



HOTEL MANAGEMENT AGREEMENTS

A MULTI-JURISDICTIONAL GUIDE

CONTENTS

03	Introduction
04	Austria
09	Belgium
12	France
15	Germany
18	Hungary
21	Italy
24	Kingdom of Saudi Arabia
27	The Netherlands
30	Norway
33	Poland
36	Portugal
39	Romania
42	Russia
45	Spain
48	Ukraine
51	United Arab Emirates
54	United Kingdom
57	Contacts
58	About us



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.

Hotel management agreements were 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, such as Romania and the United Arab Emirates, 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 finance. In many ways banks remain traditional. They know and understand a lease arrangement. HMAs (with fees based on performance) offer less certainty and Germany still remains a country where hotel deals are commonly based around leases. Due to the demands of the market it becomes essential to have an understanding of lenders and be able to work with them in a scenario of increasingly complex legal arrangements.

The tables that make up the rest of this document set 25 questions about the current workings of HMAs in various countries and their interaction with other contractual arrangements. We have assembled answers to these questions from a total of 16 jurisdictions. The local differences in practice and market peculiarities we have identified will give any international investor food for thought. Some of the technical expressions used in the tables are explained immediately below:

- **Non-Disturbance Agreements (NDA).**

An agreement between a hotel's owner, operator and the owner's lending bank whereby the bank agrees that if the owner defaults under its loan and the bank forecloses, the bank will keep the HMA in place. The bank will usually have the right to step in and cure an owner's default under the HMA.

- **"Non-Compete" or "Radius" Clauses.**

An owner will often insist that the operator does not open another hotel with the same brand within a certain radius, either for the whole of the term of the HMA or for a specified period. Operators with large portfolios comprising a number of brands will normally seek to exclude some of the brands from the non-compete clause.

- **RevPAR.** The abbreviation for rooms revenue per available room, namely the gross rooms revenue of the hotel divided by the number of room nights available (which also equals the average daily rate multiplied by the occupancy). This is the primary benchmark for measuring the performance of hotels.

AUSTRIA

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	Yes, the conclusion of HMAs is on the rise in Vienna, Austria, especially regarding city centre mid to upper tier hotels under a brand to drive expansion of those brands forward. However, the risk is minimized by taking in investors.
2	If not HMAs, what are the alternatives/what is commonly used?	<ul style="list-style-type: none"> ■ For the purpose of expanding their own brand, well-known hotel companies often provide franchisees (“white label operators”) with their trademark rights, a tested procurement, marketing and sales structure as well as support regarding education and training of employees. The significant surge in brand franchise has also seen an increase in operating franchised hotels – without having their own brand. ■ Lease agreements as traditional investments are common within the Austrian hotel sector as well. ■ License agreements, where the licensee assumes only certain trademarks (e.g. names, logos) from the licensor (in contrast to franchise agreements) or cooperation agreements with marketing companies, are less frequent on the Austrian market. ■ Purchase agreements are quite uncommon because of the obvious financial risk.
3	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?	<ul style="list-style-type: none"> ■ HMAs in Austria will, in general, be governed by Austrian law as <i>lex situs</i> (law of the place where the hotel is situated) or by German or English law. ■ It could be linked to the conclusion of an arbitration clause (e.g. VIAC or ICC with the seat of arbitration in Vienna).
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	<p>In general, both owners and operators have to be aware of VAT and withholding issues on payments (with regard to third country nationals or firms).</p> <p>As under US GAAP and IFRS, contingent liabilities have to be shown in the balance sheet, CAP regulations (limiting the liability of the owner/ investor regarding the losses of the operator to a fixed amount of max. two-year leases) are inserted into HMAs. The reason is that an increase of contingent liabilities in the balance sheet would lead to a deterioration of the rating and thus increase refinancing costs of the company.</p>

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	Normally, the contract period for lease and management agreements is limited to 15–25 years with one or two extension option(s) for five years each.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	Yes, normally agreements are concluded for a definite period.
3	Is it usual to include fees/liquidated damages for early termination?	Exit fees for early termination, other than due to operator default, are common. The level of fees can vary widely depending on a number of issues (e.g. location, brand, scale): e.g. 50 percent of the average turnover of the last three years.
4	What is the usual position in respect of renewal?	Normally included to provide more flexibility (see question 1 above).

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	<p>The operator receives</p> <ul style="list-style-type: none"> ■ a base fee: typically 2 to 4 percent of the aggregate turnover; and ■ an incentive fee: performance-based compensation: often 8 to 10 percent of the gross operating profit (“GOP”) or the GOP less the base fee (“Adjusted GOP” or “AGOP”). <p>Those fees are usually indexed (e.g. consumer price index).</p>

	QUESTION	ANSWER
2	What other fees and charges are there (such as royalties, accounting, marketing, license (sic) fees, etc.)?	<p>In addition, the operator receives the following from the owner of the premises/investor:</p> <ul style="list-style-type: none"> ■ a pre-opening grant for the sales and marketing activities of the operator one to two years before the opening (“Soft-opening”); ■ technical services fees: Fee for the provision of services and contribution of know-how in the planning and construction process; ■ marketing fees; ■ reservation fees; ■ internet/website fees; ■ IT installation fees; ■ bookkeeping, accounting and controlling fees; ■ quality assurance fees (incl. quality control); ■ charges for loyalty programs; ■ human resources & training fees; ■ working capital: basic financial equipment of a hotel to ensure liquidity; ■ IT services fees: provision of EDP software and hardware and for computer training.
3	Are owners typically required to set aside funds for fixtures and fittings?	<p>An FF&E Reserve (reserve for furnishings, fixtures and equipment; 1–5 percent of the turnover), a maintenance reserve for the replacement of such articles, is very common in Austria. A part of the FF&E Reserve is the OS&E Reserve (reserve for operating supplies and equipment: e.g. glasses, cutlery and dishes). Replacements are credited via the operating budget as direct costs. The holder of the reserve is the owner in case of HMAs and the operator in lease agreements. However, the obligation is often shared to motivate the operator to give the operator the incentive to treat the assets with care and to use the funds sparingly.</p>

