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HOSPITALITY RRREPORT

SERVING HOTEL AND OTHER HOSPITALITY CLIENTS WORLDWIDE

CHAIR'S CORNER

Welcome to the Spring-European Edition of the Paul Hastings' Hospitality RRReport authored by Europe-based members of our Resort, Restaurant & Recreation Practice Group. There are 75 members of the RRR Practice Group located in offices throughout the Americas, Europe and Asia actively involved in the hospitality industry who not only represent clients in all facets of the hospitality business but also speak at conferences throughout the world. This is the first in what will be a series of special European Editions of the Hospitality RRReport, all of which will focus on topics of specific interest to developers, capital providers and operators of hotels and resorts and other hospitality driven enterprises throughout Europe. This edition includes an article by two of our lawyers resident in the Paris office addressing issues that are common to French management agreements, and an article by one of our London barristers providing the reader with an update on the evolution of gaming legislation in the UK. Finally, we have a guest article written by a senior executive from Calyon, a leading French bank that surveys capital market trends in the European hotel and resort sector. This report is meant to serve as an informative industry update. Please do not hesitate to contact me with your comments.

Rick S. Kirkbride, Chair
Resort, Restaurant & Recreation Practice Group
rickkirkbride@paulhastings.com 213 683 6261

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Changes in UK Gaming Legislation and How these Changes Will Impact the Casino and Leisure Markets

By Katie Graham

Introduction

The casino industry was governed primarily by one piece of legislation – the Gaming Act 1968. Aside from some minor (though important) changes, the framework of the Act has remained intact since 1968. It governs the licensing of casinos, their operators and employees, together with almost every aspect of their business and operation. In contrast with other sectors in the retail and leisure markets, the facilities available have been shaped significantly by the legislation and therefore are out of touch with consumer preference and changes in society, fashion and culture.

It is universally acknowledged that the Gaming Act 1968 is outdated and overdue for reform. Almost everybody, including the industry regulatory authority, the Gaming Board for Great Britain, and GameCare, the charity which helps people with gambling problems, agrees that the industry should be freed from the shackles binding it to a past age, enabling competition between operators within the industry and with other leisure facilities. Reform has finally arrived by the introduction of the Gambling Bill which came into force on 18 October 2004, which, according to the Culture Secretary, Tessa Jowell, is aimed at:

- A crime free gambling industry that can meet the challenges of the technological age;
- Regulation through a new Gambling Commission with wide ranging powers;
- An industry offering more choice for punters; and
- Greater protection for children and the vulnerable.

LOOK FOR US AT THESE UPCOMING EVENTS:

JUNE NYU International-Hospitality Industry Investment Conference, New York City.

OCTOBER Hotel Investment Conference Asia-Pacific, Hong Kong.

The Previous Legislation

By 1968, when the Gaming Act was passed, there were over 1,000 casinos in the UK. The morals of the time dictated that gambling was a vice, but the government recognised that commercial gaming could no longer be suppressed. It was therefore decided to bring it under strict controls, based on the principle that no one has a right to provide commercial gaming. It is, rather, a privilege to be conceded, subject to searching scrutiny and only in response to public demand. The common object of the controls was to purge commercial gambling of criminal elements, to cut out excessive profits and to ensure that gaming was honestly conducted in decent surroundings. The principal agent for achieving these objects was to be the Gaming Board (which the Act established). There can be no doubt but that the Gaming Act achieved its purpose and both it and the Gaming Board have been highly successful in producing a stable and reputable gaming industry held in high esteem by regulators and operators alike throughout the world. For those who are unfamiliar with it, casino gaming in the UK has, throughout the period, been essentially crime free, fairly conducted and the vulnerable have been protected.

Over the period, however, the concept of allowing no more facilities than necessary to meet 'unstimulated demand' has become outmoded, particularly following the introduction of the National Lottery in 1992, which exposed the British government as a sponsor of gambling on a massive scale. The demand criterion certainly achieved the object of preventing proliferation and unfair competition, but it has also served as an enormous barrier to entry, keeping the industry within a small group of operators.

