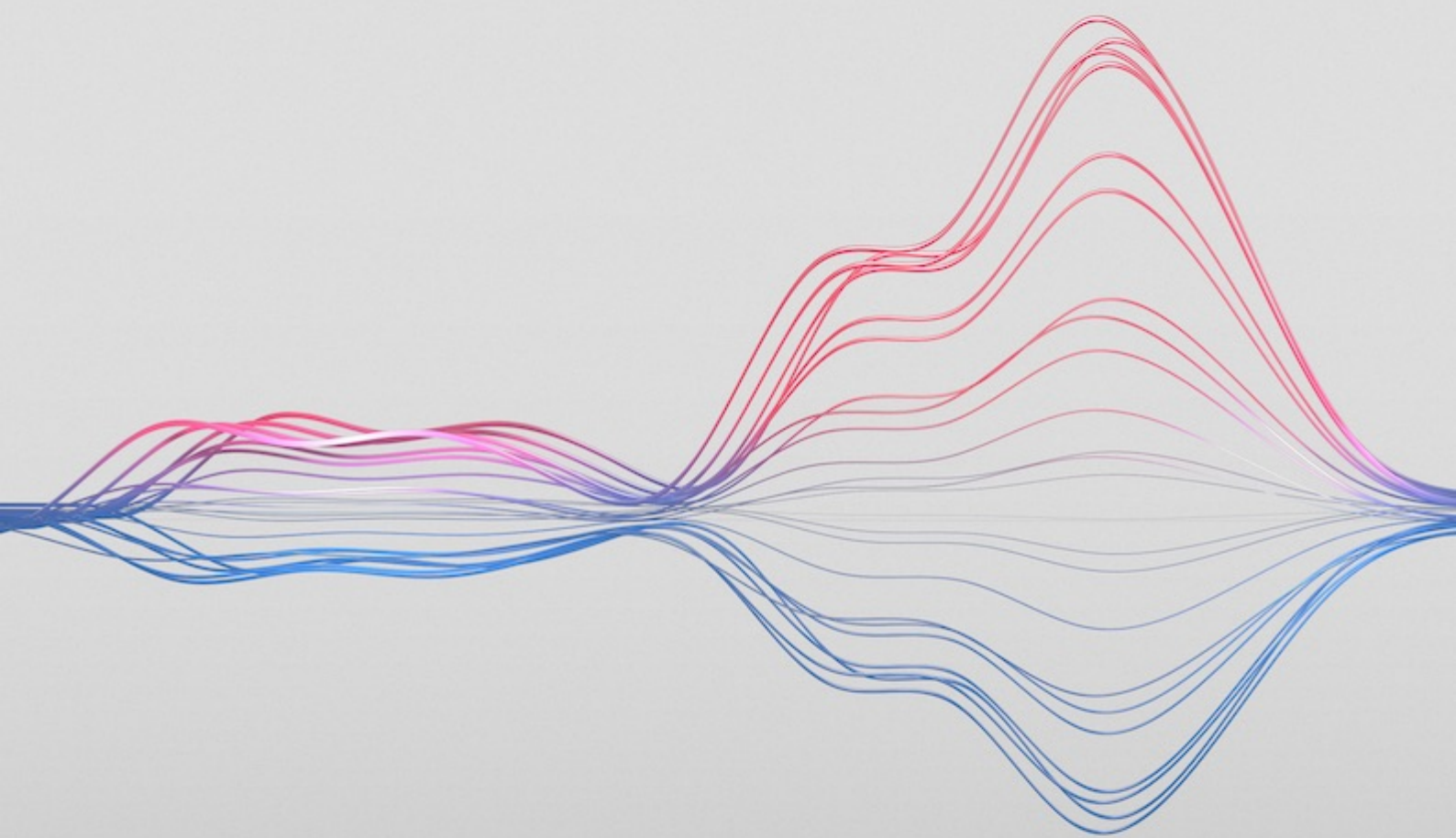


CZECH REPUBLIC

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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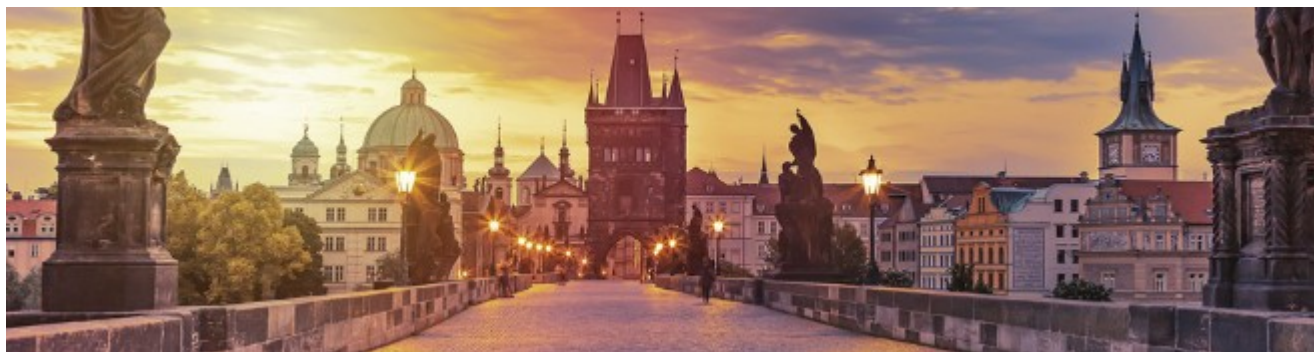
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Czech Republic

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General

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

Yes, they are common.

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

Alternatives to HMAs are lease agreements and franchising agreements. With a lease agreement, the hotel operator leases the relevant building and as lessee assumes all the risks relating to the operation of the hotel. It is the hotel operator who is responsible for obtaining all the licenses and permits.

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?

International brands do prefer English law, but Czech law is also frequently used.

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?

The average contract period is 15 to 25 years, although the trend now is to negotiate much shorter periods, in the case of smaller hotels even just 5 years.

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

The term is usually fixed. There are no implied exit options; however, these could be introduced into the contract by the parties at their discretion. It is common that the parties agree on early exit options for several specific reasons (eg violation of the terms of the agreement by one of the parties). It is also possible to include an extension option in the agreement.

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

Yes, it is; for example, in the case of selling a hotel, the manager has usually the right to severance pay. In most cases, the amount of the severance pay is determined by multiplying the average monthly remuneration of the hotel manager and the number of months remaining until the proper duration of the agreement. It could also be agreed another way (ie the owner would have the right to a fee). It is in the parties' discretion.

What is the usual position in respect of renewal?

It is very common that the parties agree on an extension option. The HMA can be renewed (extended) automatically (eg when specified conditions are met), or when the parties specifically agree to it any time during the contract period. Like most terms of the agreement, it is in the parties' discretion.

Fees

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

