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Legal Specialists in the
Hospitality and Leisure Sector

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FOREWORD

We are specialist corporate law advisors to the hospitality sector throughout Africa and the Middle East. We have over 20 years of experience in contractual matters relating to mergers and acquisitions, corporate structuring, establishment of special purpose vehicles, shareholder relationships, project finance, development and construction of new build and refurbishment projects, opening and operational phases of facilities, property acquisition, leases, franchise, management and manchise agreements. We advise developers/owners of lodges, hotels, resorts, casinos, serviced apartments, home owners associations, sectional title schemes and rental pools, as well as local and international branded and unbranded hotel management companies.

ORGANISATIONAL AND OPERATIONAL STRUCTURES

It is important to select the proper organisational and operational structures for a hospitality business as these will inform; among other things; ease of formation, operational, financial and tax efficiencies, management of credit, risk and exit strategies.

We have detailed the most common structures that can be put in place for the management of a hotel or serviced apartment business.

The illustrated structures may be combined in a number of permutations not reflected in this summary.

Note:

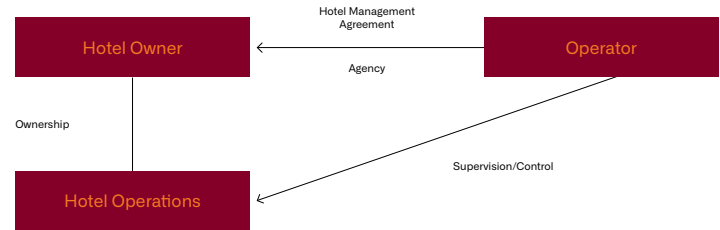
HOTEL OWNER is the owner of a hotel business

OPERATOR is a branded or unbranded hotel management company

BRAND OWNER is a franchisor or licensor of a hotel brand and management systems

UNIT OWNER is a private owner of a room or service apartment that can be used in a hotel or serviced apartment rental business

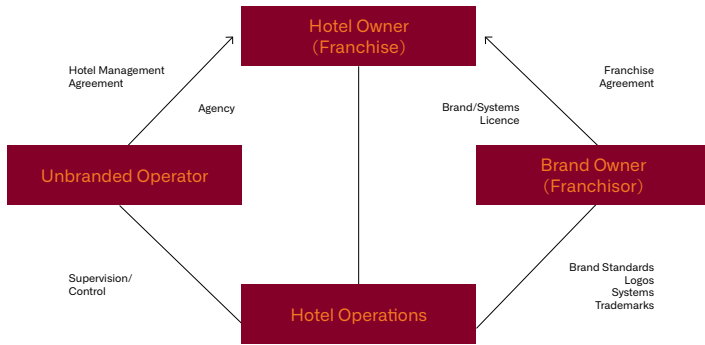
PROPERTY OWNER is an owner or lessee of land and buildings comprising a hotel



STANDARD HOTEL MANAGEMENT AGREEMENT

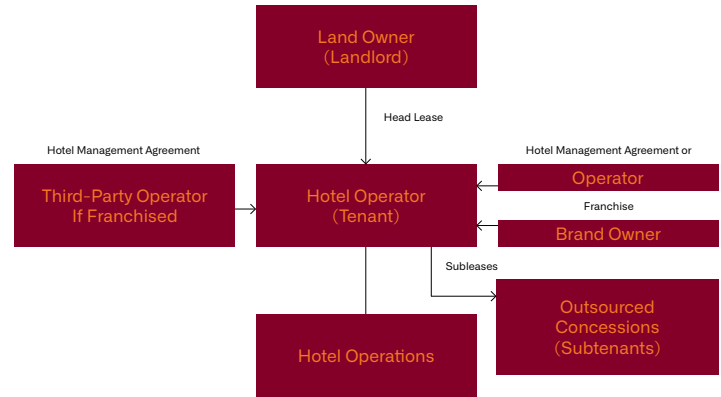
- A hotel management agreement (and related agreements such as key money, systems licence and technical services) may be entered into between an operator and the hotel owner.
- The operator operates the hotel business as agent on behalf of the hotel owner under the operator's brand and assumes responsibility for managing the hotel by providing direction, supervision, control and expertise through established methods and procedures.
- Since the hotel owner owns the hotel business and assumes all benefit and risk, the profits or losses accrue to the hotel owner, subject to the payment of management fees to the operator for services rendered in running the hotel on the hotel owner's behalf.
- There are a number of fee categories paid to the operator, the main being a base fee calculated as a percentage of turnover and an incentive fee calculated as a percentage of gross operating profit of the hotel.