Effect of Restrictions

Given the circumstances, it is perhaps not surprising that only 3 per cent of the adult population visit casinos in the UK on a regular basis, compared to much higher percentages in countries such as France and the USA, where the figure is closer to 20 per cent. In contrast, the UK has a huge sports betting industry, bingo industry and the National Lottery, accounting for the staggering 88% of the population who indulge in gambling in one form or another, spending upwards of £13 billion per year on the activity.

As a result of these restrictions, casinos in the UK tend to be small, often exclusive, clubs offering mainly table games to members and providing no other facilities apart from perhaps a bar and a restaurant. In almost all other major gaming jurisdictions, including those in Europe and in Australia, South Africa and the USA, casinos offer all sorts of leisure facilities, often with hotels and conference venues. They are usually built on a much larger scale, tending to be mainstream leisure facilities rather than private gambling clubs.

The New Legislation

The British government published it's long awaited but controversial Gambling Bill on 18 October 2004, designed to dramatically update gambling laws in the UK.

The Bill was immediately a focus of attention and debate between supporters, detractors and government spokesmen, and made headline news in mainstream media across the world.

Critics seemed mainly concerned with the implications for land-based gambling through large US investment in regional Vegas-style casinos, and with what they perceived to be the threat of increased addictive and underage gambling. Internet gambling, which is to be legalized under stringent regulations, did not appear to be the main point of discussion.

Former welfare minister Frank Field warned there would be "no turning back" once the door had been opened to the US giants. Super-sized "regional casinos", which ministers believe will regenerate run-down areas, would no longer have to be sited in "permitted" areas and will be open to the public rather than operating as 24-hour membership clubs. Others will be designated "large" and "small" where lower prize money can be played for on slot machines.

Publishing the bill, the Secretary of State for Culture, Media and Sport, Tessa Jowell, said: "It is nearly forty years since Parliament last had the opportunity to take a serious look at our gambling laws and it's not just attitudes that have changed since then. The technological revolution has touched all our lives and the gambling industry is no exception." She further added: "Internet gambling and roulette machines in bookmakers are just two examples of where laws introduced nearly ten years before the first home computer hit the shelves are no longer able to protect children or vulnerable people properly."

Lord McIntosh, the minister responsible for the new legislation, said the critics were missing the point of the reforms. "I've never known a bill to be so misunderstood," he said. "More than 90 per cent of this bill is about [new] protection and not about casinos. It's about keeping out crime and cheating and introducing new protections for children and adults who may be vulnerable to problem gambling."

Frank Field, the former welfare minister, said on GMTV: "I think the government is off its rocker thinking, even if it was the first year of a parliament, that it would actually get this through. And once they actually let this tide of big money from America come in this way there will be no turning it back."

Under the bill, which on 19 October 2004 had its first reading in parliament, a tough new gambling regulator will be established with the power to hit operators with fines if they step out of line.

The bill will also cover internet gambling and attempt to create a regulatory environment that encourages online gaming sites to be based onshore.

More than two thirds of people in Britain (71% of the 2,945 adults quizzed) have gambled in some way over the past year, according to a recent government NOP survey.

The gambling industry, dominated by back street bookies before the 1961 Betting and Gaming Act legalized casinos and off-course bets, is worth billions of pounds for which the Bill would open the floodgates.

A total of £63.8 billion was staked on gambling in the UK in 2002-2003, at casinos, gaming machines, horse and dog racing, football pools, scratch cards, and the National Lottery, according to a Business in Sport and Leisure report by Ernst and Young. Of this, operators retained £7.8 billion after paying up winnings.

There are currently 131 casinos operating in Britain—more than in any other European country bar France--and some 250,000 gaming machines with an estimated £10 billion fed into them each year, The Gaming Board for Great Britain said.

Internet gambling is also on the rise with an estimated four million Britons now betting online each month. Some 4.2 million people visited gambling or sweepstakes websites such as Casino Tropez or The National Lottery in September—16 percent of the total online audience in Britain for that month (according to a new report by Internet research company Nielsen//NetRatings).

Gabrielle Prior, European Internet Analyst, said the Bill may spark a surge in the number of online gamblers. "The new government initiative to change the gambling laws in the UK will no doubt make gambling more accessible to consumers."