It is typical to divide the fee into two types; namely the basic fee and the profit fee. The basic fee is most often determined as a percentage of the gross monthly income from the operation of the hotel (on average in the range between 2-4%). The profit fee is then primarily the remuneration from gross operating profit, the amount of this fee is then determined again as a percentage of this profit (ranging from 8-15%), while it is standard that only one percentage is set.

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

Marketing fees and trademark fees.

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

Usually not, this is used mostly in lease agreements.

Performance and operations

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

The standard is to manage the hotel in line with the legal regulations and the standard agreed between the parties.

What performance measures are commonly used in the jurisdiction?

The most common performance measures are gross operating profit per available room or revenues per available room.

Is an operator or owner guarantee common in the jurisdiction?

No, a guarantee is not necessary; however, it is common that before granting a license or concluding a franchise agreement, factors such as solvency and asset value are evaluated.

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

Wage costs are considered to be hotel costs, even if two employment variants are used, where the hotel employees are employees of the manager or the owner. A more common model is that the hotel director is an employee of the manager as well as their costs, according to which the manager's remuneration is adjusted accordingly, and the hotel employees are employees of the owner, including the costs incurred.

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

No.

Who is responsible for insurance?

Usually 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?

No.

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

None.

Transfers and assignments

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

Usually there is an option of an early termination of the agreement by the owner in case of a sale of the hotel with agreed an amount of severance pay for the operator (see the answer to the question no. 7).

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?

No, nothing like this is required in the Czech Republic.

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.

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