TOMORROW'S HOSPITALITY A-Z

NAVIGATING THE FUTURE

ReedSmith

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Contents

Introduction

The emergence of the COVID-19 pandemic in 2020 transformed the global hospitality industry as governments imposed lockdowns in an attempt to stop the virus's spread, which halted global travel and inhibited the vast majority of in-person events.

This was an unprecedented challenge for the industry, which was required to quickly adapt and innovate in order to survive. For many, this meant rapidly digitalizing their services, reducing costs and finding new uses for unused real estate.

Now, a few years down the line, and the picture is far less gloomy. The industry has bounced back and proven to be hugely resilient and innovative, coming through the worst of the pandemic and discovering new ways to provide services to clients. Businesses that successfully adapted are thriving as they seek new opportunities in emerging frontiers like the metaverse, wellness and sustainable travel, thereby supplementing their more traditional business models.

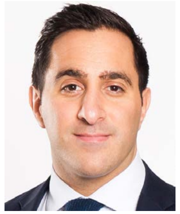
However, the hospitality industry is now facing several other factors that are driving significant change and providing fresh challenges and opportunities. Some of these factors include a growing stakeholder focus on environmental, social and governance (ESG) issues, global economic volatility and the evolution of consumer behaviors.

Shareholders, consumers, employees and regulators are increasingly scrutinizing businesses' ESG credentials, with sustainability at the forefront. This is forcing the hospitality industry to work harder to understand its impact on the environment and how to mitigate it.

Global economic volatility is leading to a more cautious approach from both investors and consumers as they look to reduce spending in the face of rising inflation and an uncertain economic backdrop. At the same time, consumer behaviors have significantly changed because of the pandemic, which reset expectations and desires around hospitality. These changes are intricate and specific to certain demographics and sectors within the hospitality industry. As the hospitality landscape continues to evolve, it remains clear that those businesses that can look ahead and quickly adapt to their new reality will be best placed to thrive in the future.

In an effort to support the industry in preparing for the future, lawyers from across Reed Smith's global real estate team and other related groups have contributed to this report to provide an A–Z guide on what tomorrow's hospitality world could look like and how to navigate the legal and regulatory challenges and opportunities that the shifting landscape presents. Themes considered include finance, sustainability, tech and marketing, new trends, data and employment. We invite you to reach out to any of our authors to discuss the issues we address and what they mean for your organization.

Jimmy Theodorou



Jimmy is the Global Head of the Real Estate team and based in Reed Smith's London office. In a complex and constantly evolving market, Jimmy partners with his clients to find practical ways to tackle challenges and maximize opportunities.

With deep experience across all areas of commercial real estate and extensive knowledge of the industry, Jimmy carries out a broad range of work for a varied client base, with a primary focus on investment, retail, hotel and leisure work.

FINANCE & TAX

Airbnb replications pose legal challenges for hotel-industry investors in France

By Cynthia Boukobza

The COVID-19 pandemic, the rebound in tourism and increased construction costs have led to the emergence of new models in the hotel industry in France and elsewhere in Europe, revolutionizing market standards and existing offers. For several years now, the hotel industry has been facing strong competition from the Airbnb marketplace, with accommodation offered by apartment owners in major cities. Hotel professionals are even aligning their prices with those offered on Airbnb, which has become a de facto price reference for the market.

Also, due to the scarcity of real estate in French city centers, particularly Paris, investors have created a hybrid offer combining the comfort and location advantages of an apartment with the amenities of a hotel, such as room service, laundry service and chef-prepared meals.

While the concept is alluring to consumers and seems simple to carry out, it presents legal challenges to investors. That is because the proposed apartments are for the most part located in residential buildings and therefore defined as residential under local planning laws as well as under contractual rules of co-ownership.

Hotel activity is a commercial activity that cannot occur in a building marked as residential. Furthermore, if co-ownership terms provide that the apartment be used as residential, this commercial activity will violate contracts.

Unless the investor acquires the entire building and declares that it is for general commercial purposes, the investor must understand the property's construction and contractual uses – before business operations start.

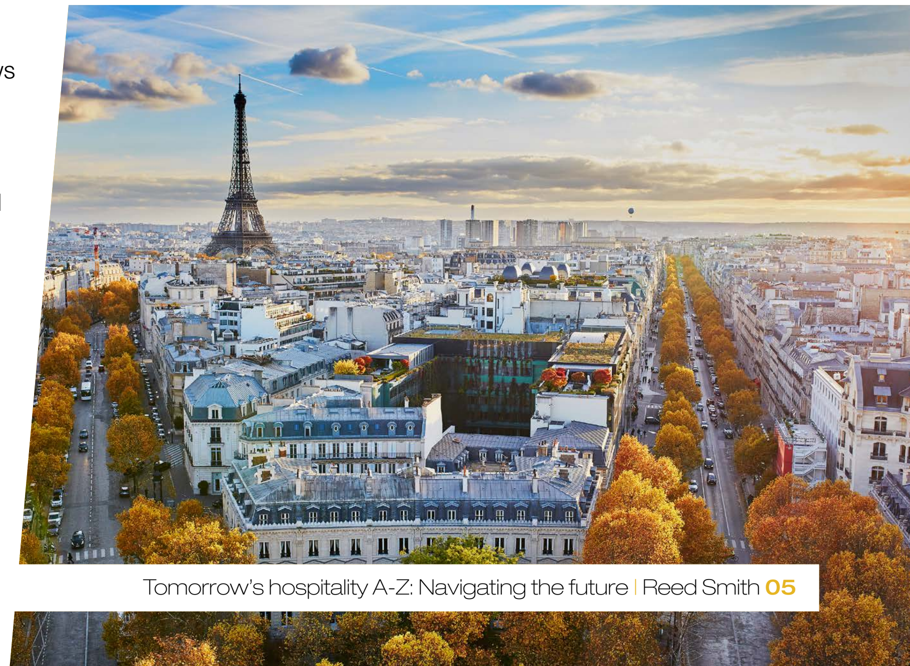
If the real estate asset is defined as residential under local planning laws, the investor must proceed with a change of use through administrative procedures. The procedure is simple, but the investor must account for the time it takes, because changes of use must be fully approved before business starts, otherwise they could be subjected to penalties and/or criminal sanctions.

In addition, if the property acquired is for residential use under the terms of the co-ownership, the investor has to obtain the agreement of co-owners to change the contractual purpose of the property in order to comply with those provisions. Investors must engage in planning and dialogue with residents during this phase. If not, and without the agreement of the co-owners, the activity cannot continue and the co-owners might take legal action.

Given these complexities, we recommend that investors prepare projects in advance and seek legal advice in order to obtain all authorizations needed to avoid sanctions and penalties.

Takeaways

- The hospitality industry in France faces stiff competition from Airbnb.
- A new model combining apartment comfort with hotel services is emerging.
- Investors considering residential locations face legal and administrative hurdles.
- Attention to contractual provisions and compliance with local regulations are key to avoiding penalties.



Business rates reduction and support package in the UK

By Gareth Amdor
and Alexander Rackow

In his Autumn Statement November 17, 2022, the UK's Chancellor of the Exchequer Jeremy Hunt set out a number of measures aimed at ensuring businesses pay their fair share when it comes to achieving the Government's key aims of reducing national debt and achieving fiscal sustainability. However, the Government remained committed to supporting businesses to invest and grow, and recognized that businesses in the retail, hospitality and leisure sectors are facing particular pressure in the current environment. Against that backdrop, the Chancellor introduced his business rates support package, which should be a real positive for the hospitality sector.

Freezing business rates multipliers

Business rates multipliers will be frozen in 2023-2024 at 49.9 pence and 51.2 pence, preventing them from increasing to 52.9 pence and 54.2 pence. This amounts to a tax cut worth £9.3 billion over the next five years and forms the basis of the Government's business rates support package. The freeze will support all ratepayers (including those in the hospitality sector), regardless of size, and make bills 6 percent lower than they would otherwise have been, before any further specific reliefs are applied.

Transitional relief scheme

Bill increases caused by changes in rateable values at the April 1, 2023 revaluation will be capped at 5 percent, 15 percent and 30 percent respectively, for small, medium and large properties in 2023-2024. These targeted caps will be applied before any other reliefs and will support 700,000 ratepayers.

Retail, hospitality and leisure relief

Business rates relief for eligible retail, hospitality and leisure businesses will be extended and increased from 50 percent to 75 percent, up to £110,000 per business in 2023-24. This support will be available to around 230,000 retail, hospitality and leisure properties, and its total value is estimated at £2.1 billion.

Supporting small business scheme

More than 80,000 small businesses that are losing some or all eligibility for either Small Business Rates Relief or Rural Rate Relief will see any bill increases as a result of such losses/reductions capped at £600 per year from April 1, 2023.

Improvement relief

The measure set out in the Autumn Budget 2021 that ensures ratepayers do not see an increase in their rates for 12 months as a result of making qualifying improvements to a property they occupy will take effect from April 2024 and remain available until at least 2028.

Conclusion

Amid rising inflation, a global energy crisis and the continued fallout from the COVID-19 pandemic, business rates (and increased business rates) were a serious issue for the hospitality sector, as well as others. It is therefore welcome that the Chancellor has recognized this and brought forward a support package that will benefit the hospitality sector, in particular, as part of the Government's growth strategy. Obviously, it is not a panacea for all the issues that the industry currently faces, but it is welcome nevertheless.

Takeaways

- The UK Government's £13.6 billion support package reduces business rates with specific additional relief for the hospitality sector.
- The cornerstone of the package is the freezing of business rate multipliers in 2023-2024, which will deliver a tax cut worth £9.3 billion over five years.
- Business rates relief for eligible hospitality businesses will also be increased in 2023-2024 from 50 percent to 75 percent, up to £110,000 per business.

Construction in hotels: Uncertainty ahead due to global volatility

By Richard Ceeney, Sachin Kerur, Laura Riddeck and Peter Rosher

After a sustained period of global economic stability, a number of market factors today are combining to create economic volatility. While the impact of COVID-19 is diminishing, other factors such as the war in Ukraine are driving up inflation generally, and particularly the cost of fuel and construction materials.

In the pre-construction phase, this makes it difficult for developers to plan their construction or refurbishment projects, and difficult for contractors to price them. For many years, the trend has been toward fixed pricing, with contractors (and subcontractors and suppliers down the supply chain) taking the risk of fluctuations in labor and materials costs.

Every risk allocation, however, carries a cost, and the risk premium of covering new inflationary factors in these uncertain times may be prohibitive for contractors, particularly in hotel projects, which often have long construction periods. Increasingly, developers are considering introducing price fluctuation mechanisms that allow contractors to adjust their prices, with reference to impartial indices (whether the official inflation index of the relevant country or an index that tracks changes in prices of steel or other materials or of local labor). These provide certainty to contractors, but not to developers.

So, how can a developer assess the profitability or even viability of a construction project when the capital expenditure cost is uncertain not only during the planning and design stage, but also during construction? And in an environment where projects are increasingly difficult to finance, will financiers be willing to provide development finance on a project that has limited price certainty?

A hybrid system, either with a sharing of cost overruns or a guaranteed maximum price ceiling, may provide a compromise solution.

For contracted projects, this volatility is also causing significant complications. Most construction contracts will not allow for price adjustment, meaning the contractor needs to absorb any cost increases. Even if the contract does allow for price adjustments, commitments that contractors, subcontractors and suppliers are giving on their other fixed-price projects are leading to supply chain insolvencies, which can be highly problematic to a construction project, since they inevitably cause delays and duplication of expenditure, as well as continuity and quality concerns. During the last decade, a degree of complacency has developed over financial due diligence toward counterparties, over bonding for advance payments and insolvency, and over the passing of title (and vesting certificates establishing title before payment). Unsurprisingly, all of these factors are quickly becoming important.

Inevitably, such uncertainties lead to claims. The construction contract may provide an entitlement to additional time and/or additional cost, depending upon the cause of the external factor. Most construction contracts, for example, would consider both COVID and the war in Ukraine as forces majeures, giving an entitlement at least to extensions of time. Any claim to give effect to this entitlement needs to be carefully managed, however, and many construction contracts contain pitfalls for both parties if claims procedures in the contracts are not followed. Similarly, claims received need careful handling, to avoid any acceptance of liability for excessive or invalid claims.

Particular care is required when a contract allows no entitlement for the event that is causing delay and cost. In these circumstances, rather than simply absorbing this delay and cost, many contractors or subcontractors will seek to mitigate their losses by attributing their delay and cost exposure to other events that do legitimately give rise to an express entitlement.

During periods of extreme volatility, formal disputes may become inevitable. For this purpose, detailed record-keeping is key, as it may be the only way to establish or disprove an alleged entitlement.

As we move away from COVID, with many regions keen to revitalize their tourist industries and generate revenue back into their economies, construction deals will continue to be made. The market volatilities that we are seeing will make those deals more complex. And contract terms that might have been considered acceptable even 12 months ago may now carry a dangerous level of risk. Developers, contractors and funders alike need to be wary.

Takeaways

- Exposure to fluctuating prices creates new risks for developers.
- Developers must address potential contractor insolvency.
- Effective and proactive claims management is crucial.
- Keep clear and contemporaneous records.

COVID-19 after-effects in the UK: Insurance protection softening the blow

By Peter Hardy and Mark Pring

Takeaways

- Market appetite has declined for important elements of non-damage-based business interruption insurance.
- Hospitality trade bodies and insurance industry groups are exploring the pooling of resources to protect businesses.
- Insurance brokers are increasingly open to exploring non-traditional sources of protection.
- Businesses may need to rely upon their own resources to mitigate risk.

The COVID-19 pandemic and the practical impact of frequent and lengthy closure orders in 2020 and 2021 hit the hospitality industry harder than most sectors. Business interruption (BI) insurance protects businesses against financial losses suffered as a result of such a disruptive event. Most policies offer BI cover as an extension to cover for loss or damage to property. In the UK at least, the courts have resisted characterizing the presence of COVID-19 as causing such physical loss or damage. But "non-damage" BI cover has also been available (for a price), and it was the scale and volume of COVID-19 claims under such cover that caught insurers and regulators by surprise in 2020.

The COVID-19 BI "test case" pursued by the Financial Conduct Authority all the way up to the Supreme Court, as well as more recent decisions, provided policyholders with mixed comfort.

What insurance cover is still available for BI losses?

The answer is bleak.

The insurance markets take the view that a pandemic represents a fundamental, societal risk that a government should underwrite, and they have little or no appetite for non-damage cover in the pandemic (or broader disease-based) context.

Further, the hospitality sector has been particularly hard-hit. Most underwriters, with the possible exception of Allianz, are currently wary of providing any property or even liability coverage relating to pandemic risk to hotels, restaurants, pubs and bars.

How are the insurance industry and others helping to resolve this?

Hospitality trade associations are continuing to pressure the UK government into endorsing schemes similar to those developed for flood and terrorism risks.

Separately, insurance industry bodies, such as the British Insurance Brokers' Association and Lloyd's of London, continue to explore solutions from within the insurance markets (albeit backed by government guarantees).

The various risk-pooling mechanisms proposed include an after-the-event insurance product affording small and medium-sized enterprises in the hospitality sector and elsewhere a cash injection and recovery support, backed by a government credit risk guarantee.

Insurance brokers are also looking at accessing non-traditional forms of protection.

Research conducted by the Federation of Small Businesses' Insurance Service indicated that should a future lockdown be declared, 75 percent of SMEs (Small and Medium Enterprises) would, in principle, be interested in purchasing set amounts of coverage delivered via a "parametric"-triggered policy. Broadly, such parametric cover protects a policyholder against the occurrence of a specific event (for example, earthquake-related risks) by paying a set amount based on the magnitude of the event as opposed to the magnitude of the loss suffered.