Opportunities for Investment

So what does all this mean for developers and investors? Existing operators cannot afford to be complacent or to believe that they will flourish by simply continuing to run their businesses as they have done in the past, albeit in many cases very successfully. The new legislation will lead, as it is intended, to even greater competition in an increasingly competitive market, from existing operators, overseas operators and new entrants to the market. The new legislative framework will change beyond recognition to reflect technological advances and modern customer expectations, and operators will have to look afresh at their businesses.

On the face of it, existing operators in the UK enjoy significant advantages over both of these other groups. They have existing premises, existing customers, established brand names and a knowledge of the market. On the other hand, overseas and new operators will be unfettered by the ideas of the past. For example, many overseas operators will have the experience of operating much larger casinos and casino slot machines which will be new to the UK. Nor will they be hampered by existing, possibly unsuitable, premises.

Existing Casino Operators

The largest four operators, Stanley Leisure Group, Rank Group, Gala Group and London Clubs International, control 114 of the existing 135 licensed casinos in the UK. Rank and Gala are also the operators of the largest number of bingo clubs, operating 295 out of the total 688. Some of their large new-built bingo clubs could be converted or expanded into multi-facility gaming establishments, and this must be a strong possibility given that many are located in areas that are not currently permitted for casino gaming.

New Casino Licenses

These operators, with the scent of reform in the air, have been applying for new casino licences, as the figures at the beginning of this paper demonstrate, and expanding their existing premises for at least the past two years. It is very likely that they will seek to move some of their licenses to new, larger premises to take advantage of the ability to offer mixed gambling and an increased number of other facilities.

Overseas Operators

Until now the UK market has been of such a different character to those in most other jurisdictions that overseas operators have been reluctant to participate at all. Now that the market is set to develop in ways that they will recognise, they have the opportunity to apply their own skills and experience to take full advantage of the new market. Moreover, some of them have the ability to make investments on a huge scale, hitherto unseen in the UK market, and almost certainly incapable of being matched by existing UK operators.

Entry into UK

Even before the legislation had been passed, a number of major operators from overseas had already entered the market, with Harrah's entering into a joint venture with Gala to develop a number of 'regional' casinos, MGM/MIRAGE linking with Metro Casinos to develop a new casino in Bristol and Kerzner International acquiring a Northampton property and licence from London Clubs. Harrah's, MGM and Kerzner operate some of the biggest casinos in the world. With the exception of the Harrah's/Gala joint venture, these other acquisitions may seem insignificant, but there is wisdom behind all of them. In order to operate a casino, or even to apply for a casino licence, an operator must be approved as 'fit and proper' by the Gaming Board. In the case of new operators, and particularly those within complex business structures and licenses in numerous jurisdictions, the process can take at least six months, whereas an existing UK operator will obtain a new certificate of consent from the Gaming Board within a matter of weeks. Now that the new legislation has been passed the new Gambling Commission is being faced with a flood of applications for new operator's licences.

The supply of new premises is not inexhaustible, either in the existing permitted areas or in new areas. This means there may only a limited number of opportunities for major regional or resort-style casinos of the type that international operators have developed—many of them from the USA. Some of those opportunities have already been identified and deals have been put together. Those operators entering the market now will be beneficiaries of those deals. They will also have the advantage of getting to know and understand the UK market and of calculating opportunities.

New Participants

There are already applications in the pipeline from other interested entities to the casino market. There are many such businesses, particularly in the non-casino leisure market, which may want to develop casino interests and take advantage of the increased market. Some of them, such as hotel groups, may have some of the best premises and locations.

Property Companies

Moreover, there has been a considerable amount of interest from large property companies considering joint ventures or partnerships with casino operators and potential casino operators. Again, these are companies with substantial property portfolios. There is equal interest from other sectors of the gambling industry wishing to develop multi-gambling facilities. The most obvious example will be the provision of betting in casinos. Very few companies in the UK have experience with both betting and gaming, and it does not automatically follow that an experienced casino operator would be able to run a profitable betting operation, or vice versa. There may well be opportunities here for joint ventures and partnerships.