THIRD-PARTY MANAGEMENT AGREEMENT



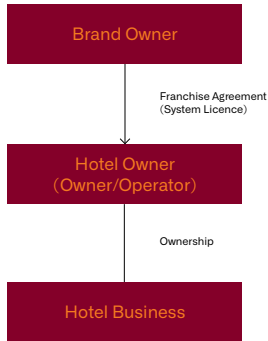
- The hotel owner may enter into a franchise agreement with the brand owner for use of the brand owner's intellectual property.
- In terms of the franchise agreement, the brand owner will grant the hotel owner a licence to use the brand owner's brands and systems. This will not include management services.
- In addition, the hotel owner enters into a separate hotel management agreement with a third-party hotel operator.
- The third-party hotel operator will manage the hotel business as agent on behalf of the hotel owner, providing control, direction, supervision and expertise through a combination of its own established methods and procedures, as well as those of the brand owner. It will do so in terms of:
 - the franchise agreement under the brand owner's brand; and
 - the hotel management agreement.

HOTEL LEASE AGREEMENT



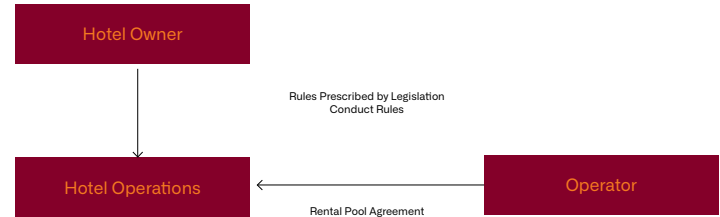
- A hotel lease agreement may be entered into between the hotel owner (lessee) and the property owner (lessor).
- The hotel owner may rent the property from the property owner and operate the hotel itself (owner/operator) under its own brand or under a third-party brand in terms of a franchise agreement.
- Alternatively, the hotel owner may appoint an operator in terms of a standard hotel management agreement or a third-party management agreement if franchised.

FRANCHISE AGREEMENT



- A franchise agreement may be entered into between the hotel owner and the brand owner where the hotel owner has its own expertise, experience and resources to operate the hotel ('self-operates').
- The hotel owner self-operates or appoints a third-party unbranded operator to operate the hotel business on its behalf.
- The brand owner licenses the use of its brand and one or more of the following components (collectively referred to as 'the system') to the hotel owner:
 - Brand features
 - Intellectual property rights
 - Systems
 - Processes and methods
 - Technology
 - Manuals; and
 - Standards and policies.
- The operator/hotel owner operates the hotel business under the brand owner's brand using the system.

RENTAL POOL AGREEMENT



- A rental pool agreement may be entered into between various owners of units in a shared property ownership scheme, such as sectional title scheme ('unit owners') and a hotel/serviced apartment operator.
- The units may be hotel rooms or self-catering apartments.
- The unit owners grant the operator the right to use their units in the hotel or serviced apartment business owner by the operator.
- The unit owners will be granted a number of nights/weeks each year for personal use.
- The operator's right of access to and use of the units forming part of the rental pool and common areas in the scheme will, in addition to the rental pool agreement, be regulated by the body corporate through a combination of legislation, the prescribed management rules, conduct rules, zoning, and consent uses applicable to the scheme as a whole.
- The unit owner's share in the profit and loss of the rental pool, the typical formula being total revenue of the whole rental pool, less operating expenses (including management fees and maintenance) to which the unit owner's participation quota is applied.



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