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	Yes, again international standards are customary. The incentive fee is often linked to a stand-aside clause. The incentive fee is paid to the operator in case the investor has previously received a specified minimum or fixed amount.
2	What performance measures are commonly used in your jurisdiction?	A performance test is fairly standard but the type and nature can vary depending on the operator, nature of the hotel, location, etc.
3	Is an operator or owner guarantee common in your jurisdiction?	Yes, the operator guarantees a certain operating profit either in the form of a group surety, letter of commitment or bank guarantee. This is to ensure that the owner/investor receives a certain compensation even if the operation profit is not reached.
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	This largely depends on the arrangement of the applicable employment agreement and the allocation of responsibilities. However, in many cases the employment will remain with the owner. The appointment of key positions requires approval of the owner (budgeting, sublease and replacement investments as well).
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Yes, mostly for the duration of the contract. The radius is bigger in case of luxury hotels.
6	Who is responsible for insurance?	In general, the employer is responsible for the insurance of the employee. However, in case a person different from the employer predominantly bears the economic risk (regarding administration, household and activity) and receives the profit obtained, such person and the employer are jointly liable for social security contributions.
7	Does the HMA give rights in real estate in your jurisdiction?	Not in itself. Yet it is possible to make a note in the land registry system to reveal personal circumstances of the owner with the legal consequence that whoever obtains registration in the relevant land register deposit cannot rely on the ignorance of such circumstances. Such provision explicitly names the following circumstances: restrictions on asset management, for example, the note of minority, the appointment of a trustee, the attainment of majority and the opening of insolvency proceedings. However, in practice, this is not done often.

	QUESTION	ANSWER
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	It is not required to register the HMA but might be implemented in favour of the operator (please see point 7 above).
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	NDAs are included in HMAs if the operator intends to take up a loan regarding activities of the hotel. However, they are not a decisive factor during the negotiation of HMAs in comparison to fees, performance clauses and termination rights.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	Sometimes, a tri-partite agreement is concluded between the owner, the operator and the financing banks.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	Transfer rights under HMAs can vary widely. Commonly, operators will require consent to any change in ownership of the hotel or at least require restrictions on transfers to competitors.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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?	The owner and the operator may agree on the requirement of the transfer of the HMA by way of an assumption of contract (<i>Vertragsübernahme</i>), especially if an NDA is contained in the HMA and finance is involved.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	Previously, this was more common. Recently, the Austrian Federal Tax Court (“BFG”) rendered a decision regarding the lease agreement dated 30 May 2007 with respect to a hotel where the operator was granted a right of first refusal.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	Owners and operators rather agree on the restriction of transfers to competitors, a sale without the brand seems quite unlikely. If it is ever given there is usually an exit fee.

BELGIUM

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	Yes.
2	If not HMAs, what are the alternatives/what is commonly used?	Although less standard, one alternative is a commercial rental agreement whereby the business activity of the subject hotel(s) is carried out by a lessee who, in consideration for a rent (fixed and proportional), will run the hotel on his behalf (as operator), and not on the account of the owner. Another alternative is the system of franchised hotel(s). Hotel chains franchise one of their brands to hotel owners, who either manage their hotels themselves or use a third management company.
3	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 Belgium will commonly be governed by Belgian law. Disputes under an HMA in Belgium will commonly be settled by Belgian courts, but parties can agree to have those disputes settled by arbitration.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	VAT should be applicable on HMA payments.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	There is no legal or standard minimum or maximum duration. The duration is determined between parties and the period tends to be long; between 10 and 20 years.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	The term is usually fixed. Break options allowing termination of the HMA after a certain period are allowed. Normally parties agree upon a period of prior notice to be respected in case the HMA is terminated.
3	Is it usual to include fees/liquidated damages for early termination?	Exit fees for early termination, other than due to operator default, are common. The level of fees can vary widely depending on a number of issues (e.g. location, brand, scale).
4	What is the usual position in respect of renewal?	The usual position in respect of renewal is to allow the operator to ask for the renewal of the HMA in order to continue operation of the hotel, for a fixed duration, between 5 and 10 years. Normally parties agree upon a period of prior notice to be respected in case the operator wants to renew the HMA. But HMAs can also provide for automatic renewal periods, between 5 and 10 years.

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Fee structures vary between operators. Commonly, management fees consist of a percentage of the hotel's gross annual revenues (base fee) and a percentage of the hotel's annual operating profit (incentive fee). Some branded operators may intersperse this with royalty fees depending on the hotel's gross sales. The level of management fees tends to be standard, even if they may vary depending on the typology and characteristics of the hotel, notably its profitability, and the negotiating power of each owner.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	Most HMAs stipulate that (nearly) all costs and charges, including taxes (such as the immovable withholding tax ("précompte immobilier"/"onroerende voorheffing"), related to the hotel, are to be borne by the operator. Moreover, as above, branded operators may require royalty fees depending on the hotel's gross sales, and ancillary fees that cover miscellaneous expenses, such as the cost of the online reservations platform and above property sales and marketing costs.
3	Are owners typically required to set aside funds for fixtures and fittings?	Operators, and not owners, are typically required to set aside a reserve account (the "FF&E Reserve").

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	Parties usually enter into standardised HMAs. The usual standard imposed on an operator is to achieve long-term profitability while maintaining brand standards. Although operators are usually granted a broad authority by the owners, review or approval by the owners can be compulsory in certain major areas, such as the annual operating and capital expenditure budgets.
2	What performance measures are commonly used in your jurisdiction?	The common measure of performance is based on the total revenues of the hotel in accordance with the Uniform System of Accounts.
3	Is an operator or owner guarantee common in your jurisdiction?	It depends on the parties to the HMAs.
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	Commonly, HMAs provide that the operator is liable for the employees who are, as the case may be, transferred from the owner to the operator when the owner operates the hotel prior to entering the HMA.