But such initiatives take time to develop, and at this stage, hospitality businesses are left with the distinct feeling that they are on their own.

Risk mitigation

Insurance brokers are resourceful. If a business can demonstrate that it is taking all prudent steps to mitigate the impact of pandemic or other no-damage risks of closure, then brokers may be in a position to tap at least some coverage (even with the expected exclusions, premium hikes, etc.). Evidence of contingency planning, in terms of the creation of appropriate "bubbles" among staff cohorts, the documenting and monitoring of cleaning procedures, and so forth, will be essential.

Regardless of the insurance position, however, any prudent business should identify its risk profile and implement appropriate mitigating steps.

Due diligence importance in UAE M&A transactions

By Adela Mues, Amir Ahmad and Zahir Sabur

The UAE (and Dubai in particular) is replete with hotels. Ranging from budget-friendly accommodation nestled among the souks to world-class and iconic properties propping up the city's skyline, Dubai does hospitality like nowhere else.

At the start of the second half of 2022, Dubai boasted an enviable occupancy rate of 74 percent across its 773 (and counting) hotels, which places it among the strongest hotel markets in the world (and ahead of markets such as London, New York and Paris), according to some reports.

All of that has led to a significant uptick in hotel transactions across the region. With global investors viewing the UAE as experiencing a post-COVID-19 roaring '20s, interest in this important asset class has seen both valuations and demand increase.

A significant number of hotels in the UAE are owned by local family groups and through local arrangements, rather than by domestic or foreign institutional investors. In addition, the UAE has complicated hotel ownership and licensing arrangements, which can require careful consideration to ensure that what a buyer receives is the same as what the seller is selling.

Some owners are unfamiliar with international standards relating to purchaser protection in M&A transactions, such as representations and warranties, indemnity coverage, and so on. It can therefore come as an unwelcome surprise to those sellers (who may be expecting a simple visit to the Land Department and/or the Notary Public to register the transfer) when they receive a draft share purchase agreement with pages and pages of specific warranty cover included. We have heard a number of anecdotal instances where transactions have been aborted in situations like this, and where trust has eroded away, taking the deal with it.

In our experience, concluding a transaction successfully starts with getting the due diligence scope right at the outset and embarking on a cooperative exercise all the way through to completion. Flushing out issues (and fixing them) as they arise only helps the process, as does continual and collaborative engagement with the sellers. Waiting until the purchaser shares the first draft of the share purchase agreement before discussing the key issues is an unlikely way to engender goodwill and confidence that the transaction will close, and it may encourage the seller of an in-demand asset to look for other options to sell. Rather, purchasers will need to act in real time, both in identifying issues and in finding practical solutions to them.

Also of critical importance is distinguishing between fundamental issues that go to value and those that can be addressed or remediated in other ways. We have seen a $200 million hotel transaction fail because a $5,000 insurance policy over a hotel vehicle had lapsed, which cannot be a good outcome for either party.

With assets in demand, it is a sellers' market. That is why engaging early on with experienced advisors who can help bridge the gaps between local conventions and international best practices on the tax, financial, commercial and legal sides of the deal is of paramount importance in ensuring deal certainty.

Takeaways

- Due diligence is, as ever, fundamental to the successful closing of transactions.
- Sellers may be unfamiliar with international conventions, so a bespoke approach may be needed.
- Deal certainty can be improved by getting the right advice early on.

Escrows' role in purchasing and selling hotels

By Peter Kogan

Takeaways

- Various scenarios in the purchase and sale of hotels may require a portion of the purchase price to be placed in escrow.
- Common escrow situations include the need for post-closing repairs, addressing unknown liabilities and covering potential employee claims.
- Depositing a portion of the purchase price into escrow can facilitate closing the purchase and sale of a hotel property by better allocating the risk between the parties.

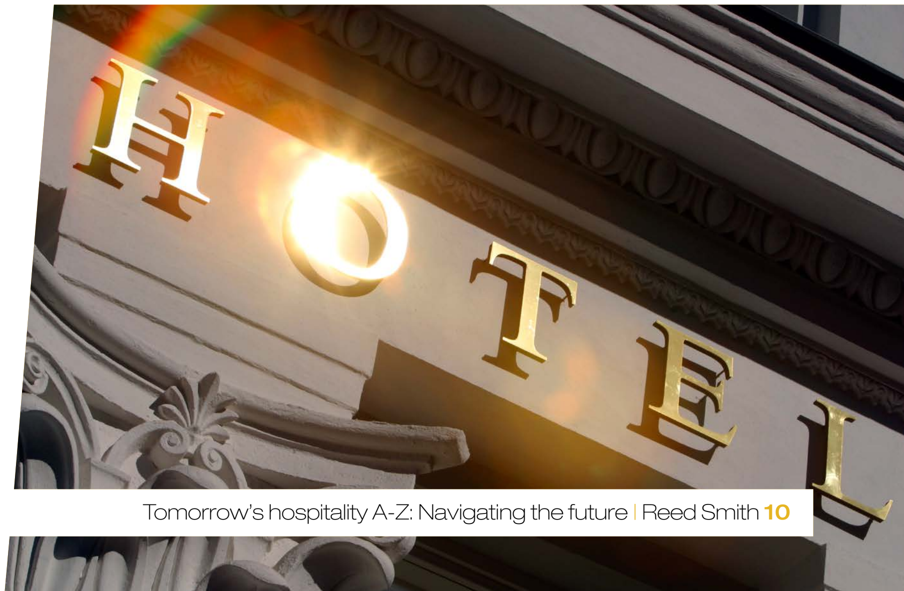
Despite the serious effects of the COVID-19 pandemic on the hospitality industry, the purchase and sale of hotel, resort and other hospitality properties continued apace during the pandemic and has shown no sign of slackening to date. However, the pandemic complicated some aspects of the acquisitions market for hospitality properties. For instance, there was increased uncertainty about the future cash flows and profitability of hospitality properties once pandemic restrictions were lifted and customers could travel again. The prolonged closure of hospitality properties created questions about the physical plant and workforce of hotels and resorts, including issues of deferred maintenance of the facilities. And the proliferation of plans to convert all or portions of hospitality properties to other uses led to increased risk awareness on the part of buyers in how they approached negotiations.

Because of this increasing uncertainty, potential buyers of hospitality properties face a larger share of unknown risks in acquiring hotels and resorts than was the norm prior to the pandemic. Motivated buyers try to mitigate those risks by using escrow arrangements in the course of the purchase and sale transaction. Typically, this involves withholding a portion of the purchase price from the seller at closing and placing the funds into an escrow account with a third-party agent, such as a title insurance or trust company. The funds remain with the escrow agent for a specified period and are used to cover general or specific post-closing liabilities associated with the property. Any escrowed funds remaining after the expiration of the post-closing escrow period are released to the seller.

During the past several years, purchase price escrows have been used in the following kinds of deals involving hospitality properties:

- Properties that need post-closing repairs due to pandemic-related deferred maintenance or new governmental regulations
- Situations where the purchaser assumes obligations relating to formerly furloughed employees and cannot be certain of the costs of such obligations
- Instances of property being transitioned to a different, non-hospitality use when the potential liabilities from the transition are unclear to the parties

The principal benefit of such escrow holdback arrangements is that they can facilitate closing where the parties to an acquisition are unsure of the actual risks associated with the property. For a buyer, an escrow arrangement allows them to close and implement their plans for the hospitality property with a dedicated fund established to cover potential expenses or liabilities. For a seller, an escrow arrangement allows the property to be transferred with a portion of the purchase price set aside for future claims. In either case, closing escrow arrangements have helped parties close deals for hospitality properties in a still-uncertain time for the industry.



SUSTAINABILTY & INCENTIVES

ESG and sustainable tourism in LatAm and Caribbean

By Jonathan Z. Kurry

Tourism is a significant driver for most Latin American and Caribbean economies. When the pandemic hit in 2020, tourism-related GDP dropped by $52.8 billion in Latin America and by $26.4 billion in the Caribbean – a devastating impact. Now with COVID-19 receding, tourist revenues are rebounding. While increased tourism is generally a positive economic force, it gives rise to unintended environmental problems in areas that suffer from poor management, unplanned urban development and a lack of resources. Hotel owners, lenders and brands realize that long-term, unfettered growth in tourism is unsustainable and ultimately will lead to substantial losses for local economies and outside investors. Players in the hotel space are therefore seeking to implement both tested and innovative green solutions to meet that challenge, resulting in a good market strategy for the industry.

More than ever, tourists are looking for safety in travel. COVID-19 caused people to consider more carefully, and maybe even for the first time, potential health and environmental risks. They want assurances about sustainability in the design and operation of their hospitality destination, as well as the wider commitment of owners and brands to those concerns. They are asking not only whether a particular hotel will be safe and contribute to health and wellbeing, but what the longer-term environmental consequences are of staying there. They ask what impact their travel has on the ecosystem and on its preservation for future generations. Answers to these questions can be found on the internet, informing customers' decisions with hard data about environmental impacts and, perhaps more importantly, the environmental, social and corporate governance (ESG) efforts specific hotels, brands and even lenders are adopting.

More than just a marketing ploy, sustainable practices, implemented correctly, lead to higher profits. Programs for recycling, waste reduction and energy efficiency lower an asset's carbon footprint and reduce utility costs. Studies show that sustainable construction is at least 20 percent more resource efficient. Another advantage of being eco-friendly is green validation through governmental and quasi-governmental certification programs that increase brand value. Valuable governmental programs exist to incentivize green hotels, most often in the form of tax credits and waivers. For instance, Argentina, Brazil, Chile, Colombia, Ecuador, Peru and Uruguay offer a wide variety of direct and indirect tax incentives to investors in projects that source energy from renewable sources. Similarly, the International Finance Corporation, a World Bank member lending to the private sector, encourages sustainable development by favoring eco-friendly projects. The lender has financed $5.4 billion of green development, with more than $1 billion in hospitality alone.

Increasingly, also, we are seeing programs that punish owners (and in some cases brands) that do not implement specified eco-friendly practices. Brazil's National Solid Waste Policy, for example, imposes maximum fines of BRL 10 million to BRL 50 million ($1.9 million to $9.5 million) for failure to comply with waste disposal guidelines. In another example, Uruguay's Environmental Impact Assessment Regulation provides for rejection and revocation of project licenses for failure to complete environmental impact studies and comply with recommendations.

Whether in reaction to the carrot of increased profits, or to the stick of potential fines for noncompliance, a significant number of investors are already focusing on green projects and initiatives. BlackRock Fund Advisors, a major shareholder in Marriott, Hyatt and Hilton, announced in January 2020 that it would put sustainability at the forefront of its investment decisions. In September 2022, Hyatt announced strategic brand expansion in Latin America and the Caribbean, with a strong development pipeline of more than 20 luxury and lifestyle hotels and resort openings through 2024. Another leading global hotel chain has said that it will double its brand presence in these same markets in three to four years. The trend is for sustainable tourism based on local, eco-friendly development, which results in profitable investment for all.

Takeaways

- Eco-friendly practices are essential for tourism growth.
- Sustainability is in demand and contributes to higher profits.
- Governments take a carrot-and-stick approach to bring about ESG changes.

French lenders help to accelerate energy transition

By Maxence Létisse

The first Low Carbon Real Estate Show (*SIBCA – Salon de l'Immobilier Bas Carbone*), held at the *Palais Éphémère* in Paris from September 22 to 24, 2022, was the meeting place for real estate professionals who are designing, building and renovating the major urban projects and buildings of tomorrow in a changing ecosystem.

There is no doubt that energy performance and carbon footprints are becoming priorities and obligations for all stakeholders in the real estate sector. The building industry alone accounts for 40 percent of the world's energy consumption and is responsible, after the transport sector, for the highest greenhouse gas emissions. France aims to achieve carbon neutrality by 2050.

This is not a new challenge. Ten years ago, institutional investors started considering the environmental impact of their real estate properties. This environmental awareness has increased over the last three years, driven by several French laws aimed at improving businesses' ESG impact. Each actor involved in the real estate industry now assumes its share of responsibility and is paying close attention to the environmental measures implemented by their counterparties to reach carbon neutrality.

Lenders want to participate in the energy transition and improve the environmental impact of their existing real estate financings. Some institutional lenders have already decided that they will only finance the acquisition of green real estate properties. For the rest (representing almost 98 percent of the French real estate properties), debt financing will be subject to borrowers' undertakings to improve the environmental and energy performance of the buildings.

Overall, the current French hospitality market has been lagging behind in terms of energy renovation, with the exception of a few brands that have focused on the issue. Significant amounts of capital expenditure will be needed to renovate existing hotels in compliance with prolific French legislation pressing for improvements in environmental impact.

Lenders have begun inserting green clauses in loan documentation, under which they may decrease their margin provided that some conditions are fulfilled, such as obtaining environmental certifications (BREEAM, HQE, etc.), prohibiting fossil energy, or sharing annual reports on the energy consumption of the buildings.

It is possible that in the near future, lenders could even impose specific mandatory prepayment events or events of default relating to the environmental performance of the assets.

Takeaways

- France aims to achieve carbon neutrality by 2050.
- Lenders help by imposing green mandates on the building industry.
- Owners will need significant amounts of capital expenditure to renovate existing hotels.

Green financing rewards for ESG-conscious hotel developers

By David Stokes

The rising cost of materials, labor, borrowing and utilities means that the cost of financing a new hotel today is very different from the costs of doing so even a few years ago. In addition, with the building and construction industry reportedly producing approximately 40 percent of global greenhouse gas emissions, developers are under increasing pressure to reduce their carbon emissions. In light of this, environmental, social and governance (ESG) issues are typically prioritized in new hotel developments.

Where development financing and ESG meet, there is "green financing." We have seen an increase in sustainability-linked loans (SLLs) and green loans. The purpose of SSLs and green loans and a brief description of how the hotel sector uses them are outlined below.

Sustainability-linked loans

Purpose

- An SLL is flexible and typically usable for any purpose.
- An SLL is a green product because the underlying loan document sets specific sustainability criteria for the borrower. There is then a pricing adjustment based on the borrower's performance against the agreed sustainability criteria.

Application in the hotel development sector

- A hotel developer can apply for an SLL for the development financing of a new hotel.
- When a developer produces a hotel that meets predetermined energy efficiency targets, the margin on the loan is reduced.
- Additional reporting obligations with an SSL result in higher administrative costs to the borrower.
- Setting the sustainability criteria at the right level is essential. Failure to meet such standards can result in an increased margin (and higher development costs) and possibly an "event of default" under the loan facility.

Green loans

Purpose

- The green loan market aims to facilitate and support environmentally sustainable economic activity.
- A green loan can be used only to finance or refinance new or existing eligible green projects. Examples of green projects are included within the Green Loan Principles.

Application in the hotel development sector

- A hotel developer producing a "green building" (as defined in the Green Loan Principles) is entitled to apply for a green loan for the purpose of financing or refinancing that building, which could achieve preferential borrowing rates.
- As with SLLs, green loans increase a borrower's reporting and administrative obligations, and it is important to ensure that the developer has the ability and resources to comply with the reporting obligations contained within the loan documents.

Benefits of green financing

Reduced carbon emissions: With increasing pressures on corporates to reduce their carbon footprint, obtaining a green financing product demonstrates that a developer is focused on reducing carbon emissions.

Positive public image: Environmental matters are an increasing priority for investors and end users. A hotel that obtains a green financing product can benefit from a positive image in the market.

Future appeal: A hotel developed in line with a comprehensive ESG plan will likely appeal to buyers, investors and lenders on future sales and/or refinancing.