Reaction to Reforms

The media-fuelled opposition to the proposed UK Gambling Bill reforms have been long drawn out in mainstream British and international media, and amidst the furore it is becoming increasingly unlikely that an early finalization can be achieved. The opposition as has been explained seems to be centred on the land casino aspects of the reforms and fears of too many large casinos in regional British locations, while the Internet gambling legalization aspect has barely been mentioned. That said there are clearly promising opportunities for investors and developers in what is a free and more flexible market and a society that has demonstrably embraced the gambling and casino culture. How true this is, will, of course, be tested by time.

Based out of our London office, **Katie Graham** is an associate in the Construction and Engineering Practice of Paul Hastings' Real Estate Department. Ms. Graham is also a member of Paul Hastings' Resort, Restaurant & Recreation Practice Group.

Major Trends of the Hospitality Sector in Europe: A Calyon Perspective

By Barbara J. Lévi

This has certainly been an interesting year to have been named Senior Banker for the hotel and leisure sector for the newly merged Calyon-Groupe Crédit Agricole, which is the result of the merger of the corporate and investment bank of Credit Lyonnais and Credit Agricole Indosuez. In has been an interesting year on several fronts.

The Bank

Calyon, created in 2004, benefits from being part of a large group which includes other units that are very active in the real estate and hotel sectors:

- The insurance company, Predica, with its service arm Credit Agricole Immobilier, which sources equity investments in the hotel and real estate sectors;
- The leasing affiliate, Ucabail; and
- Calyon's structured real estate and lodging finance teams located in major European centers,(as well as in Asia,

Australia and the US) each of which play a major role in their respective markets.

The Market

Our hotel clients entered the year 2004 reeling from the difficult and often devastating events of the years 2001 through 2003 that had had a major impact on their markets, their occupancy rates and their profitability. This, coupled with the looming changes in IAS norms for 2004-2005, forced many of them back to the drawing board to re-evaluate how they do business and manage their assets.

Just to have an idea of the extent of the difficulties faced by the hoteliers in Europe, the average occupancy rates for the major chains in 2004 hovered at roughly the following levels: France – 67 %, Germany – 60 %, Spain – 66 %, and the UK – 74 %. France has still not returned to the 80% occupancy rates of 2000; however, the UK has proven to be the most resilient of the European countries, having increased average occupancy rates by 2 % in 2004, and up to 10-12 %, for certain categories of hotels.*

As for prices, they are starting to inch upwards in most European countries, led again by the UK. Average REVPAR was the following for 2004: France – 48 € (+ 2 %), Germany – 48 € (+ 5 %), Spain – 56 € (actually a 7 % decrease in average REVPAR from 2003), and the UK 96 € (+ 7 %).* The year 2005 is expected to confirm this trend.

As for the change in accounting standards which comes into effect for the fiscal year ending in 2005, most hotel groups (and other corporations, for that matter) are considering different types of financing structures such as "sale-leasebacks," which were formerly off-balance sheets, even though they were often taken into account by analysts and brokers for the purposes of calculating "adjusted leverage." This is keeping the financiers busy for the moment while they mull over new structures that are truly off-balance sheets under the new norms.

Hotel Assets

Considering the above, it is not surprising that we are witnessing a new trend in the way hotel groups handle their assets. The name of the game is "asset light" and we see our clients actively selling their assets, and even entire portfolios of assets. While the majority of hotel groups are nevertheless actively expanding their so-called "branding base" throughout Europe, they are focusing on doing so through franchises or management contracts rather than outright ownership or fixed leases. Of course, the major chains do this to varying degrees. For example, Whitbread owns the majority of its portfolio (though they are starting to change this policy with the announced sale of some Marriott assets in the UK subject to management contracts), whereas Sol Melia has mainly management contracts in addition to owning roughly a quarter of its hotel assets. NH Hotels and Hilton both combine to the full range of ownership, leases and management contracts, but to varying degrees. InterContinental focuses predominantly on franchises (roughly 80 %), whereas Accor is fairly balanced with full ownership (21 %), leases (42 %), management contracts (17 %) and franchises (20 %).*

We have witnessed radical changes in policy from certain groups over the past year as this "asset light" phenomenon has taken hold. InterContinental Hotels Group announced early in 2004 the outright sale of up to £1 billion in hotel assets as part of a strategic review of its business. Raffles Holdings Ltd. just announced its intention to adopt an "asset light" approach to accelerate its expansion plans and thus reduce its outright ownership from 40 % of the hotel properties it manages to as low as 25 % over the next 5 years. Accor, motivated in large part by the changes in IAS rules, has just concluded an auction for the sale of the physical assets of a portfolio of 128 hotels financed via a sale-leaseback structure that retains management. The winning bidder, reputed to pay roughly € 1 billion, is actually a French real estate investment trust in association with several insurance companies.

