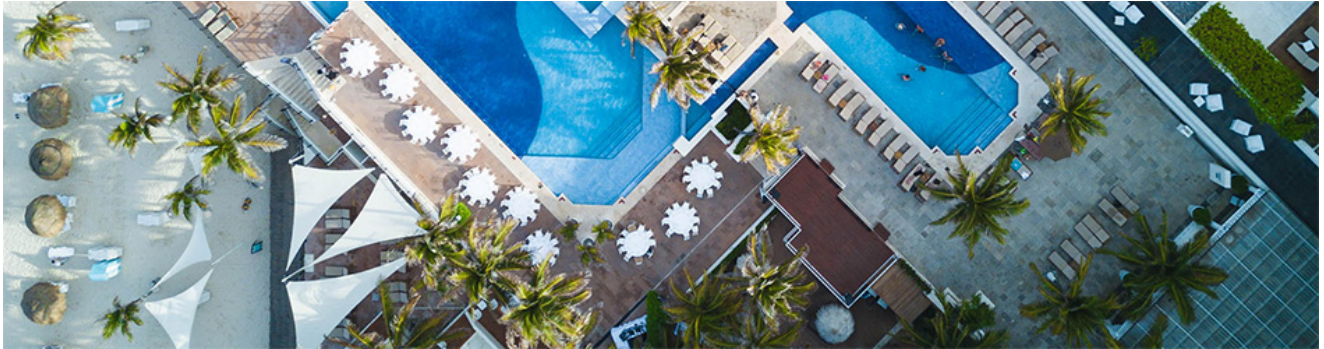


POLAND

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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Poland

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General

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

Yes, this kind of contract is commonly used.

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

The alternative to HMAs are lease agreements. Currently, we are also seeing a significant increase in franchising agreements in the Polish market.

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?

English law is the most frequently chosen law for governing HMAs in Poland by international brands. However, local entities stick to Polish 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?

Contracts in the big international hotel sector are usually concluded for a minimum term of 20 years. In the case of domestic hotels, the period is much shorter – sometimes just three 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, which is not the standard solution on the market.

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

Yes, due to the recent supreme court jurisprudence, these liquidated damages should be established at a fair and reasonable level.

What is the usual position in respect of renewal?

The potential renewal could be agreed by the parties in the HMA. There are no legal regulations regarding this issue.

Fees

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

Between 3-5% and up to 12% of the hotel's operating income.

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

Entry fees, reservation fees, trademark fees, loyalty package fees, adaptation (standardization) fees.

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

In some events the owners participate in the cost of fixtures and fittings, however, this is more frequently seen 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?

It depends on the different management companies rather than on the market standard, but the most common performance measures are occupancy rate, GOP and RevPAR.

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?

In most situations it sits with the operator.

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

It is typical for hotels of the same brand that are owned by the operator. It is rather rare when it comes to any other hotels.

Who is responsible for insurance?

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?

None.

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?

There are no restrictions of this kind.

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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