	QUESTION	ANSWER
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Yes.
6	Who is responsible for insurance?	The owner is usually responsible for property insurance, whereas the operator is usually responsible for operational insurance.
7	Does the HMA give rights in real estate in your jurisdiction?	No (except possible right of first refusal in case of sale of the hotel, to be granted by the owner).
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	No.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	Yes.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	There could be a number of different agreements depending on the operator, these include: <ul style="list-style-type: none"> ■ Employment contract for hotel manager; ■ (Brand) Licence Agreement; ■ Etc.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	Usually, HMAs provide that the transfer thereof by either the owner or the operator is not allowed without the prior consent of the other party. Additionally, HMAs allow the owner to sell the hotel provided that the owner makes first an offer to the operator to sell the hotel to the operator. Usually also, HMAs provide for a compulsory transfer thereof in case of sale to the new owner (to be approved in advance by the operator upon presentation by the owner).
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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?	Usually, HMAs provide that the operator benefits from a right of first refusal to purchase the hotel and that if this right is not exercised by the operator, the owner can sell the hotel to a third party with a transfer of the HMA to said third party (to be approved in advance by the operator upon presentation by the owner).
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	Yes.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	No.

FRANCE

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	Yes.
2	If not HMAs, what are the alternatives/what is commonly used?	The alternative is commercial leases, which are submitted to mandatory regulations and disliked by international operators.
3	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.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	No.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	From 20 to 30 years.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	The term is usually fixed and early exit options are commonly provided (upon performance test or sale). 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.
3	Is it usual to include fees/liquidated damages for early termination?	Early termination upon sale may be subject to fees or damages.
4	What is the usual position in respect of renewal?	The renewal will often be upon common agreement of the owner and the operator.

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	The standard includes a base fee calculated on revenues and an incentive fee based on profits.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	Operators will require marketing contributions and other fees for various services which may or not be optional (e.g. accounting services, license fees, software licenses, room reservation networks, trademarks and IP).
3	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 on the hotel's age, standing.

Performance and Operations

	QUESTION	ANSWER
1	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 do not usually contain KPIs, SLAs or specific standards because fee structures often mean owner and operator interests are aligned.
2	What performance measures are commonly used in your 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.
3	Is an operator or owner guarantee common in your jurisdiction?	Yes, an AGOP guarantee for the operator.
4	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.
5	Is it usual to have a non-compete clause, e.g. 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.
6	Who is responsible for insurance?	Insurance of the property will be at owner's cost and subscribed by operators.
7	Does the HMA give rights in real estate in your jurisdiction?	No.
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	No.

	QUESTION	ANSWER
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	Yes.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	Depending on the operator, the following agreements may also be executed: <ul style="list-style-type: none"> ■ Technical Services agreements; and ■ Franchise agreements.

Transfers and Assignments

	QUESTION	ANSWER
1	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.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	Yes.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	It is unusual but may be negotiated and will be subject to exit fees.

GERMANY

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	HMAs, as well as “hybrid” agreements with lease and management elements, are increasingly used. However, the German market is still dominated by lease agreements.
2	If not HMAs, what are the alternatives/what is commonly used?	The alternative to HMAs, lease agreements, are used and mostly preferred by property owners due to the stable and predictable income that they guarantee. In addition, banks financing the acquisition of hotel properties also prefer lease agreements. HMAs are seen as riskier, and many German players do not see a commercial benefit in HMAs and prefer to take the safe option. German open-ended funds are often not entitled to conclude HMAs due to regulatory restrictions.
3	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?	Usually HMAs concerning properties located in Germany are covered by German law.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	From a tax perspective there are no particularities with regard to an HMA.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	A typical term would be 15 years.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	Yes, usually the term is fixed. Each party is entitled to terminate the HMA if the other party violates its obligations under the HMA. HMAs often contain a performance clause according to which the operator is obligated to reach specific financial results with the hotel operation in each financial year. If the operator does not reach the agreed financial results in two or more consecutive years, the owner is usually entitled to terminate the HMA.
3	Is it usual to include fees/liquidated damages for early termination?	HMAs usually do not include any specific provisions with regard to liquidated damages or fees for an early termination. However, if a party is entitled to terminate the HMA because the other party violates its contractual obligations, the terminating party is entitled to claim damages for lost profits etc. according to German civil law.
4	What is the usual position in respect of renewal?	Usually, no option rights in favour of a party in order to prolong the term of the HMA exists. The parties have to agree on a prolongation of the contractual term.

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	We often see a base management fee and an incentive fee. The base management fee is at a level of 2–4 percent of the gross revenue and the incentive fee amounts usually to 8–12 percent of the GOP. Sometimes parties agree on certain incentive management fees which are applicable when a certain turnover is exceeded.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	Besides the base management fee and the incentive fee, other agreed fees usually relate to contributions to accounting and reservation systems and to marketing efforts.
3	Are owners typically required to set aside funds for fixtures and fittings?	The owner often has to set aside funds amounting to 3–5 percent of the gross revenue per annum. Sometimes parties agree on 1 percent at the beginning of the contractual period rising to 5 percent after 10 years.

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	The parties usually agree in the HMA that the operator must operate the hotel in compliance with its operational manual and standard operating procedures.
2	What performance measures are commonly used in your jurisdiction?	Reporting obligations are common in HMAs. In addition, performance clauses combined with a termination right in cases of poor performance are often included in HMAs.
3	Is an operator or owner guarantee common in your jurisdiction?	A operator guarantee is common in German HMAs.
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	Staff are employed by the owner, but usually engaged and discharged by the operator on behalf of and for the accounts of the owner. The operator also selects and trains the staff. However, the owner is often involved in the selection of the general manager of the hotel.
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Yes.