The Investors

Of course, the asset light phenomenon is fuelling the investor market where one sees a lot of hotel assets changing hands. The investor profile has evolved in the recent past as the objectives of the hoteliers has changed. With the exception of certain portfolio acquisitions, one no longer sees the major international chains bidding for the individual assets, but rather individual and institutional investors, and private and public investment funds (generalists such as Duke Street Capital and LBO France or specialists such as Colony and Blackstone). Some banks (notably RBS and UBS) have also set up investment funds with hotel companies as partners to act as investors. And certain hotel companies have set up special purpose vehicles often with outside investors to hold their own assets (Host Marriott is an example of this). Real Estate Investment Trusts (REITs), quite common in the US, are just now being introduced in Europe as various countries enact legislation to provide them with fiscal advantages. These new investors see the hotel market as a natural extension of the real estate market where they have traditionally been major players and where there may be the possibility of a greater rate of return than for office space or shopping centres.

The investor market has been extremely active all over western Europe, particularly in the UK, Spain, France and Germany where there are many cross-border transactions. We see the major investors as domiciled locally or coming from other European countries (e.g., German investment funds and

Irish consortiums of high net worth individuals), but we also see Asian and Middle Eastern individual investors partially replacing the Americans. Given the reluctance of the hotel operators to enter into sale-leaseback arrangements as they previously did (due in large part to the change in IAS norms), the investors have increased their risk profile, as management contracts or flexible lease arrangements have come into vogue. In effect, "sale-leaseback" has become "sale & manage back."

Pricing

This active investor market has had a real impact on transaction prices. Bidding wars for individual assets or portfolios have seen prices climb to record highs. The markets in the major European capitals, notably London and Paris, but also Madrid and other major cities, have seen recent deals struck at previously unimaginable prices. In the 4 star category, it is not unusual to see assets sold at prices in excess of € 300-350,000 per room. In April 2004 the Savoy Hotel Group was sold to Quinlan Partnership – a consortium of Irish Investors - for £ 750 million. The International Herald Tribune recently reported that Prince Walid bin Talal and his two partners have pulled out of a plan to buy the InterContinental Paris hotel on Rue Castiglione because the price was too high, at more than € 300 million for the 438-room building. This is an exception to the rule where investors compete ferociously for prestigious assets, though the sale is still underway with very strong interest reported from other parties.

In summary, the trends which we witnessed in their embryonic stage in 2004 are certain to develop into major structural changes in the industry, provided that there are no more major catastrophic events or natural disasters. The year 2005 promises to be generous to real estate brokers, financiers and lawyers as hotel deals continue to fuel the market, with ever-increasing prices. Is there a limit ? Financiers will draw the line, but high net worth individuals and other special investors may seek to place their excess funds a "no holds barred" attitude.

Barbara J. Lévi is a senior banker at Calyon, a major international French-based bank active in the real estate and hotel markets worldwide

* Source: – Christie & Co, France

Hotel Management Agreements Under French Law: Overview of Major Terms

By Eric Diamantis and Carol Saba

As the hotel management business becomes more and more complex, operators need to be constantly creative in order to meet the challenges of the market and to attract clients. A major trend the industry faces today is the increasing interest of real estate investment funds in acquiring and holding as financial investors the real estate component (or walls) of hotel businesses. This trend in the hospitality sector can be summarized by a brief, concise and self explanatory formula: "fewer walls, more management." International hotel operators are frequently called upon to operate and manage, either through franchising or management agreements, hotels that they don't own. Pure financiers are becoming hotel owners and are changing the rules of the game and the perception of the hotel business. Now, the traditional requirements for quality services need to be combined with the requirements for tight and efficient financial performance. In addition to their traditional quest for quality standards, international hotel operators are compelled to include in their business management models an efficient business and financial strategy to minimize costs and increase benefits.

