

Geographic Exclusivity for Marriott Franchisees

Geographic Exclusivity is a clause in a hotel franchise agreement that guarantees a franchisor will not allow competing franchises to open within a certain radius of a hotel. This protection is sometimes also called a “Licensed Territory,” a “Restricted Area,” or an “Area of Protection”. It gives the protected franchisee the assurance that their investment will not be undercut by competition. These clauses can be in effect for the duration of a franchise agreement, or they can expire after a certain period of time.

Importance for Marriott franchisees

Marriott and legacy-Starwood franchisees face a whole new competitive landscape after the merger. Shortly after the merger, Bob Braun of Jeffer Mangels Butler & Mitchell (JMBM) wrote of Marriott franchisees: “Competition with hotels that were formerly part of a different reservation system may become problematic.”¹

Additionally, franchisees may face increasing competition from new development. If a franchise agreement does not contain a Geographic Exclusivity clause, Marriott could allow competing franchises to open up right across the street. And if those new properties are paying a higher percentage of revenues in franchise fees, or if those properties are managed directly by Marriott, then Marriott has an incentive to steer business towards those new properties. Meanwhile, Marriott has unrestricted access to all franchisees’ guest data.

What is in other franchise agreements?

The 2017 Hilton and 2018 Hyatt Regency Franchise Disclosure Documents (FDDs) describe the possibility of negotiating over geographic exclusivity. But the 2017 Marriott/JW Marriott FDD states that no such protection is available to franchisees.

This could make a non-Marriott brand a more attractive option for developers.

Comparison by franchisor

Brand	Geographic Exclusivity as described in FDD
Hyatt Regency	“Unless the Hotel is an operating Hyatt Regency Hotel, we and you will agree on the boundaries of your ‘Area of Protection’ before signing the Franchise Agreement. We typically define the Area of Protection’s boundaries using geographic references (such as streets or rivers) or as a circle with the Hotel at its center.” ²

Hilton Hotels & Resorts	<p>“There are no provisions in the standard Franchise Agreement granting franchisees a protected area or territory. You will not receive an exclusive territory.</p> <p>We may, however, agree to give franchisees certain specific territorial restrictions (‘Restricted Area Provision’) for an area surrounding the franchised hotel and encompassing the immediate competitive market for the hotel as may be agreed on by the parties (‘Restricted Area’).”³</p>
Intercontinental	<p>“You will not receive an exclusive territory.</p> <p>In special circumstances, when in HHFL’s sole judgment, special considerations warrant, HHFL may grant exclusive or protected areas in which another InterContinental Hotel will not be licensed.”⁴</p>
JW Marriott/Marriott	<p>“You will not receive an exclusive territory.</p> <p>You may not be granted a territory, but if you are, it will be non-exclusive.”⁵</p>

In practice:

- The Hilton San Francisco Financial District negotiated an exclusive zone of several blocks around the hotel for the first four years of its agreement, and a smaller zone from then until the 10th anniversary of the hotel’s opening date.⁶
- Prior to Marriott buying Starwood, the Aloft New York Midtown negotiated a “Restricted Area” of approximately 3 city blocks that lasted from the signing date until termination.⁷
- The Hilton Little Rock Metro Center had a “restrictive area” with a four mile radius during a “Ramp-Up Period” that lasted for the first three years of the agreement.⁸

Loopholes and Legacy brands

Your franchise agreement may contain a geographic exclusivity clause written with a caveat that if the franchisor completes a single transaction that adds multiple properties to its system, then the protections do not apply. In a franchise agreement with a clause like this, the Marriott-Starwood merger may nullify the clause’s protections.

For example, in 2013 the Aloft New York Midtown’s franchise agreement contained an “Area of Protection,” but the clause was written so that “[The] restriction [did] not apply to any...hotel located in the Restricted Area that is part of a portfolio of at least six hotels which become Starwood Properties (under the Brand or otherwise) as part of one transaction.”⁹ The developer canceled the franchise agreement shortly after the Marriott-Starwood merger was completed.¹⁰

Franchisees should consider important questions that arise from this: For those developers who signed franchise agreements with clauses like these shortly before the merger, were they made aware that Marriott was considering buying Starwood? If not, would it have affected their negotiations?

What franchisees can do:

Franchisees who are concerned about unfair competition should consider their options. Even those who are already locked into long-term franchise agreements can take one or more of the following steps:

1. Send us a copy of the franchise agreement, so that UNITE HERE can provide timely and useful information to you and other franchisees;
2. Ask their own attorneys to take a critical look at their franchise agreements and franchise disclosure documents to see if Marriott has met both state and federal standards of transparency;
3. Ask for guarantees against area competition in the event Marriott eliminates brands or forces some brands to convert to other brands.
4. Those who may be contemplating entering into future deals with Marriott should think twice. They may want to compare geographic exclusivity protections with those of competing franchisors.

Endnotes

- 1 “Marriott-Starwood merger: the impact on owners, franchisees and developers.” Robert Braun. 12/1/2015. <https://ehotelier.com/insights/2015/12/01/marriott-starwood-merger-the-impact-on-owners-franchisees-and-developers/>.
- 2 Hyatt Regency 2018-2019 Franchise Disclosure Document. Page 45.
- 3 Hilton 2017 Franchise Disclosure Document. Page 51.
- 4 Intercontinental 2018 Franchise Disclosure Document. Item 12. Page 67.
- 5 JW Marriott/Marriott Franchise Disclosure Document. March 31, 2017. Page 81.
- 6 Franchise License Agreement. Hilton San Francisco Financial District. 12/10/2004. Attachment B-2. Page 35. Available at https://www.sec.gov/Archives/edgar/data/79661/000114420412048023/v322246_ex10-3.htm.
- 7 Aloft New York Midtown Franchise Agreement For New Build Hotel Between Fortuna Fifth Ave LLC and The Sheraton LLC. September 30, 2013. Section 5.1. Page 14.
- 8 Official Statement. City of Little Rock, Arkansas Residential Housing and Public Facilities Board. Tax Exempt Enterprise Zone Revenue Bonds (Hilton Little Rock Metro Center Project). Series 2004 A and B. June 1, 2004. Page 4.
- 9 Aloft New York Midtown Franchise Agreement For New Build Hotel Between Fortuna Fifth Ave LLC and The Sheraton LLC. September 30, 2013. Section 5.1. Page 14.
- 10 The Sheraton LLC v. Fortuna Fifth Avenue LLC and Morris Moinian. U.S. District Court, Southern District of New York. Case 1:17-cv-04637-RA. Complaint. 6/20/2017. Item 14, Page 4.