	QUESTION	ANSWER
6	Who is responsible for insurance?	The owner is usually responsible for the insurance.
7	Does the HMA give rights in real estate in your jurisdiction?	No, there are no rights given.
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	No.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	This is fairly unusual in Germany.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	In case of a project development or a refurbishment, the operator provides certain planning, equipping, design and opening services to the owner for a technical services fee under a technical services agreement (TSA). The most important goal of the TSA is to ensure that when development/refurbishment is completed the hotel will comply with the brand standards and be operationally efficient.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	If the owner disposes the hotel, the HMA is usually transferred to the purchaser. The operator is typically entitled to terminate the HMA if the purchaser is a competitor or operator. Is it uncommon that the operator has a pre-emptive right.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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?	In the case of a share deal, usually the operators approval is required for the transfer of an HMA to the buyer. In the case of an asset deal, the operator’s approval is mandatory for the transfer of the HMA to the buyer.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	A right of first refusal is uncommon in German HMAs.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	More recently this has been sought by owners. A standard HMA will not provide for this and if it is ever given, there is usually an exit fee.

HUNGARY

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	HMAs are frequently used in Hungary for city centre upper tier hotels under a brand.
2	If not HMAs, what are the alternatives/what is commonly used?	Lease and franchising are the two other alternatives.
3	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?	Either Hungarian law or the laws of one of the parties’ country of incorporation is used for HMAs.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	This depends on the parties’ country of incorporation and applicable taxation treaties.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	10–20 years with extension options.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	Terms are usually fixed. In some cases an early exit option is included and always subject to an early termination fee.
3	Is it usual to include fees/liquidated damages for early termination?	Yes.
4	What is the usual position in respect of renewal?	Usually operators have an option to extend the term by 5 or 10 years.

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Usually there is a base fee calculated on revenues and an incentive fee based on profits.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	Royalty fees and group services fees are usually charged for brand use, marketing, central booking, bookkeeping and other group services.
3	Are owners typically required to set aside funds for fixtures and fittings?	Yes, FF&E reserve is very common and is usually calculated on revenues. The percentage and the use of the FF&E reserve depends on the age and the brand of the hotel.

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	Some HMAs contain KPIs or some other form of service level requirements, however, in most cases none of these are used since the fee structure ensures that the interests of the parties are aligned.
2	What performance measures are commonly used in your jurisdiction?	RevPAR against a competitive set of local similar hotels or performance against annual budget.
3	Is an operator or owner guarantee common in your jurisdiction?	For established brands, an operator guarantee would be very unusual, owner guarantee is also rare and usually limited to cases where there is a substantial financing on the property.
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	Usually the owner is the employer.
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Non-competes are standard.
6	Who is responsible for insurance?	The owner is responsible for property insurance (real estate plus FF&E), while the operator is responsible for third party liability insurance and operational insurances.
7	Does the HMA give rights in real estate in your jurisdiction?	No. If a right of first refusal or purchase option is agreed over the property for the operator in a separate agreement, then those can be registered on the title of the hotel.
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	HMAs cannot be recorded in the land registry, right of first refusal or purchase option right can be registered if granted.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	Yes, an NDA is usually obtained if the property is financed.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	Usually, staff training and group services arrangements are made. If the operator is granted a right of first refusal or purchase option right over the real estate, then these are established in a separate agreement.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	Operators will require consent to any change in ownership of the hotel or the hotel owner vehicle.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	It is not common to include a right of first refusal for the operator.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	No, it is very uncommon.

ITALY

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	HMA are commonly used for luxury hotels to be managed under known brands.
2	If not HMAs, what are the alternatives/what is commonly used?	By means of business lease, the owner of the property may lease the business going concern to a third party, which will entirely run the business and bear the relevant risk towards the payment of the rent to the owner.
3	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 are often governed by English law.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	There are no unusual points.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	A duration of 20 years is usually negotiated in HMAs for branded operators.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	The term is usually fixed. Specific termination rights could be agreed by the parties depending on the specific situation or event or breach of the obligations. Usually a termination right is granted if specific revenue targets are not met.
3	Is it usual to include fees/liquidated damages for early termination?	Liquidated damages may be discussed and agreed upon by the parties, depending on the transaction.
4	What is the usual position in respect of renewal?	Normally, a renewal of a period of 10 years is requested, but it depends on the transaction and negotiations between the parties.

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Usually, a base fee is calculated on revenues and an incentive fee is based on profits. Royalty fees are also provided for branded operators.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	Usually the royalty fees, marketing contributions and other fees for certain centralised services are requested on the basis of specific agreements entered into simultaneously with the HMAs.
3	Are owners typically required to set aside funds for fixtures and fittings?	Contribution and FF&E reserve are usually requested.

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	The standard depends on the level of the hotel. Usually branded operators provide their own standards.
2	What performance measures are commonly used in your jurisdiction?	The performance tests are based on the negotiations between the parties. Usually the tests are based on achievement against budget and/or RevPAR against a competitive set of local or similar hotels.
3	Is an operator or owner guarantee common in your jurisdiction?	Usually branded operators request the owner to release a parent company guarantee, if it is a special purpose vehicle.
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	The owner will be the employer, except potentially for the General Manager and, depending on the nature of the hotel, certain other senior staff.
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Non-competes are common and usually negotiated.
6	Who is responsible for insurance?	The owner is responsible for the cost of property insurance and the operator may put operational insurances in place.
7	Does the HMA give rights in real estate in your jurisdiction?	The HMA does not give rights in real estate.

