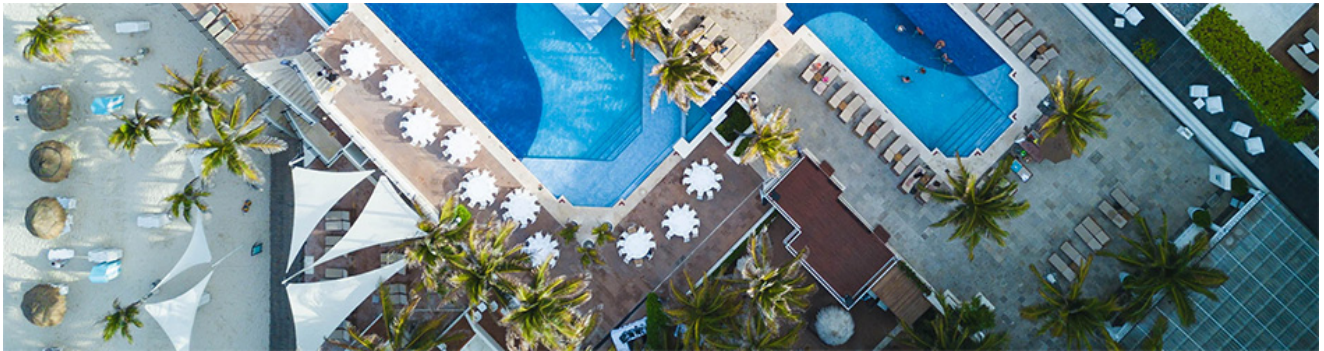


MALDIVES

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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Maldives

Last modified 10 February 2021

General

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

Yes, very common.

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

Some international operators, normally those with strong track records managing hotels in the Maldives, have agreed to franchise arrangements in recent years.

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?

Maldivian law commonly governs HMAs, although alternative laws, normally England and Wales or Singapore law, may be agreed to.

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?

15-25 years.

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

Yes, the term is fixed. Termination for cause rights, such as termination in the event of failure to maintain the rights to the underlying land lease, breach and underperformance, are negotiated in the HMA.

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

Yes. Most operators will seek lost management fees that otherwise were owed for the duration of the unfulfilled operating term in the event of any early termination.

What is the usual position in respect of renewal?

Renewal is at the discretion of the owner or by agreement. Renewals tend to be for longer periods (such as ten years) due to the prevalence of upscale/luxury hotels in the market.

Fees

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

Fees vary depending on brand, operator and hotel location. Fees are normally a percentage of total revenue (such as 1-3%), and a percentage of gross operating profit (such as 0-8%, depending on how profitable the hotel is).

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

License fees (normally a percentage of total revenue), centralized services fee (based on the services provided), and marketing service fees (based on either gross room revenue or total revenue).

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

Yes.

Performance and operations

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

The standard is negotiated in the HMA, and is generally for the hotel to be operated similarly to hotels of the same class in the market, with the same degree of care as other prudent operators, and, where agreed by the operator, with the aim of maximizing long-term profitability.

What performance measures are commonly used in the jurisdiction?

Either or both of the gross operating profit (GOP) test and the revenue per available room (RevPAR) test. The GOP test is a test of how the hotel's annual profits compare with the performance proposed by the operator during the budget approval process. The RevPAR test is a test of how the hotel's gross room revenue compares to competitor hotels in the market.

An operator almost always requires a right to cure any underperformance before the owner can terminate an HMA for failing either test.

Is an operator or owner guarantee common in the jurisdiction?

No.

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

The owner is almost always the employer of record.

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

Yes, and the clause may extend to other members of that brand's family.

Who is responsible for insurance?

The owner; however, the operator may seek to obtain operational insurance in the owner's name.

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?

Yes, the HMA needs to be registered with the Ministry of Tourism, and the operator needs to be registered with the Ministry of Economic Development. This process is to occur before signing the HMA. Failure to obtain such registrations may affect enforceability of the HMA in the Maldives.

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

No.

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

A License Agreement and a Technical Consultancy Agreement, and depending on the operator, a Centralized Services and Marketing Agreement.

Transfers and assignments

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

An operator will require approval rights with respect to any change in the ownership structure of the hotel. Approval can usually be withheld for a number of reasons, including if the owner fails the operator's compliance checks or is deemed to be a competitor.

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, and the owner will require the consent of the relevant authorities in the Maldives to any sale.

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

No.

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

No, but if agreed, the operator would likely require a termination fee.

We are not qualified to practise Maldivian law. We have prepared this fact sheet based on our experience of conducting transactions in the Maldives.

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