Better interest rates: Green financing products may offer better interest rates when compared to other loans on the market.

Reduced running costs: Unlike some other commercial investment properties, hotels include all amenity and service costs within the price of booking a room. Developing a hotel that runs efficiently could reduce hotel operating costs and increase profit.

Takeaways

- Development financing and ESG are two key considerations for hotel developers.
- ESG and global environmental concerns are spurring interest in green lending.
- Sustainability-linked loans and green loans offer advantages to hotel developers.
- Green lending does, however, increase borrower reporting and administrative obligations.

Hotels and sustainability: Are the two together a priority for consumers?

By Jimmy Theodorou

Sustainable hotels are those that significantly reduce their environmental impact through green best practices in maintenance, services, logistics, products and supplies. These core elements revolve around reducing waste, saving energy and cutting down on water usage.

There are a number of luxury brands developing sustainable hotels. These hotels are espousing sustainable initiatives such as using renewable building materials, growing produce on-site and going plastic free. They even create their own waste management and recycling facilities and harness the technology to capture waste heat to create energy. As consumer demand for sustainable travel rises, sustainably designed brands are becoming increasingly popular.

Larger, established global hotel chains are also making significant strides to go green. For example, Hilton Hotels & Resorts is prioritizing recycling and waste reduction by making small but impactful changes that most hoteliers can implement. Hilton recycles mattresses and helps to recycle partially used soap, and it donates uneaten food to local food banks. Some 94 percent of Hilton's energy is green energy.

Another leading global hotel chain is reducing its environmental impact by increasing its use of renewable energy, reducing waste and carbon emissions, and managing its use of water and energy. Although these hotels are all making a positive impact on the environment, more needs to happen for the hospitality industry to have a significant, unified impact on slowing climate change.

Why sustainability in the hotel industry?

Pressure is building on the hotel sector to lead the way and make sustainability a key priority. This pressure is coming from two main groups: hotel stakeholders and consumers. There appears to be a bigger focus on sustainability in the development of new hotels. This is a result of consumer demand and rising energy costs. With energy prices soaring in most major economies, hotels that do not take steps to reduce their energy consumption – or find alternative energy sources – will find it harder to survive. Gen Z consumers and up-and-coming generations of millennials are significantly more environmentally conscious and will soon become the dominant market force. The priorities of this new market force are supported by a recent Booking.com survey, which found that the pandemic has made consumers want to travel more sustainably in the future.

This means that the hospitality industry has the chance to reform and move toward a more sustainable future. Or does it? In reality, for the average consumer, value for money seems to be more important than the hotel's sustainability credentials, especially in the current economic climate. Unless a larger proportion of consumers have a change of mindset, real change in the industry will not come. Adapting existing hotels is also difficult and expensive.

While there are definitely long-term benefits of building sustainable hotels, unless the average consumer's mindset shifts materially, changes with more significant impact may be hard to achieve. Either way, hoteliers cannot ignore the needs and desires of the younger generation. In the long term, change will come through development, with all new hotels targeting sustainability as a key focus. For now, though, it seems most likely that sustainability will take a back seat until the majority of consumers change their priorities and make choices based on creating a more sustainable and greener future for generations to come.

Takeaways

- Sustainable hotels take substantial measures to reduce environmental impact.
- The hospitality sector has the potential to help slow climate change.
- Pressure is building for hospitality companies to prioritize sustainability.
- Progress would be better if consumers showed more interest.

How to achieve net zero in hotels with clever legal drafting

By Rebeka Mrzlikar

The hotel industry contributes up to 1 percent of global emissions, a figure that is only expected to increase as demand continues to grow.

This is not surprising for an industry with 24-hour, 365-day-a-year operations, and also given that hotels use more energy than office, retail or manufacturing premises. This places hotels as some of the world's highest per-square-foot energy and water users.

The hotel industry has recognized this issue by joining the global effort to reach net zero. More than 500 travel companies have now signed the Glasgow Declaration on Climate Action in Tourism, which aims to halve emissions by 2030 and reach net zero by 2050.

Various drivers are shifting the hotel industry onto a path to net zero, including:

Laws and incentives: Since the global built environment accounts for about 40 percent of global emissions, governments are passing laws and regulations and setting up incentives to bring about change in the real estate industry.

Meeting customer demands: Guests are becoming more environmentally aware; young millennials, in particular, are increasingly seeking out sustainable hotels and paying attention to hotels' green credentials.

Bottom line: Sustainability initiatives can bring financial benefits to different stakeholders in the hotel industry. For example, hotels are a distinct asset where all utility savings pass directly to the balance sheet of the operators.

The hotel industry faces specific challenges in aligning the interests of all stakeholders. Often, separate companies hold the roles of developer, owner, operator and funder. Further, numerous third parties are involved in the development and operation of hotels. With so many parties involved, it is important that each party does its part to reach the common goal of net zero.

This can be achieved with the help of legal drafting to ensure that the relationships between each party in the hotel industry chain are governed by mutually agreed provisions setting out obligations and the terms of their collaboration.

Reed Smith has been involved with the Chancery Lane Project, an organization that brings together legal and industry professionals to create new, practical contractual clauses to address climate risk. Each new clause is given a child's name to remind users that future generations are the ones most affected by climate change.

Some of the provisions that you may think of including in your company's legal documents are set out below:

Heads of terms: To ensure all parties are aligned on sustainability, environmental provisions can be included in the heads of terms from the start of the transaction. Doing so makes your company's position on these issues clear to the counterparty. See Hanley's Clause.

Building contracts: During the construction or major refurbishment of a hotel, consider including a carbon budget in the JCT Design and Build Contract to incentivize the contractor to adopt materials that are beneficial to the environment and longevity of the project. Include liquidated damages provisions, whereby the contractor would need to pay for every ton of carbon by which the development exceeds the carbon budget agreed by the contractor and the developer. See Tristan's Clause.

Benchmarking: During the building contractor procurement process, introduce a mechanism to benchmark the contractor's carbon footprint against the market. The mechanism would be triggered only if the contractor failed to meet the forecast assessment of emissions submitted as part of its tender. See Izzy's Clause.

Supply chain contracts: To ensure that your suppliers' net zero aspirations align with your own climate strategy and targets, consider issuing a due diligence questionnaire to your suppliers, to gather the information that you need early in the procurement stage. See the Chancery Lane Project's sample procurement due diligence questionnaire.

In summary, no one single approach to reducing carbon emissions in the hotel industry will be enough on its own. Each organization needs to word the provisions of its contracts in a way that best reflects its environmental goals, and many organizations are doing so, with provisions on carbon emissions becoming increasingly common in the industry. As we move closer to the net zero target dates in 2030 and 2050, such provisions will likely need to become a norm in the industry if such targets are to be met.

Takeaways

- Changing laws, customer demand and improving the bottom line are driving the hotel industry onto a path to net zero.
- The hotel industry faces challenges to align interests of all stakeholders.
- Solutions exist in tailored sustainability provisions governing the relationship between stakeholders.

TECH & MARKETING

Influencers in hospitality marketing: Moving with the times

By Nick Breen

Influencer marketing has become a critical tool for the hospitality industry to reach its target market. Historically we relied on TV ads, magazines, travel books and travel agents for inspiration when deciding where to go and stay on holiday. Fast forward to today, and social media platforms provide us with an enormous amount of content that acts as a targeted and personalized recommendation tool.

This has not gone unnoticed by the hospitality industry, with major hotel brands including Marriott and Moxy Hotels launching successful social media influencer campaigns as part of their marketing strategies. Instead of A-list celebrity brand ambassador engagements, hospitality brands realize they can achieve a much better return on investment by working with social media influencers. In fact, according to one study, 70 percent of teenagers trust influencers more than traditional celebrities, and 49 percent of consumers depend on influencer recommendations.

The shift in content consumption requires hospitality brands to reconsider how they market. Whereas reach and volume were key objectives for brands previously, the industry is learning that using social media marketing allows it to be much more targeted and favor engagement over reach. Brands now have access to much richer data about their target market and can use that to help them carefully select the influencers to work with who will have the most relevance.

How does it work?

Typically, influencers are vloggers and creators who regularly post on social media platforms including TikTok, Instagram, Snapchat and YouTube. They tend to have a niche that first draws an audience to them, such as coffee, cooking, video games, travel or almost any other category of interest. Often the content posted is only tangentially related to that interest and is otherwise an edited snapshot of the influencer's daily life. As a consequence, influencers build a strong connection and trust between themselves and their followers. This close and targeted audience built by influencers is precisely what makes them such a valuable marketing tool.

In the hospitality industry, it is quite common for brands to offer an influencer free trips, free hotel stays and free excursions with an expectation that the influencer will feature the trip and experience on their channels.

What should brands be aware of?

It is incumbent on influencers to disclose the nature of their relationship with brands. For example, in the UK, if an influencer has received any form of payment from a brand, then the influencer is required to explain that to their audience. "Payment" also extends to receiving free goods and services. Furthermore, if the influencer receives payment and the brand has any degree of control over the influencer's content (for example, if the brand has approval rights or requires the influencer to say certain things about the brand's goods or services), then the influencer must also expressly label their content in a prominent way with "Ad" or similar identifier. If they fail to do so, then both the brand and the influencer may be investigated by the Advertising Standards Authority.

Given the editorial and real-life nature of vlogs and Instagram posts, it can be quite easy for followers not to realize that an influencer they follow receives some form of commercial benefit from a brand they feature in a post. For this reason, advertising regulators across the world have been increasing their efforts to ensure both influencers and brands are doing their part to avoid misleading consumers.

Takeaways

- Influencers are critical and powerful assets for hospitality brands to engage customers.
- Brands must be selective about which influencers they choose to work with.
- Appropriate disclosure of commercial relationships between brands and influencers is important.

Investment growth in Asian hospitality following a resurgence of demand

By Manoj Purush

The demand for tourism is rebounding as borders progressively open up in Asia. Besides the pent-up demand the pandemic has created, the international tourism frenzy is being fueled by favorable exchange rates and tourists' desire for more than just domestic travel.

Research undertaken by CBRE indicates that operating performance in the hospitality sector is approaching pre-pandemic levels in Asia. The average daily rate (ADR) – occupancy and revenue per available room – is trending higher in all Asia-Pacific markets, with a regional recovery to pre-pandemic levels expected by 2024. ADR in Singapore, for instance, is 5 percent higher than it was in July 2019, based on data from hospitality analytics firm Smith Travel Research.

Such returns are attracting further investment in the hospitality sector in the Asia-Pacific region. Investment in hotels in the Asia-Pacific region rose to $10.1 billion in 2022.

Impact

Such strong demand has caused airfares and hotel rates to soar. While the airline industry faces a labor shortage, similar shortages are hitting other parts of the hospitality sector. The massive layoffs of 2020 resulted in a number of hospitality workers retooling themselves in other industries. With lingering health and safety concerns, the spike in demand has not been attractive enough to persuade some to return to this industry, especially since the taste of retrenchment is still fresh.

In response, the hospitality sector is finding creative ways to help attract employees. Some of these strategies, for example, cross-training, enable the hotels to cross-deploy and fill gaps in departments that are short-staffed while giving these employees a wider range of deployable skills. But according to many, this still might not be enough.

Solutions

In the Asia-Pacific region, artificial intelligence has been slowly creeping into both the front and back offices to bring efficiencies and distinguish operators from their competitors.

In the front office, over-stretched reception staff routinely have to maneuver a number of things occurring simultaneously and still be on their best behavior. An AI-powered switchboard can intelligently route calls, with chatbots becoming more prevalent. Some tech-trendy hotels are introducing remote check-in systems that enable travelers to check in and get to their rooms without interacting with a single hotel staff member.

In the back office, AI can play a strong role in driving up profits by managing revenue, etc. Property management systems and point-of-service systems are already powered by artificial intelligence.

To further attract travelers who are becoming more demanding in such a highly competitive environment, hotels are looking for ways they can differentiate themselves. Consumers are tired of the monotonous brand experience they get at traditional hotels. AI allows hotels to personalize every aspect of a consumer's stay – from offering a choice of different amenities to proposing services that uniquely appeal to individual customers. Such personalized experiences create strong memories and build loyalty.

These types of high-tech hospitality enhancements are here to stay even if some categories of travelers, such as Baby Boomers, continue to prefer high-touch service.

Takeaways

- The post-COVID-19 hospitality rebound is attracting investment to Asia.
- It is also revealing labor shortages that may be hard to fix.
- AI may help to address the shortfall and personalize the consumer experience.

Japan's robot hotels

By Tony Alfonso

Takeaways

- Technology can reduce costs for hoteliers.
- The hospitality robots market is expected to grow significantly.
- Current technology cannot replace human interaction, but this may change.

Success in hospitality is inevitably linked to cost-profit optimization. And technology in hospitality is the response to this need. Some hoteliers fear that the frequency with which new hospitality technology hits the market can impact the quality of the guest experience they provide and often dismiss many of the innovations employed by others. However, this more conservative approach to innovation rarely pays off for the hotelier.

A key challenge is to determine how the technology can help without impacting the customer experience.

An example of this was Henn na Hotel in Japan. Certified by Guinness World Records as the first hotel with working robots, the Henn na Hotel was the brainchild of Hideo Sawade, a Japanese travel tycoon and opened in 2015.

Reports had indicated that there may be a shortage of as many as 3,000 hotel rooms in Tokyo for the 2020 Olympics and it was thought that robot-staffed hotels may be part of the solution to this problem.

Hotels in Japan incorporated the latest technologies at the time. From reception to room service and from security to cleaning, many of the services at these hotels were provided by robots. Some robots resembled human employees in a weird, but accurate way. Others were friendly dinosaurs who could speak to you in Japanese, English, Chinese or Korean.

Guests arriving at the hotels may be checked in by a robot. Another robot may transport suitcases and escort guests to their room, which had just been cleaned by a robot. Face recognition technology may open the bedroom door and turn on the AC automatically. Even the wardrobes were powered by technology and when guests hung their clothes, the wardrobes cleaned and ironed them automatically using TrueSteam™ technology.

Many pundits suggested at the time that this would be the future of hospitality as the cost of robotics was much lower than the cost of hiring and training staff. The concept had potential, service was quicker with robots, productivity increased, and they completed systematic work more quickly and worked without getting tired.

However, complaints from customers showed that they missed the human interaction and found the experience quite isolating. The robots annoyed guests, as they were unable to understand different accents, non-preprogramed questions and unusual terminology and would often break down. Guests complained their robot room assistants thought snoring sounds were commands and would wake them up repeatedly during the night.

Even staff complained – they felt that a large percentage of the robots were more adept at creating work for their human counterparts than they were at reducing it and failed to reduce costs.

After four years, the Henn na Hotel reduced its 243-robotic workforce by more than half and returned to more traditional human-provided services for guests, though it still maintained a number of robots in areas where it found them to be effective and efficient.

However, despite the challenges, robots have come a long way since then, and the hospitality industry is becoming increasingly automated as technology and connectivity improve. The hospitality robots market is expected to grow to $3.08 billion by 2030, according to a report by Allied Market Research.

This growth is being driven by the growing need for efficient and cost-effective solutions, as hotels increasingly turn to robots to improve operations and enhance the guest experience. Replacing humans with technology may have significant consequences, as well as some unintended legal consequences if technology fails to operate properly. The challenge is for the hospitality industry to enhance the customer experience rather than replace human interactions.

Kick-off of World Cup brings ambush marketing to fore

By Nick Breen and Mikaela Belcher

Takeaways

- Marketing that suggests a connection between a brand and a high profile event where there is no such official connection is known as 'ambush marketing'.
- Advertisers use ambush marketing to direct consumer attention on a particular event towards their brand.
- Ambush marketing can be attacked from a variety of legal angles.