	QUESTION	ANSWER
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	It is not possible to record the HMA according to Italian law.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	Branded operators usually request non-disturbance agreements which shall be negotiated from time to time and are not likely to be released by the banks or third parties.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	Usually license agreements, centralized services agreement, design review agreements and key money are included in the set of documents to be entered into.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	Transfer rights under HMAs can vary widely. Commonly, operators will require consent to any change in ownership of the hotel. There may be restrictions on transfers to competitors, restrictions in relation to financial covenant strength and “reputation” tests.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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?	Usually the operator requests the insertion of these specific clauses into the HMAs.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	Yes.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	Such a clause should be expressly negotiated and would imply an early termination clause of the HMA.



KINGDOM OF SAUDI ARABIA (KSA)

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	Yes, this is the method by which most of the intentionally branded hotels are operated.
2	If not HMAs, what are the alternatives/what is commonly used?	In recent years, we are starting to see more international operators becoming increasingly willing to enter into Franchise Agreements. This is as a result of having an increasing number of hotel owners that are appropriate partners for a franchise arrangement and an increasing use of asset managers in the hotel sector.
3	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?	In deals with international operators, HMAs will be governed by the laws of an alternative jurisdiction, e.g. English law.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	No, other than as of 1 January 2018, VAT of 5 percent was introduced in KSA.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	Between 15 and 25 years for the initial term with up to two renewals of 5 or 10 year terms.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	Fixed term.
3	Is it usual to include fees/liquidated damages for early termination?	Whilst it is not typical, it is sometimes possible.
4	What is the usual position in respect of renewal?	Renewal upon the mutual agreement of the parties.



Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Base fee (as a percentage of total revenue) and incentive fee (as a percentage of gross operating profit).
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	There is usually a licence fee (as a percentage of total revenue), a centralised services fee (usually based on the services used at the hotel) and a marketing fee (which is often a percentage of room revenue).
3	Are owners typically required to set aside funds for fixtures and fittings?	Yes, a separate fixtures and fittings account must be contributed to each month.

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	A standard usually needs to be negotiated into the HMA – it may be possible to negotiate that of a similar operator of, e.g. luxury hotels in the country.
2	What performance measures are commonly used in your jurisdiction?	<p>A performance test commonly has two limbs – one is a test against the RevPAR of the Hotel compared to a competitive set of hotels and the other is a comparison against actual total revenue compared to the budgeted total revenue. Failure of the test is if the Hotel has a RevPAR of less than 80 – 90 percent of the Competitive Set and if the actual total revenue is less than 80-90 percent of the budgeted total revenue.</p> <p>For an operator to fail the test, typically it must fail both limbs of the test for two consecutive year. The HMA may allow the operator to ‘cure’ a failure of the performance test by making a payment. HMAs that provide a ‘cure right’ for the operator usually limit how many times such a cure right can be used by an operator (often no more than twice during the initial term).</p>
3	Is an operator or owner guarantee common in your jurisdiction?	Not at all.
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	Due to KSA law and regulations, it is always the hotel owner who employs the hotel employees.



	QUESTION	ANSWER
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	This is often negotiated as part of the deal.
6	Who is responsible for insurance?	The owner is responsible for 'property' insurances and the operator may procure the operational insurances in order to ensure they are in place and meet their requirements.
7	Does the HMA give rights in real estate in your jurisdiction?	No.
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	No.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement ("NDA") as part of a management or lease agreement?	Whilst not yet standard practice, it slowly becoming more common.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	Technical Services Agreement, Licence Agreement and Centralised Services Agreement.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	An owner typically cannot transfer without the consent of the operator. The operator will seek to prohibit transfer to a competitor (often broadly defined) or anyone subject to sanctions etc.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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, definitely.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	This is less relevant in KSA due to the restrictions on foreign ownership of real estate. However, the wording is often still included in HMAs.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	Only if this is negotiated, and such a provision would include liquidated damages to be paid to the operator.

THE NETHERLANDS

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	HMA's are used across the Netherlands, usually in hotels that are operated under major brands such as Hilton, IHG and Marriot. Every now and then you see a white label hotel operated under an HMA.
2	If not HMAs, what are the alternatives/what is commonly used?	A regular lease and also hybrid leases with a (partly) revenue-based rent. The market in the Netherlands – from a real estate investment perspective – still seems to be in favour of leases.
3	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?	The HMA is usually governed by Dutch law albeit that - every now and then – we see an HMA governed by UK or US law. Usually FCPA or UK Bribery law or similar extra-territorial anti-corruption laws are also applicable.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	Both owners and operators will be aware of VAT and withholding issues on payments and the application (which will change) of taxation treaties.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	Usually 20+ years.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	The terms are usually fixed. Given the substantial investments in hotel operations, HMAs usually do not include early termination rights.
3	Is it usual to include fees/liquidated damages for early termination?	The norm is for an HMA term to be fixed. Where early termination is negotiated, for instance in the event of a sale, it is usually subject to exit fees.
4	What is the usual position in respect of renewal?	Usually the HMA includes (a) renewal term(s) of five years sometimes upon mutual agreement between the parties, sometimes in the form of renewal options to the benefit of the operator.

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Fee structures vary between operators. Usually there is a base fee calculated on revenue combined with an incentive fee when certain profit hurdles are met.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	<ul style="list-style-type: none"> ■ License fees ■ Group services and benefit fees ■ Hotel specific services ■ Marketing contributions ■ Reservation contribution ■ IT services fee
3	Are owners typically required to set aside funds for fixtures and fittings?	An FF&E Reserve is the norm. It is usually established on a percentage of the revenue, which usually increases in the years after a hotel opens to the public. The FF&E Reserve usually maximised at a certain percentage. Percentages of 4–5 percent are not uncommon in the Dutch market. The FF&E Reserve is usually kept on a FF&E Reserve account.