Legal Characterization of Hotel Management Agreements

The legal characterization of Management Agreements under French law depends on the exact nature of the services rendered and obligations intended to be performed by the parties, regardless of the characterization the parties may have intended to give to it. The courts are not bound to follow the title or the legal characterization that parties give to it and can consequently apply another characterization which may impact the legal regime that applies to the contractual relations between the parties.

The Management Agreement is the agreement by which the owner of a furnished and equipped hotel decides to engage a professional (the operator) to manage the hotel. Defining the legal characterization of an agreement is a prerequisite to determining the legal treatment that should apply to it under French law. Even though they must take the intentions of the parties into consideration, French courts reserve the right to characterize an agreement they are asked to construe, irrespective of the characterization given to it by the parties, when they believe the initial characterization to be either abusive or inappropriate in light of the specifics of the case.

Hotel Management Agreements: Complex Agreements

Contrary to common-law practice, Hotel Management Agreements do not fall within an officially recognized category of legal agreements. French legal authors ("doctrine") and case law ("jurisprudence") view it as a "complex" agreement; a combination of several types of legally recognized agreements in French Law, the purpose of which is specifically to create and/or manage under a common trademark a hotel through the use of management and organizational skills and techniques specific to an operator.

More commonly called the "business management agreement", management agreements are agreements by which a company that owns the structure and equipment of a hotel business entrusts the management thereof to a company specializing in the proposed business activity and which, for such purpose, possesses significant expertise.

Accordingly, a business management agreement is an agreement by and between a business manager which, in consideration of a payment, agrees to undertake to act as an independent contractor for the benefit of the owner of the business but without representing it (Civil Code, Article 1792). The business manager, therefore, acts for the business that it is responsible for managing and operating, but in its own name.

Management Agreements vs. Agency Agreements

Unlike the agency agreement, the management agreement involves not only legal representation, but also the performance of material tasks (or intellectual ones, such as advice or consulting).

An agency agreement ("Contrat de Mandat") is an agreement between a principal party (i.e., owner of the business) and an agent with the purpose of appointing the latter the authority to perform specific tasks on behalf, and in the name of, the principal owner of the business (Article 1984 of the Civil Code) ("Mandat"/"Agent"). The concept of representing another person exists in the very essence of the agency. Representation has two consequences for the agent: the agent (i) may only take legal action (as opposed to performing material tasks) on behalf of the principal (for example, entering into a lease or concluding a sale) and (ii) must benefit from an actual autonomy in the negotiation and/or preparation of the legal documents.

It should however be noted that French corporate law prevents a commercial company from granting a general representation mandate to a third party; the management agreement thus has to be drafted accordingly.

In fact, drawing a line between both contracts could in certain circumstances be a difficult exercise and it is in the interest of the parties to qualify what they do since the impact, in terms of liability towards third parties, that would result from the performance of each of these types of contracts is not the same.

In practice, hotel management agreements combine a pure management agreement with an independent contractor (as a principal matter), to which is added an agency agreement (as an ancillary matter).

Obligations of Manager as Professionals

When business professionals are involved, the legal regime resulting from such liabilities may in the end be similar, whether the management agreement is an agency agreement or a pure business management agreement, or both.

Regardless of whether the contract is an agency agreement or an agreement with an independent contractor, management companies must perform their obligations in good order and "as diligent and responsible professionals" to maintain their standing as professionals in the business. Generally speaking, the responsibilities of management companies vis-à-vis principals, or owners, can involve three types of obligations:

First, the performance of efficient service is the minimum that the owner has a right to expect from a management company engaged for its professional experience. This is nevertheless limited to the scope of services as defined under the agreement.

Second, the manager should show transparency, or openness. Transparency during the performance of the engagement implies constant contact with the owner, informing and advising him in a timely manner of any problem that would require input and or a decision from the owner. This allows the owner to change or adapt his instructions according to developments. Transparency is also a way to serve the purpose of the agreement in the best interests of the owner. Any action taken by the manager that takes advantage of his position to serve his own interest or the interests of any other third party by an overly broad interpretation of the agreement would be considered a misuse of the authority granted to him.