Ambush marketing encompasses a wide range of marketing activities but can generally be said to be any marketing that takes advantage of the buzz and goodwill surrounding a high-profile event, typically a major sporting event such as the World Cup 2022, despite the advertiser not being an official sponsor or licensee for the event.

Like most organizers of major sporting events, FIFA usually seeks to prohibit ambush marketing techniques by advertisers in connection with its tournaments. For example, for the World Cup 2022, FIFA warned that marketing activities that could create the impression that the advertiser and FIFA had a commercial association when there was no such official relationship were "not permitted and are subject to legal measures."

Despite these warnings, the kick-off of the World Cup 2022 heralded an ambush-marketing avalanche. Notably, however, not all ambush marketers managed to avoid falling foul of the rules.

What legal measures may apply to ambush marketing?

Direct legislation: Unfortunately for would-be ambushers, it is increasingly common for the organizers of prestigious international sporting events (such as the Olympic Games) to require the host country to pass special legislation to protect against ambush marketing in connection with the event.

The powers introduced by such event-specific legislation are typically extensive, but there are normally gaps that savvy advertisers may exploit. Usually, event-specific legislation has only a narrow window of applicability, encompassing the period prior to and during the event in question. Similarly, event-specific legislation is unlikely to apply to ambush marketing campaigns that take place beyond the borders of the host country.

Proprietary rights: Event organisers such as FIFA commonly use trademarks, copyright, design rights and other intellectual property protections across multiple jurisdictions to provide wide protection against ambush marketing. For example, in the UK, the phrases "World Cup", "World Cup 2022", "FIFA World Cup 2022" and "Qatar 2022" are all FIFA registered trade marks. Significantly for advertisers, infringing such intellectual property rights can lead to substantial damages.

Indirect legislation, regulations, codes: Ambush marketing may be caught by rules in relation to misleading advertising where it leads consumers to infer an official connection between the advertiser and a particular event, organizer or participant, when in fact no such connection exists.

Top tips

Ambush marketing campaigns often push the boundaries of what is considered to be acceptable advertising. Before launching any ambush marketing campaign, take steps to mitigate commercial and legal risks. Here are some practical top tips to consider:

Don't use any third-party intellectual property

Consider adopting an innovative way to refer to the applicable event in your promotional materials and social media posts rather than using the official name (for example, U.S. advertisers often choose to refer to the "Big Game" instead of the "Super Bowl") to mitigate the risk of trademark infringement.

Make it clear that you're not an official sponsor for the event

This may help to mitigate the risk of falling foul of advertising regulations by misleading consumers into believing that your brand is officially connected to a particular event when in reality it is not.

Location, location, location

Regulations on ambush marketing are territorial. The lack of harmonization across different jurisdictions means that would-be ambushers must be particularly careful when deciding where to target a campaign.

Licensing of music in the UK hospitality industry

By Christopher Eklund
and Ella Evagora

For UK businesses to play live or recorded music in their business premises, licences will normally need to be obtained from the relevant collecting societies, the Performing Right Society (PRS for Music) and/or Phonographic Performance Ltd (PPL). Such licenses can help to protect UK businesses from breaching copyright when playing music "in public." This article explores at a high level the underlying copyright in live and recorded music and the means by which relevant licenses can be obtained for playing music in UK business premises, particularly in pubs and hotels.

Copyright

The Copyright, Design and Patents Act 1988 governs the law on copyright in the UK. In the context of music, the following descriptions of works are protected under UK copyright law: the underlying composition (the written song, lyrics or sheet music) and the recording (the recorded version of the composition).

Infringing copyright

The unauthorized playing of music in public can infringe the rights of the copyright owner. If a pub or hotel plays music through the radio, TV or other sound system without the relevant consent from a copyright owner or relevant license from the collecting society, there could be a breach of copyright for an unauthorized "public performance." Hospitality venues cannot simply play music from their music streaming accounts such as Spotify.

Damages or remedies such as injunctions, accounts of profits or even criminal sanctions may apply if copyright infringement is proven.

Getting licensed by collecting societies

Collecting societies' license rights in copyright works on behalf of their members. The collecting societies provide licenses to pubs and hotels for a fee, which then allows the pubs and hotels to play music in their public spaces without breaching copyright.

A pub or hotel will typically need to obtain the following licenses:

- License for the right to perform the musical composition in public. This right is managed by PRS for Music in the UK, on behalf of composers and publishers of the musical and literary copyright.
- License for the right to play sound recordings in public. This right is managed by PPL in the UK, on behalf of record companies that own the sound recordings, as well as performers who perform on those recordings.

Some music may not be covered by the license, for instance when music rights belong to a person or company that is not a member of PPL or PRS for Music.

TheMusicLicence could offer another route

PPL PRS Ltd., formed in 2018 as a joint venture between the PPL and PRS for Music, issues a single license called "TheMusicLicence" that businesses may use to license public performances of musical works and sound recordings.

Although TheMusicLicence is managed by PPL PRS Ltd on behalf of PPL and PRS for Music, the two collecting societies independently set and review their licensing tariffs.

Other licenses

Other licenses may be required for the hospitality industry to legally play music in public. By way of example, the professional dubbing (ProDub) license may be required for individuals to copy music onto various devices, for example, from a CD to a laptop. If a hotel or pub employs a DJ or fitness instructor, they should check whether the DJ or fitness instructor has obtained the relevant license.

Pubs and hotels that play recorded music should also be aware of the Licensing Act 2003, which governs regulated entertainment. Under the statute it could be a criminal offense to carry out a licensable activity without a license. Licenses can be obtained from the relevant licensing authority, which is usually the district or city council.

Takeaways

- Establishments that play live or recorded music on their premises should obtain relevant licenses.
- Obtaining a license reduces the risk of copyright infringement when playing music in public.
- Other licenses should be considered (e.g., under the Licensing Act 2003).

Metaverse hotels: A new type of chain arises

By Bryan Tan

Takeaways

- The metaverse has immense potential for hotels and hotel chains.
- Different risks and regulations apply, just like moving between hotels and countries.
- The regulatory landscape is constantly evolving.

The metaverse promises to be a space in virtual reality that transcends physical borders and avoids the ravages of human disease as recently experienced. Powered by blockchain technology, it offers users a myriad of experiences from the comfort and safety of where they are. As hotels start planting their flags in the metaverse, what legal issues should concern them?

Background

The business case for hotels in the metaverse is clear. Research firm Gartner estimates a quarter of people will spend an hour daily in the metaverse by 2026, and the entire metaverse market is projected to reach $1.2 trillion by 2030. One hospitality player accumulated a return on investment of 100 times from a single augmented reality campaign. The metaverse gives hotels an opportunity to build virtual experiences that can reach people anytime, anywhere. However, hotels should be aware of legal issues with smart contracts, portability and regulation.

Smart contracts

A customer's interaction with a hotel is often a series of many contracts – checking in, purchasing from the mini-bar, viewing cable television, dining and other services. This is the same with a multi-sensory and multi-experiential metaverse. Just like real-world contracts, hotels must navigate smart contracts carefully as they have a unique risk profile. Although the name suggests otherwise, smart contracts can fall prey to bugs and human error. Hackers could exploit smart contracts and steal funds earmarked within these contracts. Security risks are further complicated by the fragmentation of blockchain platforms and standards underpinning these contracts: Each type of smart contract has its own pitfalls to be mitigated.

Hotels must also manage commercial risks appropriately in smart contracts. Unlike transaction fees in the conventional banking system, the equivalent gas fees on blockchains are more volatile. A recent minting of virtual land non-fungible tokens (NFTs) incurred gas fees amounting to nearly 37 percent of the NFTs' own value. Hotels have to consider the risks that arise from transactions in the metaverse, and how they should be allocated between parties. Franchising and travel agency sales may introduce additional complexity, such as reflecting commission structures in smart contracts.

Portability

There are multiple virtual landscapes in the metaverse, such as Decentraland, Second Life and The Sandbox. Just like properties in multiple countries, customers may move between properties in multiple virtual landscapes, or from one hotel chain to another, competing hotel chain. Hotels should ensure their data policies comply with data portability requirements in data protection legislation such as the General Data Protection Regulation.

Hotels should also consider how rights transfer from the real world into the metaverse. For example, clearance should be sought for digital reproductions in virtual properties. These range from virtual room furniture, to artwork in hallways, to music playing on location. Hotels should also consider how rights transfer from the metaverse into the real world, such as when they issue NFTs that offer exclusive benefits in real-world hotel outlets.

Regulation

Just like the crypto space, new rules are likely as the metaverse achieves ubiquity. From securities regulations potentially applying to NFTs and coin offerings, to laws combating online harms potentially applying to virtual hotels, we should expect some aspects of the metaverse to be regulated.

Next steps

The metaverse offers hotels the immense potential of broadening offerings and deepening customer engagement. New opportunities come with unique issues, but hotels that stay abreast of the challenges are poised to benefit from the metaverse.

New technologies post-pandemic bring opportunities and risks for operators

By Tony Alfonso

The COVID-19 pandemic created an unprecedented crisis for hotel operators. However, as with many crises, the pandemic also presented unique opportunities. For example, many operators deployed technology for safer, healthier environments and an improved guest experience.

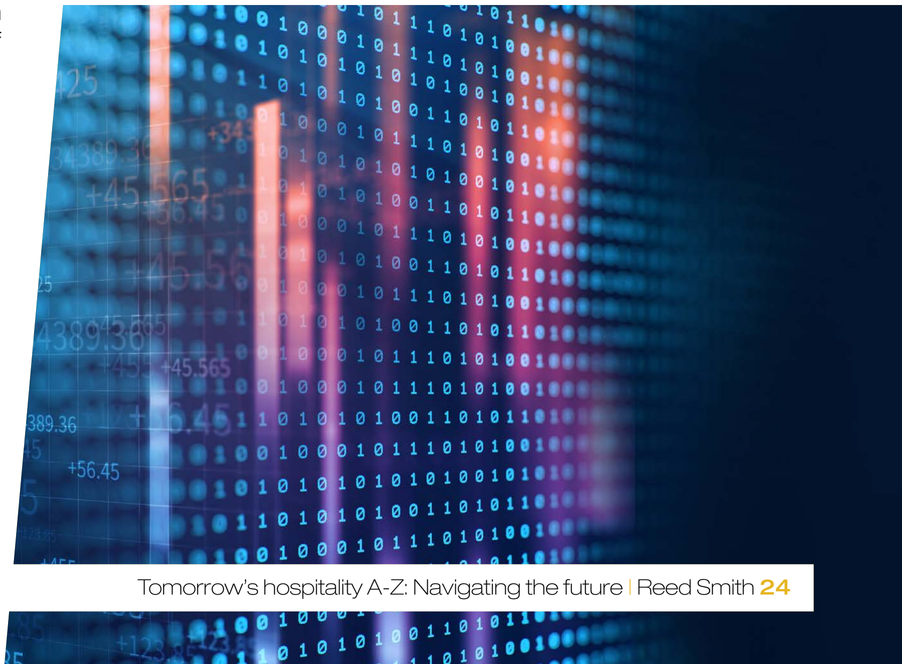
At the onset of the pandemic, technology adoption focused on equipment sanitization and contactless payment systems to safeguard physical environments for guests. A newer trend is moving hotel operations to platforms that take advantage of web3 and blockchain technologies, thereby allowing owners and operators to capture, organize and use data to improve hotel operations.

Adoption of contactless payment systems can allow use of cryptocurrencies to streamline the payment process and decrease costs. Although adopting new technologies brings challenges and obstacles, such as the volatility of cryptocurrencies, these technologies do improve and overcome barriers. For example, “stablecoins,” which are tied to traditional fiat currencies, now provide stability in the use of cryptocurrencies. Blockchains also can help hotel operators manage their loyalty programs and create more efficient processes for guests to redeem rewards.

Hotel operators now use internet-of-things technology, such as sensors, to gather real-time data related to the use of electricity and other resources in hotel operations. This real-time data gives operators the detailed information required to reduce operation costs and environmental impacts. As companies continue to focus on adopting environmental, social and governance (ESG) plans, reducing costs and environmental impacts in hotel operations can also contribute toward reaching a company’s decarbonization and other ESG goals.

As hotels increasingly use new technologies in operations, operators need to be mindful of unintended consequences from the legal and risk management perspective. Replacing employees with technology can increase liability, which hotel operators may need to consider and mitigate. It is important to make sure that the hotel operator’s risk management procedures and insurance programs cover new technology from both property and liability perspectives. This important consideration gets overlooked when risk management teams are unaware of new technologies being added to hotel operations.

In spite of the benefits technology brings to hotel operations, there are always risks in replacing human interactions with technology. It is important for hotel operators to carefully consider how technology can effectively enhance the guest experience without detracting from it. Guests can sometimes be frustrated when, as we have all experienced in our daily lives, robots or automated systems cannot perform as effectively as humans in solving problems. Hotel operators need to be especially mindful of this issue since customer satisfaction is the foundation of the hospitality industry.



Takeaways

- Hotel operators use technology to decrease costs and enhance the guest experience.
- Technology can improve efficiency and mitigate environmental impacts.
- Watch out for unintended consequences when technology replaces human interactions.

Operational efficiencies and opportunities enhanced by Hospitality 5.0

By Dr. René Lochmann and Katrin Gerceker

The term "Industry 5.0" refers to the direct cooperation between humans and intelligent machines (robots), which means robots helping humans to work faster and better by using technologies such as the internet of things and big data. In addition to the familiar two pillars of Industry 4.0 – automation and efficiency – this requires a personal, human touch. The same can be said for the hospitality industry, which must also adapt in a post-COVID world to remain relevant and indeed survive.

Considering that the people who could always be relied upon to book business class flights and rooms in five-star hotels – i.e., senior and middle management – have reduced business travel to a minimum, it is becoming more and more necessary to rethink the approach to hospitality in less picturesque city locations. Similar to "workations," a mixed form of business and leisure travel ("bleisure") could prove promising. So for hotels that were once geared almost exclusively to business travelers – guests who sleep, have a quick breakfast and strain the Wi-Fi to its capacity – it is not enough to offer an "anti-inflammatory-super-collagen-boost latte" alongside the filter coffee.

To survive in this evolving world of hospitality, hotels that formerly targeted business travelers must now focus their efforts on revitalization and the creation of a contemporary brand image that is attractive to the modern-day traveler. This means making the transition from a "room upgrade, with free Wi-Fi and good airport connections" to a "green 5G-ready hotel with a spacious onsen spa and self-check-in via the app," in order to get a "safe-travel stamp" from one of the major hotel booking portals.

However, such a paradigm shift requires not only a creative approach to contemporary design and taking on more hip and qualified staff who are familiar with individual preferences (yoga instructors, baristas, etc.) in a time of acute staff shortages, but also a brave leader – a leader who does not lose their resolve to transform the business, even during lengthy and heated negotiations with the various parties who all have a stake in the hotel, such as hotel owners, operators, franchisors and restaurant lessees. This driven individual must also have unwavering faith in their vision since they are the ones who must ultimately pitch the business plan to the final decision makers: the financing entities.

An example from the authors' home base is illustrative. Overnight stays in Germany, especially Munich, are almost back to pre-COVID levels, but in a world of high inflation, rising interest rates and rocketing energy costs, property values have not yet recovered from the crisis. And even financing is not the last of the challenges, because building renovation or change of use (such as changing or adding amenities, bars and leisure facilities) requires corresponding building or change of use permits in most cases – not to mention compliance with ESG criteria and the need to meet certain sustainability KPIs and environmental targets. Such undertakings require not only detailed planning and a reasonable timeframe for obtaining the necessary permits, but also – if they are to be realized – that construction companies and building materials are available and cost estimates are predictable, which in current times may turn out to be a challenge.