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	Contractual performance standards vary between operators, type of hotel etc. The operator is usually obliged to operate the hotel in accordance with a certain brand, brand standards and a certain hotel classification.
2	What performance measures are commonly used in your jurisdiction?	A performance test based on RevPAR against a competitive set (peer group).
3	Is an operator or owner guarantee common in your jurisdiction?	An operator or owner guarantee is not common. In the event of Opco-Propco structures, non-disturbance covenants are customary.
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	The owner will be the employer, except potentially for the general manager and, depending on the nature of the hotel, certain key members.
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Non-competes are common and usually negotiated.
6	Who is responsible for insurance?	The owner is responsible for the cost of property insurance (even if sourced by the operator) and the operator may put operational insurances in place.

	QUESTION	ANSWER
7	Does the HMA give rights in real estate in your jurisdiction?	No. One could debate whether an HMA qualifies as a lease. But this is a theoretical discussion.
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	No.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement ("NDA") as part of a management or lease agreement?	Yes, usually an NDA forms part of the HMA.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	<ul style="list-style-type: none"> ■ Licence agreement ■ Group services agreement ■ IT and technical services agreement, etc.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	Transfer rights under HMAs can vary widely. Commonly, operators will require consent to any change in ownership of the hotel which is not unreasonably withheld. There may be restrictions on transfers to competitors, restrictions in relation to financial covenant strength and "reputation" tests.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	No.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	A standard HMA will not provide for this and if it is ever given there is usually an exit fee.

NORWAY

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	HMAs are widely used for upper tier hotels under a brand and in brand franchise hotels. Whilst similar, the two forms of HMA have many differences.
2	If not HMAs, what are the alternatives/what is commonly used?	Lease if not franchise is the alternative, which is also quite common between Norwegian parties outside the big international chains. Most hotel operators resist taking a real estate interest and the growth of corporate owners (and investment into them) with internal operating capacity has seen a growth in franchised hotels.
3	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 Norway with international chains as operators will commonly be governed by English law. Between Norwegian operators and Norwegian property owners, Norwegian law would apply.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	No, but this largely depends on corporate structures. At a simplistic level there should not be, but VAT and withholding issues on payments should be viewed.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	HMAs for branded operators tend to be longer in duration (20+ years).
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	The norm is for an HMA term to be fixed. Under Norwegian law it is unlikely an HMA could have implied early termination (for convenience) rights.
3	Is it usual to include fees/liquidated damages for early termination?	Exit fees for early termination will definitely be included if accepted by the owner in the first place. Exit fees must always be viewed in respect of the terms for the financing of the property to avoid breach of the financing conditions. The level of fees can vary widely depending on a number of issues (e.g. location, brand, scale).
4	What is the usual position in respect of renewal?	This varies between different operators. Usually, HMAs will be extendable in tranches of 5 or 10 years. This can be mutually agreed or at the operator’s discretion.

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Fee structures vary between operators. The standard is a base fee calculated on revenues and an incentive fee based on profits. Some branded operators may intersperse this with royalty fees.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	As above, branded operators may require royalty fees and most require marketing contributions and other fees for certain centralised services, which may or may not be optional (e.g. accounting services).
3	Are owners typically required to set aside funds for fixtures and fittings?	An FF&E Reserve is common in HMA agreements. Contributions and how it is operated can vary widely depending on practical matters associated with the hotel(s) (e.g. is the hotel part of a portfolio, the hotel's age, standing etc).

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	Contractual performance standards vary between operators, type of hotel etc.
2	What performance measures are commonly used in your jurisdiction?	A performance test is fairly standard (together with a termination right for failure to meet such a test), but the type and nature can vary depending on the operator, nature of the hotel, location, etc. A standard performance test would consider achievement against budget and/or against a competitive set of local or similar hotels.
3	Is an operator or owner guarantee common in your jurisdiction?	For branded operators, an operator guarantee would be unusual. For more ordinary lease structured agreements a guarantee would often be more usual, depending on the initial investments in the hotel made by the owner.
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	The operator would normally be the employer, but it could be either.
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Non-compete clauses are common and usually negotiated.
6	Who is responsible for insurance?	The owner is responsible for the cost of property insurance (even if sourced by the operator) and the operator may put operational insurances in place (albeit this would be an operating expense).

	QUESTION	ANSWER
7	Does the HMA give rights in real estate in your jurisdiction?	Not in itself. However, where key money is granted or rights of first refusal on a sale etc., restrictions can be registered on the title of the hotel.
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	It can be, but normally not the HMA itself. However, specially agreed rights and terms in relation to the property as such given to the operator under the HMA may be recorded, as per the above.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	This depends on the bank and the operator. Traditionally, NDAs have always been required where there is finance and a management agreement.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	There could be a number of different agreements depending on the operator; these include: <ul style="list-style-type: none"> ■ (Brand) Licence Agreement ■ Central Services Agreement ■ Technical Services Agreement – on a new build or redevelopment ■ Central Reservation Services Agreement.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	Transfer rights under HMAs can vary widely. Commonly, operators will require consent to any change in ownership of the hotel. There may be restrictions on transfers to competitors, restrictions in relation to financial covenant strength and “reputation” tests.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	Traditionally this has been common in standard international HMA agreements.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	More recently this has been sought by owners. A standard HMA will not provide for this and if it is ever given, there is usually an exit fee.

POLAND

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	Yes, this kind of contract is commonly used.
2	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.
3	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.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	No.

Term and Termination

	QUESTION	ANSWER
1	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.
2	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.
3	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.
4	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

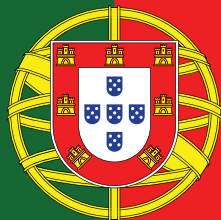
	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Between 3–5 percent and up to 12 percent of the hotel's operating income.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	Entry fees, reservation fees, trademark fees, loyalty package fees, adaptation (standardisation) fees.
3	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

	QUESTION	ANSWER
1	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.
2	What performance measures are commonly used in your 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.
3	Is an operator or owner guarantee common in your jurisdiction?	No.
4	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.
5	Is it usual to have a non-compete clause, e.g. 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.
6	Who is responsible for insurance?	The operator.
7	Does the HMA give rights in real estate in your jurisdiction?	No.
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	No.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	No.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	None.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	None.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	No.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	No.



