

Coronavirus: Operational Issues for the Hospitality Industry

The hospitality industry is expected to be one of the worst hit by the impact of the novel coronavirus (**COVID-19**). With travel advisories and restrictions on international commercial passenger aircrafts from landing in the country, business would be seriously impacted. In some regions, hotels may be asked by the Government to shut down operations, while some hotels are also being approached for use of their premises as quarantine facilities.

Conditions of Lease

Where the land underlying a hotel has been taken on lease, the primary concern of the owner would be whether the lease documentation excuses performance on account of events beyond the control of the parties (force majeure events) and whether a pandemic such as the COVID-19 would be covered thereunder. Even if the force majeure clause covers pandemics, it would be important to ascertain whether payment of lease rentals would be excused during such force majeure. Often lessees would be required to notify the lessor of a force majeure, in order to claim the benefit thereof. It may also be evaluated whether the continuance of the force majeure accords either party the right to terminate the lease.

Operator Issues

Similarly, for contracts between hotel owners and operators, the consequences stipulated under the contract for a force majeure should be ascertained. If operators apprehend that management of the hotel operations would be required to be partially or fully suspended, they should ascertain whether they have such a right under their hotel management agreement and notify the hotel owners accordingly. From our experience, while hotel management agreements with most international hotel chains would cover epidemics and governmental advisories (which would thus cover COVID-19) within their force majeure clauses, they do not permit suspension of payment obligations of the owners in such circumstances. The fees payable to the operators are usually linked to gross revenues of the hotel. However, the hotel would most likely not be earning any significant revenue and thus owners would find it extremely challenging to continue performing such an obligation. This should be seen in the backdrop of the priority of fee payments to an operator over statutory, rent and financial payment obligations. In such a case, the solution would be to look to business interruption insurance that has been procured by the hotel.

Further, care must be taken that operators comply with all government directives issued and keep the owners abreast of any notices received from any governmental authorities. Although there is some controversy on this, an operator could be treated as an agent of the owner, and hence would owe a duty of good faith to the owner. Given their oversight they exercise over a hotel, they should ensure the compliance of all government directives.

Other Financial Obligations

As mentioned above, hotel owners would also have debt service obligations towards their lenders and statutory payment obligations which may be difficult to fulfil owing to the lack of revenue. It may be noted that lending documents do not suspend payment obligations on the occurrence of force majeure events. Until the Government rolls out a package to help alleviate the situation, owners could probably get in touch with their lenders and seek a moratorium on loan repayments or request the lenders to not enforce securities due to default in payments made during such period.

Employment Issues

Given that the hospitality industry is one of the largest employers in the country, the decision as to their employees would perhaps be the most difficult. Our advice would be to first check the local Government directives on COVID-19 and ascertain whether any regulations have been issued in respect of the treatment of employees at such time. Secondly, it would be important to ascertain whether a wage cut could help mitigate the crisis. Retrenchment of employees should be resorted to only when absolutely necessary and after following the due process of law. Further, whilst most operators would have the power to make decisions regarding employees unilaterally under the management contracts, given that the employees would be those of the owner under law, it would be advisable for operators to keep the owner in loop before taking any such measures.

Guest Issues

In line with the motto of 'Atithi Devo Bhava', the first and foremost priority of a hotel owner/operator would be to ensure safety of their guests. It would be critical for hotels to adhere to all instructions issued by the Government and local authorities and continue guest operations accordingly. The Ministry of Health and Family Welfare has issued guidelines for prevention of transmission and disinfection of hotels where suspect or confirmed COVID-19 have housed. The Ministry of Tourism has also advised hotels not to adopt discriminatory behavior against foreign tourists and instead report symptomatic cases to the health authorities. In addition to this, advisory on social distancing have also be the MoFHW.

Hotels would, thus, have to be cautious in their approach towards any incoming guests. Hotels could perhaps require guests to submit self-declaratory forms to ascertain whether they are violating any quarantine or isolation rules and report the same to the relevant authorities. However, it would be important to ensure that any information is only collected only after the guests have provided an informed consent, to be compliant with applicable data privacy laws.

In addition to the above, hotels who have not already revisited their cancellation policies may choose to do so for future room and MICE reservations. Many large brands are permitting cancellations even where rooms were earlier booked on a non-refundable budget as a gesture of goodwill.

Miscellaneous Issues

In addition to the above, hotels may also have contracts with vendors and suppliers. The same may be revisited to determine the hotel's ability to suspend or terminate such contracts or to defer payment obligations. Importantly, it would be advisable for all hotel owners and operators to get in touch with their insurance advisors and ascertain the nature of claims that are covered under their existing insurances.

While these appear to be testing times for the hospitality industry, we expect the Government to pay heed to the difficulties in this sector and offer relief, considering the importance of an industry which millions bank on for employment and which is also necessary infrastructure for India's economic aspirations in the long run.

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