In regard to the capital investment needed to transform the hospitality industry, it should be expected that international investors and banks providing finance must also adjust to the changed market and rethink their conservative valuations and short-term expectations of operational properties. They will probably favor investments in tailored offerings that will generate revenue in the short term, but will also pay for themselves in the long term by contributing to higher margins and profits.

Bloggers and content creators offer a significant advertising platform with an enormous reach, but they are not going to cover the costs of staff, toilet paper, gas central heating, etc. And so, the hidden-away hotel on a green strip of land in a city of concrete and glass, promoted on social media or the metaverse in dazzling, colorful pictures, without any associated debt owing and with fully paying guests in the "real verse" is doomed to fail – and no robot butler in the hallway or contemporary art on the wall will save it.

Takeaways

- Hotels and hospitality companies must adapt to meet the changing demands of the modern-day traveler.
- Industry players must adjust to changes in the post-COVID hospitality landscape.
- Lenders and investors must re-evaluate their short-term expectations for operational properties.

NEW TRENDS

Online travel agents and their role in the European hospitality industry

By Dr. Philipp Süss and Dr. Alexander Hardinghaus

Takeaways

- The importance of online platforms, including online travel agents, has increased significantly.
- The EU has modernized the legal framework for online travel agents, seeking to balance relations between platform giants and business users.
- Rules to govern short-term accommodation rentals are in the offing, perhaps in the form of harmonized EU legislation.

The role of online travel agents (OTAs) has become increasingly important within the hospitality industry. A growing number of customers are turning to OTAs as a one-stop shop to search for and book hotels online. According to a study by the EU stakeholder organization HOTREC, the market share of online intermediaries (OTAs and global distribution systems) for hotel bookings in Europe increased from 21.8 percent in 2013 to 28.7 percent in 2021.

In light of OTAs' significant market reach and global footprint, the dependency of hotels on OTAs remains very high. At the same time, OTA commissions are one of the largest cost factors for hotels.

In 2020, the European Commission found that 46 percent of business users experienced problems with online intermediation services throughout their business relationship. One out of five businesses often experienced problems, while heavy business users, i.e., businesses generating more than 50 percent of their turnover via online platforms, were even more likely to experience problems.

Meanwhile, the EU has modernized its legal framework for OTAs, enacting various harmonized legal instruments to rein in the power of OTAs as online platform gatekeepers. These measures are designed to ensure a more balanced partner relationship between online platform giants (including OTAs) and business users, such as hotels, and customers which depend on the major online platforms and gatekeepers.

Platform-to-Business Regulation – Regulation (EU) 2019/1150 (the P2B Regulation)

The P2B Regulation took effect on July 12, 2020. It aims to ensure the fair and transparent treatment of business users by online platforms, giving them more effective options for redress when they face problems, and creating a predictable and innovation-friendly regulatory environment for online platforms within the EU. The P2B Regulation sets forth specific legal requirements for OTAs' terms and conditions for business users.

The P2B Regulation also introduced new transparency requirements for OTAs; this includes new requirements to achieve a more thorough understanding of rankings and search results. The P2B Regulation was well received by the hospitality sector.

Digital Markets Act – Regulation (EU) 2022/1925 (the DMA)

The DMA applies from May 2, 2023. It will put an end to unfair practices by companies that act as gatekeepers in the online platform economy. While only dominant OTAs will qualify as gatekeepers, the DMA establishes a list of do's and don'ts that gatekeepers will need to implement in their daily operations to ensure fair and open digital markets. Among others, the DMA sets out a ban on narrow price parity clauses, which would prevent hotels from offering a better price on their own channels than on the OTA's platform. Europe's hotel industry expressly welcomed the DMA as a clear signal to digital giants to behave like partners, and not as gatekeepers.

Proposal for a new EU regulation on short-term accommodation rentals (STR)

On November 7, 2022, the European Commission presented a proposal for a new EU Regulation on STR (STR Regulation). In essence, the STR Regulation is intended to ensure a level playing field among all accommodation providers by introducing new obligations for hosts of STR and OTAs listing STR on their platforms. The proposed new obligations for OTAs include the obligation to display hosts' registration numbers on their platforms and the obligation to share specific data about hosts' activities and their listings with public authorities. Industry stakeholders support this new proposal.

Conclusion

The EU legal framework for business users of online platforms, including OTAs, is in the middle of a significant improvement. But what will come of the EU's efforts to achieve a level playing field around STR remains to be seen.

Prosecutions are soaring due to allergens labeling breaches in the UK

By Joy-Emma Martin

Food and catering businesses are coming under increasing regulatory scrutiny for failures to communicate allergen risks to customers. This can cause legal and reputational damage, as a number of recent regulatory prosecutions demonstrate.

Food allergy law

Much of the law concerning food allergen labeling in the UK derives from EU law. The EU Food Information to Consumers Regulation (FIC 2011) recognizes 14 allergens, including celery, milk, fish, nuts and sesame seeds.

FIC 2011 also outlines the required format for presenting allergen information. Packaging must bear the name of the food and all allergens present in the food must appear in the ingredients list. Allergens must be emphasized (for example, by way of bold font, italics or color). For non-prepacked food, allergens may be highlighted by any means, including verbally or through menus, labels and signs.

Food business operators are responsible for complying with labeling requirements, with failure to supply allergen information carrying criminal penalties. The EU Food Information Regulations 2014 impose an unlimited fine for breach of allergen labeling requirements (although in practice, the fines imposed are based on numerous factors, including the revenue of the business).

Recent cases

Recent news stories show the grave implications of poor allergy signposting.

In December 2017, Pret A Manger (Pret) was charged with food safety failures for selling a sandwich – labeled "vegan" – that was contaminated with milk protein, to a woman who later died due to a severe allergic reaction to dairy. Although the prosecution was dropped due to insufficient evidence, the inquest, which took place in September 2022, highlighted serious supply chain food testing deficiencies.

Pret was also charged in November 2017 with selling food with incorrect allergen information, contrary to section 14 of the Food Safety Act. In this case, a student suffered an allergic reaction to a sandwich containing sesame after a Pret staff member failed to highlight the allergen. The restaurant was acquitted, having claimed that its staff acted outside of its allergen procedures, despite training. This ultimately led to the extension of allergen labeling requirements in FIC 2011 to food that is prepacked for direct sale in the UK, through the introduction of "Natasha's Law."

The courts have also not shied away from penalizing restaurants for breaching allergen-labeling laws. The owners of Haute Dolci in Ellesmere Port, Cheshire, were sentenced to pay a total of £3,635 after a woman collapsed in September 2020, having eaten food containing nuts at the restaurant where she had warned staff about her allergy.

The owner of Royal Spice in North Staffordshire was fined more than £5,000 for selling a pizza containing almond powder to a customer with a nut allergy. Owners of a takeaway in Lancashire with the same name were sentenced for manslaughter in 2017 when a customer died after her order contained peanut protein, despite her flagging her allergy. The owners successfully appealed the conviction.

Conclusion

Hospitality operators should ensure that systems and procedures are in place to ensure food is correctly labeled for allergens. Where food is not packaged, they should inform customers about any allergens present at the point of sale to avoid criminal charges and reputational damage.

Takeaways

- Poor allergen procedures are triggering fines on food and catering businesses.
- Failing to communicate allergen risks may endanger customers and create legal and reputational problems for hospitality operators.
- Allergen labeling requirements have been extended to food prepacked for direct sale.

Q&A with leading hoteliers

We interviewed Arnaud De Saint-Exupery (Area VP & GM Hyatt, UK & Ireland) and Mario Flanagan (GM Andaz London Liverpool St). Participants' responses have been consolidated and edited for length.

What do you think have been the biggest changes in the hospitality sector in the last five years, apart from COVID-19?

Despite the lingering effects of COVID-19, 2022 was a better year for Hyatt hotels than 2019!

Labor: Finding the right people has been tremendously hard, made worse by Brexit. There has had to be a big focus on training staff and developing the talents of the next generation. It takes time to build the right team, and having the right people in place significantly increases customer satisfaction. Productivity of the team is also paramount and we are trying to mentor our teams to change their way of doing things. Good customer service is what drives additional revenue opportunities and adds more value to the stay, meaning that guests are more likely to return.

Technology: The evolution of technology has meant that hotels can be more flexible in how they do things and allows hotels to connect to new audiences as well as guests staying in the hotel. Although technology is improving every day, the general consensus is that technology cannot replace people and the human touch – robots may work in Japan, but using robots to replace staff is unlikely to happen outside of Japan. Although technology can significantly help the budget hotel chains, luxury hotels will always need human interaction – as service can make or break a stay.

Bleisure: The "bleisure" (part business travel, part leisure travel) mindset is here to stay and more and more people are combining work trips with extended vacation before, during or after the work event, with big hotels reaping the rewards of this new trend. As jobs lean into hybrid and remote work, the lines between work and life — and business and personal travel — continue to blur. Workers engaging in bleisure travel want the ability to get out of their rooms but still have access to Wi-Fi to relax or get work done. Savvy hospitality businesses are transforming these guest desires into stylish semi-public spaces where guests can engage tech on their terms.

Brexit: Brexit certainly affected the UK industry, not just in terms of workers, but also the supply chain of products, as hotels can no longer get the products they have relied on for so long. The whole industry has had to become more flexible and less demanding in their needs and specifications.

What do you think will be the biggest changes in the hospitality sector in the next five years?

Technology: Communications and targeting tools will continue to evolve and help the hospitality industry to increase revenue by targeting the right audience. We have started to use marketing companies who analyze metrics and data to be able to send paid adverts directly to our target markets. The larger hotel chains, including ourselves, are starting to employ chiefs of technology to keep up to date with the latest technology, which can help improve productivity in the tasks involved in the back-of-house operations. The use of clever technology also reduces the risk of mistakes. We believe there will also be a growth in the use of automatization programs, e.g., for roster creation and headcount planning. This technology already exists in other industries, but is likely to become more mainstream in the hospitality industry in the future.

Growth: Surprisingly, 2022 was a better year than 2019 for a lot of hotel chains globally, apart from Asia, where travel restrictions still apply. There has also been a rise in the number of new hotels opening post COVID-19. Leisure travel has proven its resiliency and durability and has recovered more quickly than business travel.

The competition between hotels is likely to increase, as they will try to appeal to all client sectors. For example, Hyatt bought luxury resorts operator Apple Leisure Group, which took us into the luxury all-inclusive market. The global luxury travel market is expected to grow by about 11 percent by 2027.

Q&A with leading hoteliers *(cont)*

Data: Data privacy is essential. Guests are becoming more concerned about data privacy and protection as businesses (particularly hospitality brands) collect increasing amounts of personal data for marketing and research purposes. Guests need and want control over their data and transparent information regarding its intended usage.

Hospitality providers must be informed about the law and appreciate why data privacy is so significant to guests, especially in the wake of recent legislative developments providing customers more rights over their personal information.

Travelers are more likely to remain with a business, spend more money and promote its services if they feel comfortable providing the company access to their data. Adopting the proper approach to data privacy is crucial for the hospitality industry because repeat business and reputation-building depend heavily on trust and loyalty.

What do you think about the metaverse?

We don't personally believe it will be a thing in today's world, and we are not convinced that it will feature imminently either.

However, we do believe it is plausible that hotels will start incorporating aspects of it more and more. It's definitely a generation and mindset thing, as millennials and Generation Z would think nothing of buying add-ons for gaming, etc., so why not a hotel stay in the future?

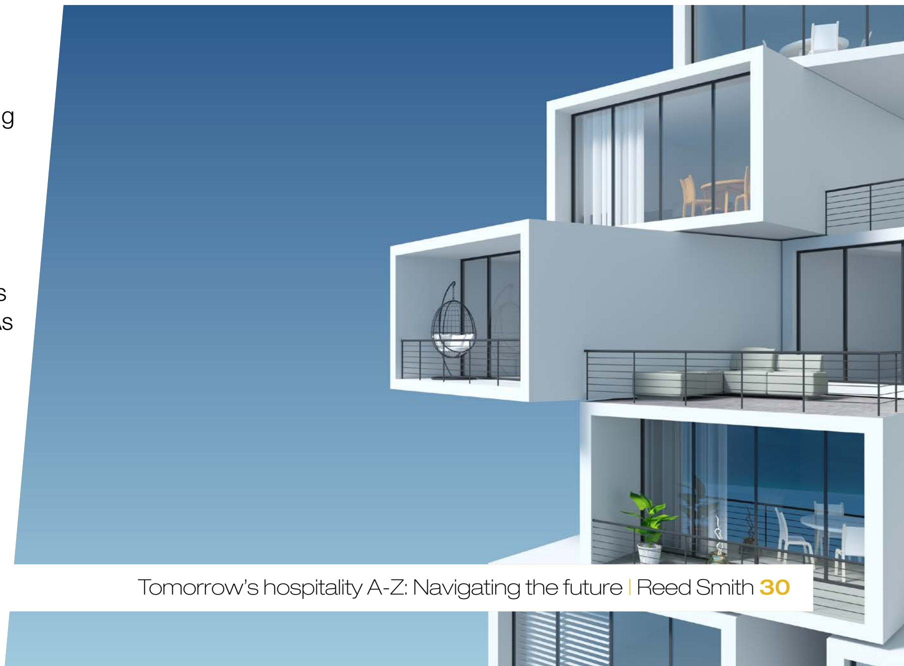
How high on the agenda is sustainability?

Very high. Hyatt has launched a World of Care, which deepens Hyatt's commitment to caring for their people, the planet and communities. As the world evolves and new challenges emerge, we have brought our global environmental, social and governance strategy to life through our World of Care platform. Deeply embedded across all areas of our business, World of Care is our global approach to advancing care for the planet, people and responsible business.

Under our 2020 environmental framework, Hyatt achieved its 25 percent per square meter greenhouse gas reduction goals early across its three regions, took a leadership position in sourcing seafood more responsibly by becoming the first global hotel brand to set sustainability goals with the World Wildlife Fund, and initiated the transition to large-format bathroom amenities.

Each hotel has goals and strives to improve year on year – they do as much as they can – no plastic, eliminate waste, conserve water, responsible sourcing, etc.

A new Andaz hotel is being built with a net zero focus, i.e., no carbon footprint, and with a garden on the roof. In terms of achieving net zero hotels, we are focusing on new builds, as it's much easier to control in new buildings.



Restoration Hardware Guesthouse: A new hotel market post-COVID

By Drew Robinson

After almost two years of travel restrictions and intermittent quarantines, the world's desire for luxury travel has exploded. However, consumers are approaching holiday breaks and vacations with a mindset and priorities that have been markedly transformed. The modern-day luxury traveler now expects something unique and is willing to spare no expense in order to have the holiday of a lifetime. A boom in luxury travel has ensued with the hospitality sector adopting new approaches to satisfy this growing consumer demand.

A new hotel concept by RH – formerly Restoration Hardware, a furniture store turned luxury curator of products, places, spaces and services – is embracing just this, with the hotel opening in New York City's Meatpacking District on September 8, 2022.

"The RH Guesthouse has been designed through a lens of privacy and luxury… We believe privacy is going to become a large and important market, and the RH Guesthouse has an opportunity to define that new market with an unseen-before level of design, quality, and hospitality," RH Chairman and CEO Gary Friedman explained.