Third, the manager acts as an advisor to the owner, to the extent that the management company has been hired for its know-how. Courts require, in this specific case, that the manager's advice be tailored to fit the situation and be relevant to the circumstances facing the owner of the hotel. Consequently, managers are responsible for recommending, among various options, advice that is most favorable to the interests of the principal or owner (see, Cour de Cassation [Highest Civil Court of Appeal], civ. 3, 4 October 1978, Bull III, 233 – civ. 1, 9 July 1985, Dalloz 1986, at 118). Whether a manager will carry out this advisory obligation depends on the individual case, i.e., on the professional status of the owner and whether the owner is deemed to be considered an experienced individual or warranted professional in his field. (Cour d'appel [Court of Appeal] of Versailles, 30 May 1996, RJDA 1996 n° 1346).

Standards for Liability

Management companies face several liabilities. They can be rendered liable for any damage caused by the improper, partial or total, performance of their obligations and of any failure or fault committed in connection with their management services. Certain agreements or events can limit or exclude the management company's liability, such as:

1. The inclusion of a contractual provision having the effect of limiting or excluding liability. Such a provision operates to the extent that the management company has not committed gross negligence or willful misconduct (Cour de Cassation, com., 21 March 1977, Bull. civ. IV, n° 89);
2. The occurrence of an unforeseen event or case of force majeure;
3. Where, through its acts, the principal or owner has itself made the performance of the management company's assignment impossible or more difficult;
4. Risky transactions undertaken on the order of the principal or owner with full knowledge of the underlying risks; or, finally
5. Ratification by the principal of the agent's acts.

The management company is liable for all faults that a prudent and diligent professional would not have committed, whether by positive action or by omission. For example, an experienced professional has been held liable for:

1. Failing to take steps necessary to protect the interests of the principal or owner (Cour d'appel of Versailles, 20 February 1998, Gaz. Pal. 21 Oct 1999);
2. Not giving the principal or owner timely notice of an increase in expenses or the occurrence of certain problems (Cour d'appel of Paris, 13 February 1980, Gaz. Pal. 1980.1.351);
3. Providing incorrect information, or failing to verify and double-check the accuracy of the information provided by third party contractors;
4. Regularly selling at below-market prices without informing the principal or owner;
5. Breaching its obligation to advise (Cour de Cassation, 18 January 1989, Dalloz 1989, 318).

Case law usually views the management company's obligation standard as simply being a "best efforts" duty ("obligation de moyen"),the success of the assignment not depending solely on its efforts, but also on other matters which could be out of its control. Consequently, the burden of proof of the occurrence of the fault falls on the principal or owner. This would have not been the case had it been considered as a strict duty ("obligation de résultat").Another possible source of liability relates to employees. Whereas management agreements usually state that the hotel employees are employees of the owner, and not of the manager, (i) a too broad drafting of the management agreement could deprive the owner of any management input and (ii) the day-to-day relationship between hotel employees and the manager could possibly lead to the owner and the manager being jointly considered co-employers under French Labour law.

Within the legal characterizations and restrictions of the role of the manager, the field continues to grow as the need increases. More and more hotels are owned by a different type of owner than we saw in the past. As real estate investors and new owners enter the business, they must make careful consideration of the type of agreement they will wish to pursue with a manager, as well as of their own level of involvement. Understanding the obligations of both parties is vital to a successful hotel business.

Eric Diamantis is Of Counsel in Paul Hastings' Paris office, focusing on regulatory matters and mergers and acquisitions. In particular, he is involved in public sector operations and in the fields of media, telecommunications, energy, health, and infrastructure projects. Mr. Diamantis is also a member of Paul Hastings' Resort, Restaurant & Recreation Practice Group.

Carol Saba is Of Counsel in Paul, Hastings' Paris office. Mr. Saba focuses on banking and project finance, he has been involved in major international financing projects throughout the world, including Eastern Europe, the Middle East and Africa. Mr. Saba is also a member of Paul Hastings' Resort, Restaurant & Recreation Practice Group.