

FRANCE

Hotel Management Agreements



Introduction



One cannot discuss the evolution of hotel management agreements (HMAs) without first talking about the separation of hotel ownership and hotel operations; a transformation of the major chains' business models, more commonly known as an "asset light" strategy. Today the form taken by hotel operators in HMAs is an important factor in the effective working of the market in hotel investment. DLA Piper's Hospitality and Leisure Sector Group has negotiated HMAs for a myriad of different clients across the H&L landscape (owners, investors, operators (both branded and white label) and lenders) in all of the world's key jurisdictions.

Many consider hotel management agreements to be borne out of a modified lease for the Hong Kong Hilton back in 1963, and the main terms included in it underpin most HMAs to this day. All major chains today have, to one degree or another, expanded nationally and internationally through a combination of franchise and management, and all have their own "form" or template agreements. In summary, over the last few years, we have found that trends that started as a result of the financial crisis of the last decade have continued to develop. In many markets the advent of recession made operators more risk averse. Traditionally HMAs were a means to limit operators' exposure to fixed rental payments when revenues were dropping. In less developed markets, even with a degree of economic recovery, operators have continued to use HMAs in this way. In more developed markets, such as Spain and the United Kingdom, we have seen increased complexity in agreements, a symptom of owners becoming more knowledgeable and seeking more control and input on the operation of their hotel, although owners continue to take the lion's share of commercial risk in developments.

Another important factor, as with any real estate investment, is the attitude of those who are providing the money, be it equity or debt. Leases were the traditional mainstay of hotel developments and indeed Germany remains a country where hotel deals are commonly based around leases. However, as investors have started to see the increased returns from ownership, the boom in arrangements like ground leases and other market changes is essential to have an understanding of investors and be able to work with them in a scenario of increasingly complex legal arrangements.

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General

Are Hotel Management Agreements (HMAs) common in the jurisdiction?

Yes.

If not HMAs, what are the alternatives / what is commonly used?

The alternative is commercial leases or management lease contracts (*location-gérance*), which are submitted to mandatory regulations and disliked by international operators.

Is it common or usual for the HMA to be governed by (i) local laws; (ii) the laws of one of the parties' country of incorporation; or (iii) an alternative jurisdiction?

HMAs in France will commonly be governed by French law.

Are there any significant or unusual points to note in respect of tax on HMA payments in the jurisdiction?

No.

Term and termination

Is there a standard contract period of an HMA?

From 10 to 30 years.

Is the term usually fixed? Are early exit or similar options included (contractual or implied)?

The term is usually fixed (with renewal possibilities often provided) and early exit options are commonly provided (notably upon performance test failure or sale of the hotel). Operator or owner misconduct, condemnation, bankruptcy or default may also be taken into account. Termination rights for convenience will almost always be rejected, even if subject to an indemnity.

Is it usual to include fees / liquidated damages for early termination?

Early termination upon sale may be subject to fees or damages. Moreover, should the agreement be terminated due to the default or breach by either party, damages or indemnity may be due.

What is the usual position in respect of renewal?

The renewal will often be upon common agreement of the owner and the operator.

Fees

Is there a standard fee structure for HMAs (eg base + incentive)?

The standard includes a base fee calculated on revenues and an incentive fee based on profits.

What other fees and charges are there (such as royalties, accounting, marketing, license fees, etc.)?

Operators will require marketing contributions and other fees for various services which may or not be optional (eg accounting services, license fees, software licenses, room reservation networks, trademarks and IP). Depending on the case, such services can be subject to separate agreements entered into between the owner and the operator (such as services agreements or licensing agreements).

Are owners typically required to set aside funds for fixtures and fittings?

FF&E reserve is very common and often calculated as a percentage of revenues subject to diverse levels depending notably on the hotel's age, standing, etc.

Performance and operations

What is the usual standard imposed on an operator in respect of the operation of the hotel?

Contractual performance standards vary between operators, types of hotel, etc. Generally speaking, HMAs will provide for a performance test but do not usually contain KPIs, SLAs or specific standards because fee structures often mean owner and operator interests are aligned.

What performance measures are commonly used in the jurisdiction?

Performance tests are standard (and imply either termination right for failure to meet RevPAR and/or Gross Operating Profit (GOP) tests or cure payment by the operator for keeping running). An Adjusted Gross Operating Profit (AGOP) guarantee might be provided.

Is an operator or owner guarantee common in the jurisdiction?

Yes, an AGOP guarantee for the operator.

What is the usual position in respect of employees? With whom does the liability for the employees sit?

Hotel employees are often employed by the owner and more rarely by the operator at the owner's costs.

Is it usual to have a non-compete clause, eg that no other property with that brand can open within a certain radius?

Non-compete clauses are common and may include a radius subject to city size and type of brand.

Who is responsible for insurance?

Insurance of the property will be at the owner's cost and subscribed by operators or subscribed by the owner but with the coverage extending to the operator.

Does the HMA give rights in real estate in the jurisdiction?

No.

Does the HMA need to be recorded against the property, if this is possible in the jurisdiction?

No.

Where financing is taken, is it standard to obtain a Non-Disturbance Agreement (NDA) as part of a management or lease agreement?

Yes.

What other agreements usually sit alongside an HMA in the jurisdiction?

Depending on the operator, the following agreements may also be executed:

- Technical Services agreements
- Centralized services management agreements
- Licensing agreements
- Franchise agreements

Transfers and assignments

What are the standard rights / restrictions in respect of transfer / sale of the hotel?

Changes in ownership of the hotel will often be subject to the prior approval of the operator and/or will be restricted (eg only possible to sell to a member of the owner's group) or prohibited in the agreement.

When a managed hotel is sold (either asset or share deal), is it usual in the jurisdiction that either the Operator's consent is required for the sale, or that the hotel may only be sold if the HMA transfers with the hotel?

Yes.

Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?

Yes.

Is it usual to include provisions which enable the sale of the property with vacant possession ie without the brand?

It is unusual but may be negotiated and will be subject to exit fees.

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