RH Guesthouse opened at 55 Gansevoort Street in a historic triangular loft building comprising a total of only 10 units: six adults-only guest rooms, three suites and a penthouse (Friedman's personal space that will occasionally be offered for rent). The Fantini fixtures, freshly stocked gourmet pantry and fresh fruit in each room – in lieu of a minibar – evoke the luxury RH is known for. There are also two restaurants on the premises, serving a curated menu including everything from wood-grilled avocado with caviar to Australian Wagyu rib-eye and even an entire branzino cooked over Japanese charcoal. RH's investment in luxury is partially informed by the success of other luxury brands during COVID and is a gauge of what will sell in the post-COVID hospitality space.

Luxury is not the only commodity offered at RH Guesthouse; the new hospitality concept also sells privacy: RH Guesthouse has a no-social-media policy, reserved guest entrance, soundproof windows and a private gym in each accommodation unit. With nightly rates for guest rooms starting at $3,500/night and suites set to begin at $7,500/night (with a two-night minimum), privacy certainly comes at a cost. However, RH is betting privacy can be not only monetized but also a market force in the post-COVID hospitality industry. There are consumers that are hesitant to return to old habits such as sharing public amenities and being in large crowds out of concern for their physical wellbeing. The privacy provided by RH Guesthouse may reassure these consumers enough for them to feel it is safe to stay there.

Despite the demand for luxury travel, there is also a growing demographic of socially conscious consumers who are rejecting overt displays of wealth in favor of more inconspicuous travel choices. Ethical living, artisanship, authenticity and sustainability drive their approach to luxury and experience is the new currency for these holidaymakers, who seek self-fulfillment through greener travel and an immersive and cultural escape. For example, the South African hotel Sterrekopje, situated on 124 acres of farmland in South Africa's Western Cape wine region, is an eco-traveler's paradise. It strives for sustainability in all areas, from the water treatment system to the minimum waste restaurant, to the use of eggs and seasonal produce grown on the farm itself. Holidaymakers who reside there can escape from the hectic pace of life and immerse themselves in the local culture by having a traditional Reiki spa treatment or taking a pottery class in the onsite arts studio.

When comparing RH Guesthouse to these escapist holiday retreats, it is unclear if the guesthouse provides the holistic experience that the modern-day socially conscious traveler is looking for. However, the accommodations at RH Guesthouse provide a niche offering for luxury travelers who highly value both luxury and privacy.

The success of RH Guesthouse is not a foregone conclusion, but how this new hospitality concept fares will be an important business indicator for developers, investors, operators and others. It will be particularly interesting to see both the unique opportunities and challenges presented by a concept that sells both luxury and privacy in the post-COVID era.

Takeaways

- Demand for luxury has grown discernibly with the lifting of COVID restrictions.
- Real estate developers and investors are rethinking offerings in response to growing demand.
- Bespoke hospitality concepts present unique opportunities and challenges.

Risk potential vs opportunities of using AI

By Cynthia O'Donoghue, Andreas Splittgerber, Joana Becker and Alexander Pierce

Hospitality businesses are increasingly embedding artificial intelligence (AI) into their operations, but the efficiency and insights offered by AI do not come without risks.

Anticipating preferences and services for hotel guests

Machine learning can identify and analyze guests' preferences and interests and give them tailor-made recommendations. Algorithms can organize large volumes of customer data (including biometric data) to draw conclusions about, for example, a customer's go-to drink or room preference. Identifying these partialities can enhance the customer experience and ultimately strengthen sales.

Many of these AI systems (particularly in the biometric and emotion markets) are in the early development stages. If these tools are not appropriately developed and trained with a high-quality data set, there is a significant risk of profiling, bias and inaccuracy. Biometric data is particularly sensitive and falls under the General Data Protection Regulation's (GDPR) definition of "special category data." The UK Information Commissioner's Office has warned that it will investigate organizations that fail to act responsibly when deploying biometric and emotional analysis technologies.

Dynamic and personal pricing

Historically, hotel managers set fixed-price bands for their hotels based on the city and the season. This was a time-consuming process that did not respond to surges in demand and failed to maximize revenue. Machine learning can automate this process by updating room prices in response to changes in demand, maximizing room occupancy and increasing revenue per room. It also can provide personalized pricing to different consumers based on their purchase history and inferred price elasticity.

Regulators have identified potential concerns, however, with these pricing mechanisms. For example, the UK Competition and Markets Authority has highlighted that such practices may be harmful to consumers because they may be difficult to detect, target vulnerable consumers and have unfair distributive effects.

Finding and rooting out fake social media reviews

Social media reviews are an important part of the booking experience, helping customers make purchase decisions and providing a way for businesses or platforms in the hospitality industry to build trust and credibility. To realize such benefits, it is critical that social media reviews reflect guests' and customers' real experiences.

In recent years, increasing numbers of fraudulent social media reviews have been appearing for travel services, hosts and other hospitality businesses, and these fake reviews can damage trust and integrity among customers. Rooting out false or fraudulent reviews can be achieved with machine learning, which detects unusual patterns in reviews by employing language processing methods.

However, current laws lack reliable definitions and legal frameworks to govern the use of AI for this purpose. In particular, the EU Commission's proposal for an AI Act is still under review, which means that the use of AI still entails legal risks, especially if, for example, AI causes genuine reviews to be deleted.

Conclusion

Overall, great AI applications beckon for the hospitality industry, including supporting guest service and pricing and ensuring true representations appear in social media reviews. The industry does need to consider legal risks and uncertainties, but existing and proposed rules and laws are promising, and they provide a future-oriented basis for AI deployment in the hospitality sector.

Takeaways

- AI provides insight into guests' preferences, but results may be inaccurate or discriminatory.
- Dynamic pricing may boost revenue, but regulators are wary about potential consumer harm.
- Self-learning AI can root out fake social media reviews, but EU rules to govern its use are not finalized yet.

Subscriptions, diversification and revitalization: New trends driving change

By Ella Ovenden
and Charlotte Rogers

Five to ten years ago, it would have been unusual to find yourself in a hotel lobby unless you were a guest or a conference attendee, but the hotel scene has changed dramatically. Hotel lobbies are no longer private areas reserved for those who are making use of accommodation. They are quickly becoming work, social and well-being hubs for both guests and the wider public.

Recent cultural and lifestyle changes have accelerated the need for hotels to innovate, particularly in how they use space. A decrease in business travel paired with an increase in flexible working has prompted hotels to adapt in two key ways. Firstly, the traditional hotel room has transformed into a multi-purpose room with dedicated spaces to log on. Secondly, co-working spaces have become a key feature of hotel lobbies, as many hoteliers seek to ensure that they offer fast Wi-Fi, a range of desks for private or communal working, and even meeting pods. The option for workers to use a hotel's spa and gym facilities certainly gives hotels the edge over the traditional office at a time when people have gained the flexibility required to integrate well-being into their working days.

The diversification of hotel space extends further than the lobby, and it is becoming increasingly normal for hotels to let spaces to pop-up shops and yoga studios. This can generate additional revenue in rental income from the operators of these ancillary functions and attract increased footfall to a hotel's traditional functions by satisfying the ever-increasing demand for something different.

However, the innovation that will be required by hotels to adapt to the changing requirements of their consumers is not limited to how they use space. Embracing technology and attracting customers with new and sustainable developments are also key to the industry's survival.

Key players in the hotel industry have launched subscription models enabled by app technology. We can now get our coffees, dinners and pet food on subscription – so why not hotels? Selina, a boutique hotel chain, launched a subscription service in August 2020 whereby subscribers pay a monthly fee giving them unlimited access to stays at all Selina hotels and unrestricted access to hotel amenities (including flexible working spaces). This benefits both travelers and local customers who can use the flexible working spaces as offices when they do not feel like working from home. Focusing on creating an exclusive and long-term community for guests, instead of fleeting one-off stays, could transform hotels into a more productive asset class with a constant stream of business from a variety of functions rather than being limited by their traditional offerings.

A growing number of developers are revitalizing existing buildings to provide modern hotels rather than constructing new spaces in which to do so. While some aspects of an existing building cannot be easily changed, such as location and surroundings, it is proving entirely possible to re-invent a charming, historic building in order to offer guests a more interesting experience with hints of the past, present and future. Heritage buildings are a prime example of interesting spaces that can be given a new lease of life while being well placed to satisfy the desire for an interesting experience. In Kent, in the UK, the Grade II listed Bromley Old Town Hall has undergone a major refurbishment and now includes a boutique hotel, workspaces, and a restaurant and bar. This is one example of a vision for the future being incorporated into a space that has seen a lot of history but has even more left to offer its community.

While it is clear that the hotel industry and the uses of hotel spaces are rapidly changing in many ways, it remains to be seen which of the emerging themes may entrench themselves as part of the new normal for this industry and which may fade away in time along with the idea that hotels are only for those in need of a place to stay.

Takeaways

- Diversification in how hotel space is used.
- Subscription models enabled by app-based technology.
- Revitalization of heritage buildings.

DATA STORAGE & PROTECTION

Security fiascos: U.S. FTC pursues corporate executives for companies' alleged failures

By Gerard Stegmaier
and Eric Manski

The recent Drizly case signals the Federal Trade Commission's (FTC) efforts to punish executives whom the agency deems culpable for their organizations' security failures. Drizly is an online alcohol marketplace that experienced a data breach affecting 2.5 million users. The FTC alleged that Drizly's failure to implement reasonable safeguards to secure the personal information it collected and stored, coupled with statements that its security practices were "standard" and "reasonable," represented unfair and deceptive trade practices.

"Our proposed order against Drizly not only restricts what the company can retain and collect going forward but also ensures the CEO [James Rellas] faces consequences for the company's carelessness," said Samuel Levine, director of the FTC's Bureau of Consumer Protection. "CEOs who take shortcuts on security should take note."

The Drizly settlement represents the first time the FTC has released a settlement order that holds an executive personally liable for the purported data security failures of their employer. This is nothing new, but it has historically occurred in connection with alleged schemes to defraud consumers and well-established theories of consumer injury. In 2019, the FTC reached a settlement with Facebook over the social media company's alleged violation of a 2012 consent order. In addition to a $5 billion penalty, the settlement required a number of corporate governance changes, including specific executive obligations. The agency required the establishment of an independent privacy committee on the board and imposed a quarterly privacy certification requirement for individual Facebook executives with threatened civil and criminal penalties for any false certifications, much like Sarbanes-Oxley corporate certifications. Significantly, the 2019 Facebook settlement contained dissents from two commissioners (one of whom was also involved in deciding the Drizly case) who argued that Facebook CEO Mark Zuckerberg should have been held personally liable for the company's alleged violations.

Under current FTC leadership, it seems increasingly probable that the agency will seek personal liability for executives over alleged security failures. These limitations and obligations would potentially follow executives even if they move on to work at other organizations, significantly limiting their employability, much like personal liability for Securities and Exchange Commission (SEC) related offenses. The FTC claimed in its complaint that Rellas, as CEO, was personally responsible for Drizly's alleged security failures, as he did not implement, or properly delegate the responsibility to implement, reasonable information security practices, even after he was alerted to security problems two years prior to the breach. The order requires that Rellas, even if he leaves Drizly, implement an information security program at future companies. As noted in the FTC's press release, "In the modern economy, corporate executives frequently move from company to company, notwithstanding blemishes on their track record. Recognizing that reality, the Commission's proposed order will follow Rellas even if he leaves Drizly." While the Drizly order binds only Rellas, future cases may implicate other executives whose duties relate more directly to data security, privacy and oversight of these functions.

Minimizing data collection is an emerging consideration (and enforcement risk) for any company subject to the agency's jurisdiction – it is also directly at odds with many service, quality and product goals of businesses. The FTC's order requires the destruction of any personal data the company has collected that is not necessary for it to provide products or services to consumers – a standard that is problematic and may be at odds with the First Amendment. Moving forward, the company must refrain from collecting or storing personal information unless it is necessary for specific purposes outlined in a retention schedule. The FTC's recent proposed rulemaking on commercial surveillance and data security also seems to foreshadow the agency's intention to take an active role in encouraging data minimization and usage by businesses. This proposal suggests that the risk of being accused of and investigated for failing to abide by data minimization principles is expanding under present agency leadership.

Data minimization and proportionality remain issues of global concern. Whether personal liability for executives will spread outside the United States remains uncertain but disaffection with corporate accountability remains high with many regulators.

Takeaways

- The FTC seems increasingly keen on holding executives personally accountable for organizational security failures.
- FTC corrective measures may have lasting effects on executives, significantly limiting their employability.
- Minimizing data collection is an emerging consideration for FTC-regulated companies.

Security, standards and scalability of data and privacy worldwide are patchy

By Elle Todd

Privacy law compliance has never been a simple task for the hospitality sector, with its large datasets of customers from all over the world, international operations, and marketing and loyalty programs. Many hospitality companies have invested millions in compliance efforts already. And as some laws reach maturity and others around the world are on the cusp of coming into force, what must the sector prioritize and focus on now?

Keep an eye on the basics

While headlines scream out details of the latest multimillion-pound fines, it is important to keep the focus on day-to-day privacy compliance basics. Compliance issues may not result in the highest fines, but the most regularly enforced area (which goes to the heart of brand loyalty and customer database value) is non-compliance with basic direct marketing rules, and those rules have been around for decades.

Keep on top of security measures guidance

Many privacy laws have vague obligations to have "adequate measures" in place to protect the security of personal data. The laws leave it unclear to those in the hospitality sector as to what exactly is adequate and how far they should go. Accreditations such as Cyber Essentials or ISO 27001 can be useful at a general level, but it is important to keep an eye on guidance and recommendations as to what the regulators expect. New ransomware guidance from the UK's Information Commissioner's Office (ICO) and the International Enforcement Co-operation Working Group on credential stuffing provide good examples, practical guidance and insight into how to achieve compliance if an incident has to be reported.

Human error remains the greatest vulnerability

Approximately 80 percent of all personal data breaches are not cyber-related (according to statistics from the UK's ICO as of October 2022). Emails and other correspondence sent to the wrong recipients are actually the main culprits. Companies with large customer service teams will always be ripe for issues, so training, recording, repeating training and putting in place guardrails to prevent common issues, such as bulk sends, will save time and money in the longer term. Tech threats may change, but human vulnerabilities are ever-present.

International laws require a flexible program

The General Data Protection Regulation (GDPR) may nearly be old enough to start school already, but countless new privacy laws around the world are only just being born, and the birth rate is soaring! With a lack of uniformity even on whom rules apply to and whom they protect, the lack of harmonization forces international hospitality companies to bring some sense and structure through a centralized but flexible privacy program.

Don't create a paper mountain of detail that can never be gone through and only provides a record of things left half done. Focus instead on setting key pillars for compliance, offering a high baseline of protection across the business that you can scale up or down as local laws change and emerge. Create a spine of excellent basics and add in detail only where it is needed and moves the dial.

Takeaways

- Data security breaches remain the number one priority and concern.
- Nonetheless, direct marketing rules are still most regularly enforced.
- As privacy rules proliferate worldwide, flexibility and scalability are now essential.

Technology and smart hotels: What about data protection?

By Aselle Ibraimova and Friederike Wilde-Detmering

Takeaways

- Tech innovations personalize service but may compromise customer data privacy.
- Hospitality providers should implement privacy settings by default.
- They should avoid data collection without customer approval/initiation.
- Hospitality providers must monitor data protection and compliance of third-party vendors.

An increasing number of smart hotels offer guests a futuristic experience of checking into a hotel digitally without the need for a human receptionist. Guests scan in their passport and a QR code to check in and are assigned a room. Where local laws allow, guests may even check in without scanning their IDs by simply filling out a registration form. After their stay, guests can pay by mobile and receive their invoice electronically. Guests can use an app, downloaded and activated, to access their rooms digitally via Bluetooth. This is enabled via so-called door beacons (radio transmitters) that communicate with compatible devices. Once in the room, the guests can connect to devices in the room, such as a smart TV, regulate temperature, set an alarm, and access other services, via app-enabled guidance.