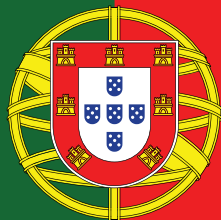
PORTUGAL

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	HMAs are often used in Portugal, either by managing companies or by high brand operators.
2	If not HMAs, what are the alternatives/what is commonly used?	Lease is the obvious alternative. Most hotel operators resist taking a real estate interest, and the growth of corporate owners (and investment into them) with internal operating capacity has seen a growth in franchised hotels.
3	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 Portugal will commonly be governed by Portuguese law. It would be unusual for any other jurisdiction’s laws to be used as the governing law.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	There is no impact.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	HMAs for branded operators tends to be longer in duration (15 to 20+ years), whereas average managers will usually be for shorter periods.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	The norm is for an HMA term to be fixed. Where early termination or, for example, flip to franchise is negotiated, it may be subject to exit fees.
3	Is it usual to include fees/liquidated damages for early termination?	Exit fees for early termination, other than due to operator default, are common. The level of fees can vary widely depending on a number of issues (e.g. location, brand, scale).
4	What is the usual position in respect of renewal?	This varies between different operators. Usually HMAs will be extendable in tranches of say 5 or 10 years. This can be mutually agreed or at the operator’s discretion.

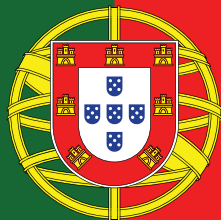


Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Fee structures vary between operators. The standard is a base fee and a variable fee calculated on revenues. Some branded operators may intersperse this with other fees.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	Branded operators may require royalty fees and most require marketing contributions and other fees for certain centralised services, which may or may not be optional (e.g. accounting services).
3	Are owners typically required to set aside funds for fixtures and fittings?	Contributions and how they are operated can vary widely depending on practical matters associated with the hotel(s) (e.g. whether the hotel part of a portfolio, the hotel's age, standing). Its payment may be on the owner's account or on the operator's account, depending on what is agreed.

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	Contractual performance standards vary between operators, type of hotel etc. Generally speaking, HMAs do not usually contain KPIs, SLAs or specific standards because fee structures often mean owner and operator interests are aligned.
2	What performance measures are commonly used in your jurisdiction?	They are not common except in cases of branded operators.
3	Is an operator or owner guarantee common in your jurisdiction?	For branded operators an operator guarantee would be unusual. Regarding owner guarantors, it will depend on the owner vehicle, if it owns the hotel (e.g. are there are Propco/Opco structures in place).
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	It depends on what is agreed between the parties. The employer can either be the owner or the hotel operator. Usually is the hotel operator due to their standards and MO.
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Non-compete clauses are common and usually negotiated.
6	Who is responsible for insurance?	The owner is responsible for the cost of property insurance (even if sourced by the operator) and the operator may put operational insurances in place (albeit this would be an operating expense).



	QUESTION	ANSWER
7	Does the HMA give rights in real estate in your jurisdiction?	It depends on what is agreed between the parties. Where key money is granted or rights of first refusal on a sale etc., restrictions can be registered on the title of the hotel.
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	Not the HMA itself, but rights under the HMA may, as per the above.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	It will depend on the bank and on the operator. Please note that there may be some legal restraints which may make it impossible to execute.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	There could be a number of different agreements depending on the operator; these include: <ul style="list-style-type: none"> ■ (Brand) Licence Agreement ■ Central Services Agreement ■ Technical Services Agreement – on a new build or redevelopment ■ Central Reservation Services Agreement.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	Transfer rights under HMAs can vary widely. Commonly operators will require consent to any change in ownership of the hotel. There may be restrictions on transfers to competitors, restrictions in relation to financial covenant strength and “reputation” tests.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	Traditionally this has been common in Portugal.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	A standard HMA will not provide for this, and if it is ever given there is usually an exit fee.

ROMANIA

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	Yes.
2	If not HMAs, what are the alternatives/what is commonly used?	As well as HMAs, owners choose hotel franchise/long lease agreements.
3	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 Romania are usually governed by English law.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	No.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	HMAs for branded operators tend to be for long periods (10–20 years).
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	Yes, usually the term of an HMA is fixed. However, the HMA may be terminated early by the owner/operator in case of breaches of the other party’s material obligations – such breaches are usually expressly mentioned in the HMA. The owner may also have the right to terminate the HMA early for material underperformance compared to a competitive set of hotels of the same size/type.
3	Is it usual to include fees/liquidated damages for early termination?	Exit fees for early termination (break option), other than due to operator default, are common. The level of fees can vary widely depending on a number of issues (e.g. location, brand, scale).
4	What is the usual position in respect of renewal?	This varies between different operators. Usually HMAs will be extendable in tranches of 5 or 10 years. This can be mutually agreed or automatically if neither party notifies the other party of the contrary.

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Fee structures vary between operators. The standard is a base fee calculated on revenues and an incentive fee based on profits.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	Sales and marketing costs, accounting charges, purchasing costs, and license/franchise fees. These are often set as a percentage of rooms' revenue, and typically range from 1–3 percent of gross room revenue.
3	Are owners typically required to set aside funds for fixtures and fittings?	An FF&E Reserve is very common – it usually varies between 2–5 percent of the total revenue.

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	Contractual performance standards vary between operators, type of hotel etc. Some HMAs do not contain specific standards (because fee structures often mean owner and operator interests are aligned), whilst others impose the operations standards of the brand.
2	What performance measures are commonly used in your jurisdiction?	The performance test used in our jurisdiction is that of measuring the GOP (Gross Operating Profit) achieved for an operating year with the pre-agreed percentage of GOP. In practice, there are other performance tests used, such as AGOP (Adjusted GOP) or EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization).
3	Is an operator or owner guarantee common in your jurisdiction?	For branded operators, an operator guarantee would be unusual. However, this may vary on a case by case basis.
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	All hotel employees (except for the hotel general manager or other executive personnel indicated by the operator) are employed by the owner.
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Non-competes are common and usually negotiated.
6	Who is responsible for insurance?	The owner is responsible for the cost of property insurance and the operator may put operational insurances in place.
7	Does the HMA give rights in real estate in your jurisdiction?	No.

