/starclassification

Change in Novel Foods Regime

What do insects and nanotechnology have in common? When used in foods, both are governed by the novel foods regime. A change to this regime is due to come into effect from 1 January 2018. These changes are intended to address some of the uncertainties in the current regime and promote innovation. An accelerated approval process and increased clarity on what is a novel food can only be good news for Food Business Operators, but there are less advantageous changes, and possible unintended consequences, for which Food Business Operators should prepare.

For more information, please visit: tinyurl.com/noveltyact

UK Business Rates Revaluation 2017

Check, Challenge, Appeal – One bite at the cherry

Many businesses are facing unprecedented increases to their business rates liabilities from 1 April 2017. Given the tight margins that exist in hotel and restaurant business models, and the material impact an increase in business rates may have on both the top and bottom lines, hotels and restaurant operators are rightly concerned about the 2017 rates revaluation. Any challenge to an increase in rateable value will have to be made under the proposed new Check, Challenge, Appeal regime. The regime will be front-loaded, heavily prescribed, procedurally burdensome and risky, and generally weighted against businesses. It is completely untested and a business will only have one opportunity to challenge its rateable value. Many rating surveyors and lawyers have expressed concern that access to justice may be compromised if new evidence is restricted. The final procedures are awaited. Here we summarise the draft regulations in this new appeal process and the steps any business seeking to challenge their new rating will need to know about.

Check

The Check stage involves the checking of factual information held by the Valuation Office Agency (VOA). A business has to initiate the process by making a request for the information. The VOA then provides the information and the business reviews and confirms it as either accurate or inaccurate.

If a business confirms that information is inaccurate, the VOA must alter the list to correct the inaccuracy. Although the procedure appears to require the VOA to accept the accuracy of information provided by a business – and the VOA has been indicating informally to the industry over the last few weeks that it will be working on a presumption in favour of information supplied by businesses – we are doubtful that the VOA will correct the list without questioning the information first.

The nature and level of detail of information that will be subject to the Check stage is not yet known but is expected to be quite extensive. Examples given to us informally by the VOA include lifts, air conditioning, refurbishment date, plant and machinery and rent.

The timescales for a Check will depend entirely on how long the VOA takes to respond.

Challenge

The Challenge stage is an amended form of the current 'proposal' procedure. A Challenge will still have to be made in the form of a proposal by a business to the VOA to amend the list. Under the new procedure a proposal can only be made after the conclusion of the Check stage, and within a four-month window.

The end of the Check stage will be when the VOA has amended the list or, where there is disagreement with or inaction by the VOA, after twelve months from when the Check stage began. The fact that the 'nondetermination' period is as long as twelve months indicates that the Check stage is not expected to be straightforward or brief.

A key difference between the new and old Challenge procedures is that a proposal under the new procedure must include a statement setting out the grounds of the proposal, including particulars of the grounds, evidence to support the grounds and a statement as to how the evidence supports the grounds. This means that the full, detailed case now needs to be submitted to the VOA at the beginning of the Challenge stage, whereas before it would not be needed until the case reached the Valuation Tribunal (VT). The current procedure allows a business to seek a reduction without any supporting evidence or argument.

There are new powers for the VOA to refuse an incomplete proposal, which replace current provisions that allow a business to appeal where a VOA finds a proposal to be invalid. There is no right of appeal to the VT against a refusal of an incomplete proposal, but a business can submit a new proposal within the fourmonth period after the completion of the initial Check stage.

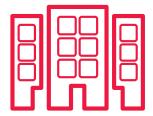
The only substantive obligations on the VOA to respond during the Challenge stage are to provide further information that it holds or comes into the possession of in response to the particulars of the grounds in the proposal. Note that the VOA's duty in the draft Regulations is limited to 'information' and is not expressed as evidence or arguments, albeit that the government's response to the consultation refers to 'tailored information and evidence'. The VOA's duty is also limited to what the VOA considers to be reasonable. The approach appears to be very one-sided in favour of the VOA and raises potential issues of procedural unfairness.

A business then has an opportunity to submit further evidence in response to the VOA's further information. The business also has additional, limited rights to submit further evidence relating to its grounds if the evidence was not known and could not have been known to the business when the proposal was made, or otherwise with the VOA's agreement. These very limited rights to submit new evidence emphasise the front-loaded, single bite of the cherry nature of the new procedure.

There are new financial penalties where a business knowingly, recklessly or carelessly provides false information to the VOA. There is a right of appeal against a penalty.