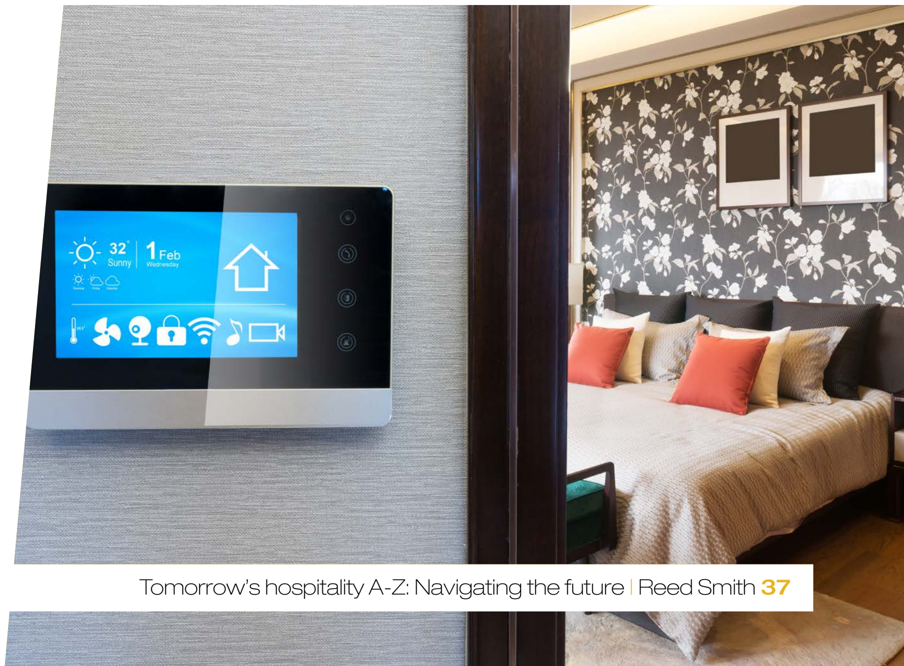
Such processing allows hotels to personalize a service but also enables them to access and collect much more personal data. Given recent massive data breaches in the hospitality sector, hotels that are stepping in this direction need to ensure guests can trust hotels with their personal data.

Since hotel rooms are private spaces, hotels need to implement privacy by default and by design. Hotels must disable by default any personal data collection that is not initiated by the guest or required for their stay – without requiring the guest to take any additional steps. This means that the collection of information by smart TVs, of movements in the hotel room or of voice recordings needs to be disabled unless specifically enabled by the user.

How often have we been in a hotel where the prior guest forgot to sign off from their Netflix or gaming account? Since there may be quite a few services to which the guest had to sign in, the hotel needs to ensure guests log off to prevent any further collection of personal data, accidental disclosure or unauthorized access to their personal data.

Hotels need to be transparent about what personal data they collect and for what purposes before collecting such data. They also need to ensure that they observe basic principles like data minimization.

Even if data protection measures at hotels might be of the highest standards, cyber incidents may happen due to vulnerabilities of third parties that hotels engage in data collection. For example, hotels usually work with a third-party technology company to offer apps that connect guests to the hotels' services digitally. Hotels need to:
1) conduct due diligence on any such third parties and confirm that their IT systems provide an appropriate level of protection; 2) ensure they commit to contractual data protection obligations; and 3) monitor their compliance regularly.



Transfer of data and localization laws affect China

By Amy Yin

In 2020, China launched a global data security initiative focused on strengthening international coordination for cross-border data flows and setting standards for the protection of personal data. Ensuring data localization and data transfer rules affect how multinational corporations transfer personal information they collect from customers in the People's Republic of China to other countries for storage and processing. Complying with the new rules will no doubt impact the global data strategy of some international organizations, including hospitality chains.

How do international hotel operators collect and process personal information?

Hotel chains commonly use digital and cloud systems to perform functions like room reservation, guest check-in, group management and marketing. As a result, a large volume of guests' personal information (PI), even sensitive PI, will be collected and processed by hotel chains, and cross-border transfers often occur, especially with global online travel agencies or affiliates under the same hotel brands on enterprise resource planning (ERP) systems.

Will hotels be legally required to store all data locally within China?

The short answer is that it is very likely. According to the Personal Information Protection Law (PIPL), a business that processes a large volume of PI must generally store the PI collected within China locally. This localization requirement may apply to international hotel brands and impose considerable costs, considering the significant number of guests they deal with in their daily operations.

What are the key legal requirements for cross-border transfer?

Transparency. It is a critical first step to disclose to the data subjects upon collection about the proposed cross-border transfer, including why it is required, when PI is transferred, what types of PI are involved, who will receive the PI, and how PI is protected upon transfer. These details are usually included in the relevant privacy policy and notices.

Lawful basis. It is recommended to rely on the lawful basis available under the PIPL instead of solely relying upon the individuals' consent, which may be withdrawn at any time. Typical examples of lawful basis available to hotel brands may include:

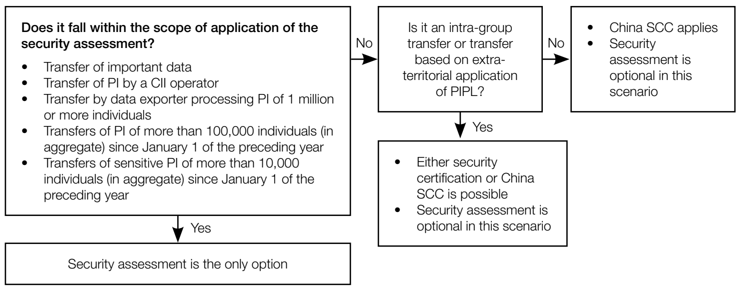
- Checking ID during check-in for public security purposes, as required by law
- Executing contracts (electronic or written) with guests (such as providing membership services or accommodation)
- Protecting the vital interests of individuals in emergencies

If PI is collected or transferred for marketing needs (e.g., user profiling, preference analysis, pushing ads), informed prior consent must be obtained separately.

What cross-border transfer mechanisms are available?

The PIPL allows the cross-border transfer of PI in the following three scenarios: (i) security assessment by the Chinese regulator; (ii) the Chinese version of standard contract clauses (China SCC); and (iii) security certification (similar to the GDPR's "binding corporate rules"). The China SCC and security certification are still pending finalization and more clarification is expected.

The diagram below illustrates how to determine the appropriate cross-border data transfer mechanism applicable in different scenarios:



Takeaways

- Data collected in China likely will have to be stored in China.
- Disclosure and consent must be performed when collecting personal data.
- Some cross-border transfer rules might be similar to those in the GDPR.

EMPLOYMENT RULES & LAWS

UK returns to in-person 'right-to-work' checks

By David Ashmore
and Carlene Nicol

As of October 1, 2022, all UK employers need to check right-to-work (RTW) documentation face-to-face, as special COVID-19 rules allowing remote RTW checks over a video call expired on September 30, 2022.

Background

All UK employers must carry out RTW checks for new recruits, typically checking the employee's passport (and keeping a copy) to ensure they have the right to work in the UK. Failing to do so exposes employers to fines of up to £20,000 per breach (plus criminal liability, disqualification of directors and reputational damage, among other risks) in the event that they illegally employ someone.

During the pandemic, the Home Office enacted temporary measures allowing employers to carry out RTW checks over a video call and accept scanned documentation. Those temporary measures no longer apply. As of October 1, 2022, employers must check RTW documentation face-to-face. However, the UK government has opened the door to an employer performing digital RTW checks via new technology.

Benefits of the move to digital

A key change is that employers can now work with an identity digital service provider (IDSP) using identification document validation technology to carry out digital identity checks on UK and Irish citizens. A list of IDSPs can be found on the www.gov.uk website. The process involves the new hire scanning their passport (or Irish passport card, if relevant) into the system and undertaking a biometric scan of their face.

That means employers now have two options for checking a UK or Irish citizen's RTW:

1) A return to face-to-face checks; or

2) Use of a government-approved IDSP.

The ability to use IDSPs is a welcome addition for certain sectors, such as hospitality, since employers may have many checks to carry out and IDSPs allow the whole process to be outsourced. This option will not only save employers time, but also has the benefit of streamlining the process and ensuring that the employer does not fall foul of requirements.

With a number of accredited providers already in the market, and more likely to follow, employers will need to carefully consider the most appropriate provider for them, taking into account the different services and pricing options available, while being mindful that finding the right provider and securing a contract may take some time.

Other online options remain in place for recruits coming from outside the UK and Ireland who have a biometric residence permit, a biometric residence card, a frontier worker permit or an e-visa. These recruits may be able to provide a "share code" so that the employer can do the RTW check online.

Takeaways

- UK employers must return to manual right-to-work checks, as required before the pandemic.
- Identity digital service providers can carry out some right-to-work checks for hospitality employers.

U.S. Labor Department revises rule on tip credits

By Amanda Brown, Oluwaseyi Odunaiya and Joseph Mammone

Takeaways

- In 2021, the DOL revised Fair Labor Standards Act rules for tipped employees.
- The DOL reinstated the 80/20 rule for tip credits and imposed additional requirements.
- Legal challenges to the revised rule are pending, but employers still need to comply.

Background

Per the U.S. Department of Labor (DOL), "a tipped employee engages in an occupation in which he or she customarily and regularly receives more than $30 per month in tips." An employer is allowed to pay a tipped employee direct wages of $2.13 per hour, instead of the federal minimum wage (currently $7.25 per hour) if the tipped employee's direct wages plus the tips received equals or surpasses the federal minimum wage. Employers' ability to count an employee's tips toward their obligation to pay tipped employees the federal minimum wage is known as a "tip credit." Employers list the tip credits taken as a line item on tipped employees' pay stubs. If a tipped employee's tips combined with the employer's direct wages of at least $2.13 per hour do not equal the federal minimum wage, the employer must make up the difference.

The DOL's 2021 revised rule for tipped employees

In October 2021, the DOL announced a final rule reinstating the 80/20 rule (and more), effective December 28, 2021. Previously, the Trump administration had eliminated the 80/20 rule and replaced it with a rule allowing employers to take a tip credit if a tipped employee performed non-tipped work simultaneously with tipped work or for a reasonable time immediately before or after. Prior to the Trump administration's rule, the 80/20 rule had been in effect since the 1980s. The DOL delayed implementation of the Trump administration's rule and issued the recent final rule to minimize the likelihood that employers would improperly claim tip credits for side duties that do not qualify as tip-producing work.

Under the re-implemented 80/20 rule, there are three categories of work: (1) "tip-producing work," (2) "directly supporting work" and (3) "work that is not part of the tipped occupation." Work that is not part of the tipped occupation is work that does not provide any service to customers (e.g., a server preparing food). An employer cannot take a tip credit for any work that is not part of the employee's tipped occupation, and the employee must be paid no less than minimum wage for that time.

The other two categories are not as straightforward. Tip-producing work occurs when an employee is performing work directly providing services to customers for which the employee receives tips (e.g., taking orders from a customer). Directly supporting work includes work performed by the employee to assist with tip-produced work (e.g., a server cleaning tables). Under the 80/20 rule, employers can use a tip credit if 80 percent or more of the work is tip-generating and no more than 20 percent of the work is directly supporting work.

The recent final rule expanded on the traditional 80/20 rule with a "30-minute" rule that advises if an employee performs directly supporting work for more than 30 consecutive minutes, an employer cannot take a tip credit for the time in excess of 30 consecutive minutes and the employee must receive minimum wage for that time. While an employer can include the first 30 minutes of directly supporting work in its 80/20 calculation, anything beyond 30 consecutive minutes of directly supporting work cannot be included in the 80/20 calculation.

Industry groups have challenged the DOL's reinstated 80/20 rule, arguing that it divides tip-producing work from directly supporting work in a confusing manner and "without factual or legal support." In February 2022, the industry groups lost their bid to enjoin the 2021 rule, but the litigation remains pending.

Conclusion

Despite the continuing legal battle, the DOL's revised final rule remains enforceable. For this reason, employers should ensure their policies and practices comply with the final rule. Employers should also ensure that both managers and tipped employees are properly trained on the importance of accurate time reporting. Employers who are not in compliance with the final rule may find themselves subject to collective actions under the Fair Labor Standards Act (FLSA). Moreover, the DOL may issue substantial penalties for each employee affected if it determines an employer is not in compliance with the rule. Finally, employers should be mindful that the DOL's final rule only implements the FLSA and state laws may impose more stringent "tip credit" requirements.

Voters in California work to overturn law targeting fast food restaurants as Superior Court temporarily blocks enactment

By Jennifer Terry and Eduardo Vargas

California Gov. Gavin Newsom on September 5, 2022, signed into law AB 257, the Fast Food Accountability and Standards Recovery Act (FAST Act), which creates an unelected Fast Food Council to set minimum standards that affect the terms of employment for fast-food restaurant chains with 100 or more locations nationally and at least one in California. The FAST Act is union-backed and is said to be part of a larger effort to unionize the restaurant industry in California.

Opponents of the FAST Act quickly filed for a voter referendum on September 7, 2022, to thwart the bill before it was to take effect on January 1, 2023. They had 90 days from the date of the bill's enactment to collect the number of signatures required to qualify for a ballot measure. California's Department of Industrial Relations (DIR) acknowledged receipt of the signatures and it is currently validating that the requirements for a referendum have been met.

Notwithstanding, California announced its intent to proceed with the adoption of the FAST Act as of January 1, 2023, despite the constitutional requirements under California law, that a measure being put to a referendum vote be suspended until ballots are cast by the public. The coalition "Save Local Restaurants," comprised of businesses and restaurant trade groups, filed a lawsuit in Sacramento Superior Court on December 28, 2022, to "ensure the democratic process established by the California Constitution is respected." It asserts that it submitted more than 1 million unverified signatures this month, well above the required minimum to initiate a referendum, and that putting the law into effect would set a "dangerous precedent" that threatens voters' right of referendum.

On January 13, 2023, the Superior Court of Sacramento ruled that the FAST Act must go through the referendum process before going into effect. County officials have until January 25, 2023 to verify signatures. If the signatures are verified, the next step is to put the proposed legislation to a vote.

The FAST Act establishes an unelected 10-member Fast Food Council within the California Department of Industrial Relations (DIR) that is authorized to set new minimum standards concerning the minimum wages, working hours, and other health and safety conditions of a fast-food chain with at least 100 establishments nationwide (and at least one in California) that (1) share a common brand or are characterized by standard décor, marketing, packaging, products and services; and (2) are fast-food restaurants, which are defined as establishments that provide food or beverages for immediate consumption on or off premises to customers who order and pay for food before eating, with items prepared in advance (including items that may be prepared in bulk).

Composition of the FAST Act's Fast Food Council

All members of the Fast Food Council will be appointed by the governor. Four members will be industry representatives: two representatives of fast-food restaurant franchisors and two representatives of fast-food restaurant franchisees. Four members will be worker advocates: two representatives of fast-food restaurant employees and two representatives of advocates for fast-food restaurant employees. One member will be a representative from the DIR. The final member will be a representative from the Governor's Office of Business and Economic Development.

The FAST Act clearly impacts large, national, franchised restaurant chains, but it will also impact non-franchised brands with more than 100 employees. Any new wage and hour standards implemented by the Fast Food Council will be enforced by its Division of Labor Standards Enforcement, which is currently responsible for enforcing various California wage and hour laws. The regulations passed by the Council will automatically become law unless the California Legislature votes to invalidate the regulations. New standards will be enforced by the Division of Occupational Safety and Health, which is currently responsible for enforcing California workplace safety laws and regulations.

