

The Use of Operator Agreements in the Events and Sports Industry

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The use of an operator agreement can be a neat and effective method to identify and distribute responsibility and risk to an expert operator of a specialised sports or recreational activity or event. This is particularly so in circumstances where the body who holds the rights to conduct such activity or hold such an event requires expertise beyond the knowledge or expertise of the land holder, such as specific safety protocols or knowledge of specialized equipment.

In the United Arab Emirates, the land holder is generally a local Government entity, or related body, and it would be expected that such body is entitled, and holds the rights, to exploit land for commercial and sporting purposes. For short term or one off events and activities, using an operator arrangement can be a relatively cost effective and straightforward arrangement in comparison to negotiating complex shareholder or similar arrangements in joint ventures. Even if a more formalized joint venture arrangement is contemplated after an initial collaboration, an operator arrangement not only sets out preliminary legal rights and obligations but also provides a good “get to you know you” pre-arrangement for many joint ventures.

This article will consider some non-exhaustive salient provisions which should be considered when negotiating such an operator agreement to be used in the United Arab Emirates; and, it will also discuss methods of resolving issues between the parties in the event of a dispute.

The Parties to the agreement and licensing

Although often seen as a basic point, getting the right contracting parties is of paramount importance from a legal perspective to ensure the correct land holder is granting the requisite authority and that the correct operating entity is contracting to binding terms of engagement. To avoid any doubt, the parties should disclose relevant up to date trade licences and memorandum of association in order that the correct referencing is included and to confirm that the signatory has authority to enter into contractually binding arrangements.

Operators responsibilities and obligations

The operator agreement should clearly set out the responsibilities of the operator and the parameters in which it can operate. Due consideration must be given to ensure that the operator is obliged to carry out its duties responsibly and safely and in accordance with any relevant accreditations or industry standards.

Marketing and IPR

Branding and marketing guidelines are required to ensure that the parties are aware of specific requirements in relation to their respective intellectual property and in order to protect the parties rights in this regard. If the project is being jointly marketed then consideration must be given as to who will own the IPR at the end of the project and whether or not it would be expedient to include any post-contractual licenses or permissions (e.g., to refer to the activity or event or use images of the same).

Compliance with laws and regulations

Any operator must agree to adhere to and comply with relevant laws and regulations and specific regulations such as Security and Safety, Personal Data Protection and Anti-Corruption should be specifically stipulated. Although an operator will be required under law to comply, enhanced contractual requirements further protect the parties and demonstrate best practice and compliance.

Fees

A significant amount of time will be spent in calculating the fee model and agreeing satisfactory payments terms. Fee models vary from fixed rates, share of profits, percentage of revenue and can include provisions whereby costs, expenses and overheads are deducted and paid before distribution (the profit cost model). In addition, for longer term arrangements there may be a requirement to adjust or recalculate fees using a stabilisation clause, which can be as basic as an increase in line with an indexed rate or more complicated based on external market and economic forces.

Termination and Force Majeure

Termination rights will depend on the length of the agreement but generally include rights to terminate upon notice for a variety of events, including a material and incurable breach of the agreement and bankruptcy. The parties may wish for a “stay” in the event of a Force Majeure or availability to terminate, depending on the length of the Force Majeure event.

Moreover the parties must also determine the consequences of termination including any practical requirements such as making a handover of property, including customer information.

Insurance obligations

Whilst a breach of the contract may lead to a claim for damages from the non-breaching party, one important aspect that should be expressly included in the contract will be insurance to ensure that any third party loss and damage is satisfactorily covered. Accordingly, the type of insurance, the quantum of cover and the party responsible to insure may be points of considerable negotiation. It is advisable that there are obligations on the responsible party to (i) produce evidence of the insured cover in a timely manner before commencement of the activity, (ii) maintain the coverage throughout the term of the agreement, and (iii) advise the other party in advance of any change of the coverage.

Dispute resolution and choice of law

One of the main reasons to enter into a written, binding contract is to avoid disputes over what has or has not been agreed. Whilst the vast majority of commercial arrangements do not end up with serious issues, from time to time, with reputations and financial detriment at stake, and even with a considered document in place, parties may end up in dispute.

The contract should stipulate which jurisdiction’s law will govern the agreement and also the forum in which disputes will be settled, and may include options for mediation, arbitration or immediate reference to court to resolve disputes which cannot be settled between the senior personnel of the parties.

With the recently announced collaboration between the Judiciary of Ras Al Khaimah and the Dubai International Financial Centre (DIFC) (see Article [Ras al Khaimah and the DIFC Courts: new agreements to forge an ever-closer partnership] above), this provides further dispute resolution options in Ras Al Khaimah.

Legal advice is always recommended to be obtained on the effects and the terms and conditions of any agreement.

Al Tamimi & Company’s Ras Al Khaimah team regularly advises on operator and other commercial agreements relating to Sports and Events. For further information please contact Adam Powell

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