There remain provisions for withdrawing a proposal, and for agreeing with the VOA an alteration to the list following the making of a proposal but differing from the alteration contained in the proposals. These are largely unchanged by the reforms. However, it is unclear what discretion an individual VOA officer will have to continue to negotiate with a business during and in parallel with the formal Check procedure.





Where the VOA finds that a proposal is well-founded, it must alter the list. However, when considered alongside the new appeal rights, the VOA is not required to alter the list where it finds that a proposal is well-founded but the difference in rateable value is within the 'bounds of reasonable professional judgement'. This is generally considered to be +/- 10% (but in some contexts can be greater) and is a significant and controversial aspect of the reforms. There are still rumours that it may not be introduced. If it is introduced, we expect there to be litigation as to the meaning of 'reasonable professional judgement' and/or whether these regulations are ultra vires in light of the duty to maintain an accurate list.

Where the VOA finds that the proposal is not wellfounded it must issue a decision notice containing a statement that the VOA will either not alter the list or alter the list otherwise than in accordance with the proposal. The decision notice must include: reasons; a statement of the evidence used to make the decision; and a statement in relation to each of the grounds, setting out why a ground is not made out and including a summary of any particulars of the reasons.

Appeal

A business has a right of appeal on the grounds that the VOA has not altered the list or altered the list otherwise than in accordance with the proposal. However, as indicated above, an appeal on either ground can only be made where the difference in rateable value is outside the bounds of professional judgement.

An appeal can also be made where a decision has not been made within 18 months after the date that the proposal was made.

An appeal must be made within the 4 months following the decision or the expiry of the 18-month nondetermination period referred to above.

A fee will be payable on making an appeal.

The procedure for an appeal to the VT is largely unchanged, save for a new limitation on the introduction of new evidence. New evidence will only be permitted where it was not known and could not have

been known before the right to appeal arose. There is a corresponding right for other parties to respond to new evidence.

There are similar restrictions on the VT to issue a summons to a person to be a witness only in relation to evidence provided during the Challenge stage or where the evidence could not have been known before the right of appeal arose.

The VT must not take into account matters that did not form part of the proposal at the Challenge stage or were not introduced in accordance with the correct procedure as matters that could not have been known before the proposal was made or the right of appeal arose. Again, this demonstrates the emphasis on a business presenting its case in full at the outset of a Challenge, and is inconsistent with most other tribunal procedures where information up to the decision may be taken into account.

There are currently no proposals to restrict the right of onward appeal to the Upper Tribunal on a point of law only, as was tabled in the consultation. Therefore, the right of appeal against a VT decision is expected to remain as on both points of fact and law.

There are many areas in the new procedure that require clarification. As currently proposed it seems highly likely that there will be many legal challenges to test the rules and regulations to ensure rating appeals are dealt with fairly. Although the new procedure was designed to reduce the number of appeals, it seems that satellite litigation will unfortunately fill the gap.



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Little Blue Books: Investors guides to the hotel sector

Short guides to all you need to know about hotels as leased and managed investments.

If you would like a copy of the little blue books on hotel management agreements and leases, please contact Tom Page or James Miller.







Upcoming events

International Hotel Investment Forum

Berlin, 6-8 March 2017

MIPIM

Cannes, 14-17 March 2017

Hotel Investment Conference South Asia (HICSA)

Mumbai, 5-6 April 2017

Arabian Hotel Investment Conference (AHIC)

Dubai, 25-27 April 2017

World Travel & Tourism (WTTC)
Global Summit

Bangkok, 26-27 April 2017 (invitation only)

Henry Stewart: Hotel Operating Agreements

London, 17 May 2017

CMS Hotels Seminar

Edinburgh, 18 May 2017

The Hotels Operations Conference

London, 24 May 2017



British Hospitality & Tourism Summit

London, 6 June 2017

European Hotel Finance Forum

London, 15 June 2017 (invitation only)

Hot.E Hotel Investment Conference Europe

London, 26-27 September 2017

Expo Real

Munich, 4-6 October 2017

The Annual Hotel Conference

Manchester, 11-12 October 2017

Hotel Investment Conference Asia Pacific (HICAP)