Takeaways

- If implemented, the FAST Act will authorize an unelected council to set standards such as minimum wages, working hours and other conditions of employment.
- The Act will apply to fast-food chains with at least 100 establishments nationwide.
- Opponents received sufficient signatures for a November 2024 referendum and county officials have until January 25, 2023 to verify the signatures.
- Once verified, the legislation will be put to a vote in November 2024.

Voters in California work to overturn law targeting fast food restaurants as Superior Court temporarily blocks enactment *(cont)*

By Jennifer Terry and Eduardo Vargas

The Council will also be tasked with conducting a full review of the adequacy of fast-food restaurant health, safety and employment standards every three years and holding public hearings every six months. The Council will also be required to provide a report to the California Legislature at least 60 days before a proposed standard is effective.

Immediately after the FAST Act takes effect, the Council will have the authority to raise the minimum wage for fast-food employees to $22 per hour in 2023. The Council may further increase the minimum wage each year by the lesser of (1) 3.5 percent or (2) the annual increase in the Consumer Price Index.

Exemptions from the FAST Act

The FAST Act exempts (1) certain bakeries; (2) restaurants within “grocery establishments” if they are staffed by employees of the grocer; and (3) restaurants subject to a collective bargaining agreement (CBA), where the CBA provides for wages, hours of work, and working conditions equivalent to standards set by the Council and a regular hourly rate of pay not less than 30 percent more than the state minimum wage.

Employees’ private right of action

The FAST Act creates a private right of action for fast-food restaurant workers discriminated or retaliated against or discharged for exercising their rights under the Act. It specifically creates a rebuttable presumption of unlawful discrimination or retaliation for any adverse action taken against a worker within 90 days of the franchisor or franchisee having knowledge of the worker exercising their rights, and it will allow the Labor Commissioner to enforce violations without first receiving a complaint.

Additionally, the FAST Act permits cities or counties with populations of more than 200,000 to establish local councils that will be authorized to make recommendations to the Fast Food Council. Currently, there are at least 20 eligible cities and nearly 30 eligible counties, which may lead to numerous local councils.

Joint liability provision stricken from the FAST Act

Initially, the FAST Act contained a joint liability provision that made every covered franchisor a joint employer and therefore liable for any unlawful actions committed by its franchisees. Prior versions also made any agreement that a franchisee indemnify a franchisor for liability under the FAST Act void and unenforceable as contrary to public policy. Both provisions would have disincentivized franchisors from expanding franchises in California or bringing new franchise concepts to the state.

Broader implications in the hospitality sector

While the FAST Act has taken aim at quick-service restaurants, its supporters have made no secret that California and the fast-food industry are only a starting point and that they intend to expand the model to other industries, including retail, as well as introduce similar bills in other jurisdictions. For restaurants that are already struggling to make ends meet in the COVID-19 era, the FAST Act could not come at a more difficult time. Franchisors doing business within California will have to find ways to operate their restaurants so that they remain profitable. This may mean reducing the cost of labor through job elimination as costs sharply escalate through enactment of the FAST Act.

What next?

As discussed above, if the signatures of those supporting a referendum on the FAST Act are verified by the County, the next step will be to put the legislation to a vote in November 2024.

Workplace obligations imposed by New York State

By Mark S. Goldstein

Takeaways

- The New York State Department of Labor's Hospitality Industry Wage Order sets forth specific workplace rules that apply to hospitality industry employers.
- Hospitality industry employers in the state may apply particular wage rates to employees and take tip credits from those wages, as well as pool tips for covered employees.
- They must also provide certain disclaimers on documentation provided to customers or prospective customers as it pertains to administrative charges for banquet events.
- Employers may have to pay extra wages to cover uniform purchase and maintenance costs.

New York is one of the few U.S. states to enact specific workplace rules for hospitality industry employers. To that end, the New York State Department of Labor has for decades used regulations known as "wage orders" to supplement employers' statutory obligations under the New York Labor Law. These wage orders are industry-specific, covering everything from nonprofits to the building service industry. Among these regulations is one specific wage order that covers just the hospitality industry.

This wage order creates workplace-related obligations unique to the hospitality industry, which includes restaurants, hotels, catering and banquet halls, fast-food establishments, camps, and membership clubs. These regulations govern minimum and overtime wage rates within the industry, gratuities, uniform maintenance pay, reimbursement for purchase or maintenance of required uniforms, spread of hours pay and credits for meals and lodging, among other things.

Perhaps most critically, the hospitality wage order sets forth increased minimum wage rates for tipped employees, as well as regulations pertaining to the handling of gratuities. These include regulations concerning so-called "tip credits," which have been the subject of substantial litigation over the past few years. Tip credits are essentially exceptions to the general wage-and-hour laws that permit hospitality industry employers to, under certain circumstances, pay tipped employees less than the minimum wage, so long as the employee's direct wages plus tips equal or exceed the minimum wage or overtime rate.

The hospitality wage order allows covered employers to apply a tip credit, but standards differ depending on whether the employee is considered a service employee or a food service worker. For instance, employers must directly pay service employees and food service workers at least the tipped minimum wage and cannot claim a tip credit that exceeds the maximum tip credit. However, for service employees, the ability to claim a tip credit depends on whether the employee's weekly tip average equals at least the hourly tip threshold and whether their direct wages plus tips equal or exceed the minimum wage. Hospitality industry employers may not apply a tip credit to management, salespeople or kitchen staff. In addition to tip credits, the hospitality wage order allows employers to take meal and lodging credits.

The hospitality wage order also permits voluntary tip sharing, voluntary tip pooling and redistribution of tips among directly and indirectly tipped service employees and food service workers. Employers may require a tip pool and may set the percentages to be distributed to employees, so long as records are maintained and regularly made available to employees.

In addition, the hospitality wage order requires that documents provided to customers or prospective customers pertaining to banquet events clearly state that any administrative charge kept by the business is not intended to be a gratuity and will not be distributed to individuals working the event. As with tip credits, this aspect of the wage order has been subject to extensive litigation in recent years.

Further, the hospitality wage order provides for uniform maintenance pay, which is intended to cover the cost to an employee of maintaining required uniforms worn on the job. To determine the amount of uniform maintenance pay, employers take the actual hours of work into account. The law does not, however, require that employers pay for uniform maintenance where the employer requires wash and wear uniforms or where the employee declines to use a free and readily available employer-provided laundry service (after receiving written notice that such a service is available to the employee).

Compliance with the hospitality wage order is imperative because non-compliance may result in steep damages. These include back pay, liquidated damages (in the total amount of any unpaid wages), attorneys' fees and costs and interest. Because the hospitality wage order contains several unique rules pertaining to the operation of restaurants, hotels and bars in New York state, it is critical that employers in the hospitality industry understand these rules and implement wage practices that comply with them.

EXclusivity clauses, resilience, retention and reform are the key themes in UK hospitality employment

By Carl De Cicco
and Laura Brown

Takeaways

- Resilience, retention and reform top the list of challenges for the UK hospitality industry.
- Contingency staffing plans are needed to prevent disruptions due to outbreaks of COVID-19 and other illnesses.
- Employers are attempting to stave off retention issues exacerbated by the pandemic.
- With the expansion to the ban on exclusivity clauses, it will be important to ensure these provisions no longer appear in contracts of applicable hospitality staff and are not enforced where already in place.

As UK hospitality businesses emerge from pandemic-related disruption, other challenges for the industry remain. Among these are resilience, retention and workplace reform, which we consider further here.

Resilience

Even with social distancing and other measures in place, hospitality remains an industry that involves a high degree of contact among staff, and between staff and suppliers and customers. It is therefore inevitable that COVID-19 infections and other illnesses this winter will have some impact on staffing levels.

Contingency planning therefore becomes critical to ensure that a sufficient pool of staff remain available if an outbreak occurs. For example, it might be possible to operate bubbles for different cohorts of employees, thereby reducing the risk of a single infection spreading throughout the business. It may also be appropriate to implement an adequate sick-pay provision so that staff members are not tempted to attend work when infectious due to financial reasons.

Retention

The perennial challenge of attracting and retaining staff has been exacerbated by the pandemic and a general reduction of available labor.

To address this issue, businesses are offering additional benefits and perks to staff. These include bonuses for recommending new personnel who remain in post for a particular period, personal development programs, and free or discounted meals. It is important when offering such arrangements to have in place clear terms and criteria regarding applicability.

Another consideration for retention would be to include longer notice periods for termination. The increased commitment provides greater security for businesses. Of course, the trade-off is that terminations become more expensive. This places more emphasis on ensuring that the recruitment process is geared toward identifying strong performers.

Reform

With effect from December 5, 2022, the UK government has widened the ban on exclusivity clauses, which restrict staff from working for multiple employers, to include all low-paid workers whose weekly guaranteed income is less than the lower earnings limit (currently set at £123 per week).

These reforms affect an estimated 1.5 million workers and mean that those in this group who have exclusivity clauses are now free to “top up” their income with extra work from other employers if they choose.

Related enforcement rights have been introduced as protection against being unfairly dismissed or subjected to detriment for reasons relating to the ban. To the extent that workers within the hospitality sector fall within the impacted group, it will be important to ensure that these clauses are no longer included in contracts and are not enforced if already in place. Giving workers the flexibility to take on a second job if this suits their personal circumstances may help hospitality businesses fill vacancies with those who would previously have been banned from working for another employer.

Young workers and the UK workforce of the future: Considerations and limitations

By David Ashmore
and Joanna D'Cruz

Young people have historically made an important contribution to the hospitality sector. With Gen Z said to make up 20 percent of the UK workforce, engaging more young people is an obvious means of gaining an additional flexible staffing option. In spite of concerns that young people seem less enthusiastic about pursuing a career in hospitality, the sector not surprisingly continues to recruit from this age group, thereby investing in its future talent pipeline.

Different rules apply when employing young people under 18; for them, additional limits and considerations must be borne in mind. But if a worker is over 18, most of those rules no longer apply.

Age limits

To work full time, young people must be over compulsory school age. That can be either 16 or 18 years old in the UK (young people are expected to be in some form of part-time education or training until the age of 18).

Working hours

Children (below compulsory school age) may not work during school hours on school days. Also, they may not to work before 7 a.m. or after 7 p.m. on any day. Work on a school day may not be for more than an hour before school. There are limitations on the number of hours children can work on school days and on weekends (between two and eight hours depending on age and whether it is term time) as well.

Rest breaks

Other rest break requirements exist for anyone under compulsory school age. Children may not work for more than four hours in a day without taking a break of at least one hour.

Pay

The rate of the national minimum wage is age dependent. There is a "young workers" rate (currently £4.81 per hour) for under 18s who are above compulsory school age, a "development" rate (currently £6.83 per hour) for 18- to 20-year-olds and a standard rate (currently £9.18 per hour) for workers aged 21 and 22. [Update: On 1 April 2023, after the original publication of this article, hourly rates of pay were increased. The young workers rate was raised to £5.28, the development rate was raised to £7.49 and the standard rate was raised to £10.18.] Different rates apply to apprentices. The national minimum wage does not apply to under 16s. National insurance is not applied to their pay and so their pay only needs to be processed through payroll if their total income exceeds their personal allowance.

In summary

Engaging and retaining young people in the hospitality sector has the potential to improve several short-term and long-term concerns around recruitment and the future workforce. In the push to engage young people, be mindful of the additional considerations and limitations around pay, hours and permits, particularly for those still at school.

Takeaways

- Employing young people can provide flexibility and additional resources, but effort is required to attract this age group.
- Young people over 18 may work full time without restriction and have the same rights as other employees.
- Young people under 18 require added consideration when being hired. This includes limits on the hours they can work and additional rest breaks.

Zero hours (and exclusivity clauses) in the UK

By David Ashmore
and Sophie Timmins

A “zero-hour contract” refers to a contract between a business and a casual worker, usually for ad hoc or on-call work, such as seasonal event work. It offers flexibility for both sides, as employers are not obliged to offer guaranteed hours of work and casual workers do not have to accept work when asked.

These contracts can be particularly beneficial in the hospitality industry given the seasonality of the demand for staff. They allow an employer to have a flexible pool of staff available to call upon if work becomes available, but without any commitment to offer work.

However, there are downsides. The flexibility of zero-hour contracts also means a high staff turnover. The lack of commitment to work from both parties can have a negative impact.

Zero hours does not mean zero rights

Zero-hour workers have the same protections under wage and discrimination laws as other staff. They are entitled to statutory annual leave and the national minimum wage. They also have the right to take rest breaks, and pension auto-enrollment may also apply if they meet the relevant qualifying conditions.

Employers should be careful not to overlook the special protections for zero-hour workers. Since May 2015, exclusivity terms have been unenforceable in zero-hour contracts. This means that employers cannot stop casual workers from getting work elsewhere. Accordingly, casual workers can disregard any contractual clause that attempts to restrict their ability to seek or accept other work.

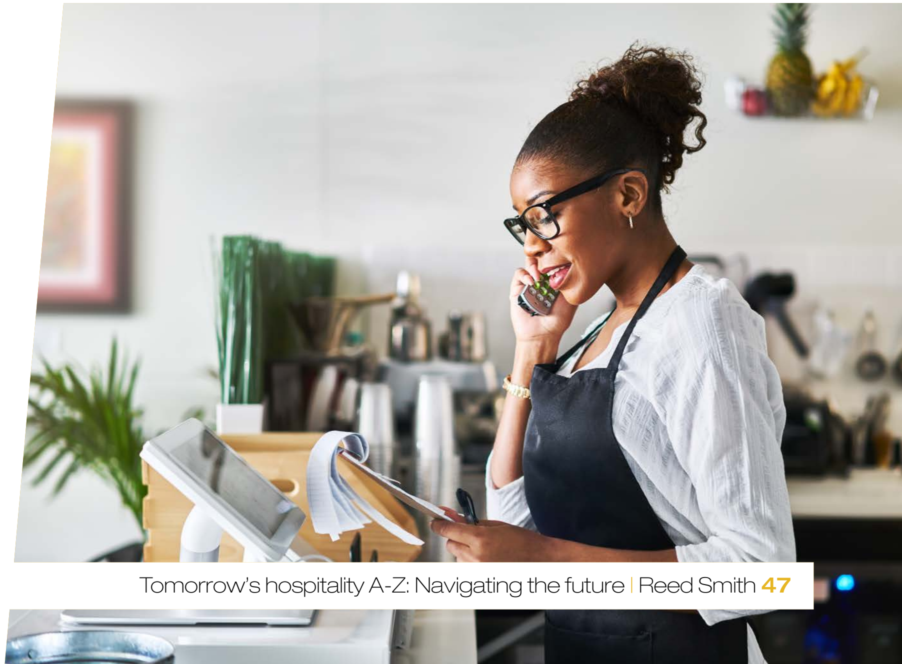
Starting December 5, 2022, this exclusivity ban was extended to apply to all low-income workers (the UK’s lower earnings limit is currently £123 a week).

In summary

Zero-hour workers are useful in the hospitality industry as they allow flexibility to deal with fluctuating demand. Casual staff get the same protections as other staff, but in a few ways, they get extra protection, which means that employers cannot stop them from seeking and accepting work elsewhere.

Takeaways

- Zero-hour contracts give hospitality employers flexibility when meeting seasonal demand for staff and when it is difficult to predict staffing requirements.
- Employers should not try to stop casual workers from getting work elsewhere.
- Contractual clauses that restrict casual workers from other employment are void.
- The ban on exclusivity clauses has been extended to low-income workers.



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