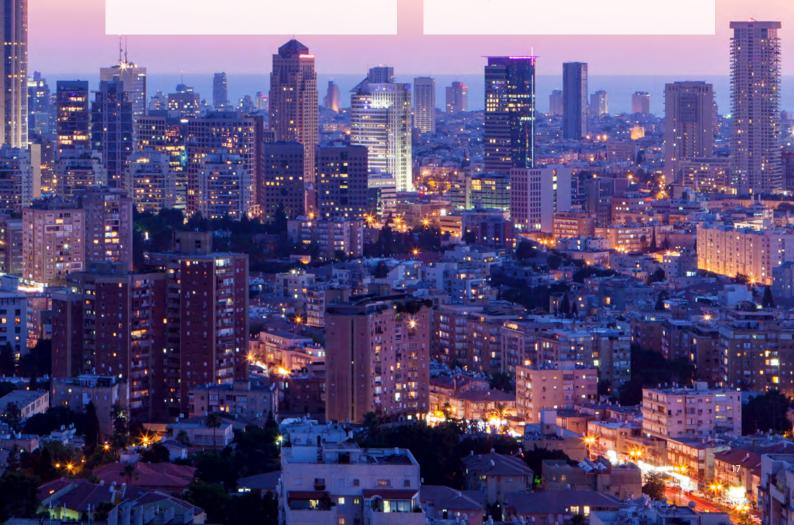
Hong Kong, 18-20 October 2017

World Travel Market

London, 6-8 November 2017 (invitation only on the 6th)

Deloitte European Hotel Investment Conference

London, 7-8 November





Recent transactions and credentials

Atlas Hotels

Sale of a portfolio of 47 Holiday Inn Express / Hampton by Hilton hotels to London & Regional

Value: GBP500-600 million CMS acted for Lone Star as seller

DoubleTree by Hilton

Acquisition of the DoubleTree by Hilton Tower of London Hotel by the Bhatia Family from Blackstone Real Estate and financing with two German banks

Value: GBP300 million

CMS acted for the Bhatia Family as buyer

INNSIDE Amsterdam hotel

Negotiation of a development agreement and a lease agreement with CRI (a subsidiary of Commerz Real) as part of the new INNSIDE Amsterdam hotel

Value: confidential

CMS acted for Meliá Hotels International

Six UK Hilton Hotels

The disposal of six UK Hilton hotels to six separate buyers

Value: GBP40 million asking price

CMS acted for Oaktree Capital as the seller

UK hotel finance

Financing and due diligence for acquisition of two UK hotels in Manchester and Southampton, with the Royal Bank of Scotland as lender

Value: confidential

CMS acted for Elliott Partners and Westmont as borrower

CitizenM refinancing

Advised CitizenM Hotels on the refinancing of its hotel portfolio in UK, the Netherlands and France with HSBC

Value: confidential

CMS acted for CitizenM Hotels as borrower

Iran development

Advised a private development company on the HMA for a hotel and residences to be developed in Mashhad, Iran

Value: confidential

CMS acted for the developer

Hollywood Bowl IPO

CMS acted for the Hollywood Bowl Group plc in connection with its IPO and admission to the LSE main market

Value: GBP240 million

CMS acted for Hollywood Bowl

W Edinburgh Hotel

Negotiation of a W Hotel HMA with Starwood Hotels as part of the St James mixed use development in Edinburgh

Value: GBP1 billion development value CMS acted for Edinburgh St James and THRE as developers

Hotel Lebenberg, Kitzbühel

Acquisition of the famous Hotel Lebenberg by two German investors from a property holding within the UniCredit Group

Value: confidential

CMS acted for the purchasers

Resort Sun Gardens

Sale of the Sun Gardens resort in Dubrovnik, Croatia, by

ERSTE Bank to ADC

Value: EUR50-100 million
CMS acted for ERSTE Bank as seller

Ten hotels in Germany and France

Sale by LFPI to Swiss Life of a portfolio of ten hotels and one development in Germany and France

Value: EUR100 million CMS acted for LFPI as seller

Hilton Paris Eiffel Tower

Negotiation of a management agreement with Hilton for the Hilton Paris Eiffel Tower hotel

Value: confidential

CMS acted for Compagnie de Phalsbourg as owner

Alexandrine Opéra (Paris)

Acquisition by a private investor of Alexandrine Opéra Hotel located in Paris (8th area)

Value: confidential

CMS acted for the purchaser

Ibiza development

Advising Bank Leumi in the financing of a hotel development Project in Ibiza and a hotel development project in Barcelona

Value: EUR30 million

CMS acted for Bank Leumi as lender

Liberation Group

Sale of the pub chain Liberation Group to Caledonia Investments

Value: GBP118 million

CMS acted for LGV Capital as seller

More hotels & leisure deals than any other firm

Source: Mergermarket European Leisure (inc Hotels) M&A 2014-2016.

*89 deals when including Nabarro and Olswang who will merge with CMS on 1 May 2017.

Rank	Law firm	No of deals
1	CMS	69*
2	DLA Piper	41
3	Clifford Chance	31
4	Hogan Lovells	26
5	Allen & Overy	13





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