	QUESTION	ANSWER
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	No.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	This depends on the bank and the operator/owner.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	There could be a number of different agreements depending on the operator (e.g. (Brand) Licence Agreement, Central Services Agreement, Technical Services Agreement etc.).

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	Transfer rights under HMAs can vary widely. Commonly, operators will require consent to any change in ownership of the hotel. There may be restrictions on transfers to competitors.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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, usually the sale/transfer/assignment or disposal of the hotel require the operator’s prior written approval.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	This varies on a case by case basis.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	Usually HMAs do not provide for this.

RUSSIA

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	Yes, but we break up the overall services into several contracts for tax reasons: an HMA is entered into with a local branch company and then a separate license agreement, central services and technical services agreements are entered into with various offshore operator entities.
2	If not HMAs, what are the alternatives/what is commonly used?	Franchise is the most common alternative to a management relationship and is used on a more frequent basis nowadays. Manchises (management franchise) are the latest trend as operators become more flexible. Leases are used, but only in very specific cases like chain transactions involving hotels in other jurisdictions where leases are common.
3	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?	Template management contracts for most international hotel operators are governed by English law. However, there are several international hotel operators which are using Russian law for (i) the HMA only; (ii) for all of their management contracts. Russian hotel operators predominantly use Russian law for their contracts.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	The majority of the international hotel operators provide licenses from countries with which the Russian Federation has a Double-Tax Treaty and royalties are subject to zero percent withholding.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	HMAs for branded operators tend to be longer in duration (20+ years), whereas white label managers will usually be for shorter periods.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	The term is usually fixed under an English law governed HMA. Where early termination or, for example, flip to franchise is negotiated, it is usually subject to exit fees. Under English law it is unlikely an HMA could have implied early termination (for convenience) rights. Unless a Russian law governed contract specifically provides for exit fee, there is an implied termination (for convenience) right provided under Russian Civil Code where only actual costs shall be paid to the operator.
3	Is it usual to include fees/liquidated damages for early termination?	Exit fees for early termination, other than due to operator default, are common. The level of fees can vary widely depending on a number of issues (e.g. location, brand, scale, duration of HMA).

	QUESTION	ANSWER
4	What is the usual position in respect of renewal?	This varies between different operators. Usually HMAs will be extendable in tranches of say 5 or 10 years. This can be mutually agreed or at the operator's discretion.

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Fee structures vary between operators. The standard is a base fee calculated on revenues and an incentive fee based on profits. Most branded operators intersperse this with royalty fees. Generally, an HMA provides for a small portion of base fee and the rest, along with the incentive fee, is paid under license agreement.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	Branded operators usually require royalty fees and marketing contributions and other fees for certain centralised services, which may or may not be optional (e.g. revenue management).
3	Are owners typically required to set aside funds for fixtures and fittings?	An FF&E Reserve is very common in Russia. Contributions are 4–5 percent of total revenue (in general). In the first five years it may be less (e.g. first year–2 percent, second–3 percent, etc). How it is operated can vary widely. For some of projects, operators are ready for the FF&E Reserve to be partially or fully non-funded provided an owner provides a bank or mother company guaranty to secure the funds are in place when needed.

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	Contractual performance standards vary between operators, type of hotel etc. Generally speaking HMAs do not usually contain KPIs, SLAs or specific standards because fee structures often mean owner and operator interests are aligned.
2	What performance measures are commonly used in your jurisdiction?	A performance test is fairly standard (together with a termination right for failure to meet such test), but the type and nature can vary depending on the operator, nature of the hotel, location, etc. A standard performance test would consider achievement against budget and RevPAR against a competitive set of local or similar hotels.

	QUESTION	ANSWER
3	Is an operator or owner guarantee common in your jurisdiction?	For branded operators, an operator guarantee would be unusual. Regarding owner guarantors, it will depend on the owner vehicle, if it owns the hotel (e.g. are there are Propco/Opco structures in place).
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	The norm is that all employees are employed with an owner's vehicle, but for some operators there is an exception for key personnel (general manager and financial controller).
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Non-competes are common and usually negotiated.
6	Who is responsible for insurance?	The owner is responsible for the cost of property and operational insurances (albeit the latter may be negotiated as an operating expense).
7	Does the HMA give rights in real estate in your jurisdiction?	No.
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	HMAs do not generally require registration. License agreements need to be registered with Rospatent.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement ("NDA") as part of a management or lease agreement?	Yes, it is seen more often, but still there is a chance that a specific bank could refuse to enter into it. Therefore, an obligation to obtain is frequently replaced with "use best efforts" or alike.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	Generally, other agreements include License Agreements, Technical Services Agreements and Centralized Services Agreements.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	Transfer rights under HMAs can vary widely. Commonly, operators will require consent to any change in ownership of the hotel. There may be restrictions on transfers to competitors, restrictions in relation to financial covenant strength and "reputation" tests.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	This is quite common, but application of this right by operators seems quite remote considering the current market and asset-light strategy of operators.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	There were a few cases recently in which this has been sought by owners. A standard HMA will not provide for this and if it is ever given there is usually an exit fee.



SPAIN

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	They exist and are becoming more common; however, management agreements as drafted and imposed by international chains have never been popular amongst hotel owners, many of whom wish to have some involvement in the management of the property. This may explain why the penetration of international chains in Spain has not been high.
2	If not HMAs, what are the alternatives/what is commonly used?	<p>Real estate lease agreements are the most common alternative to hotel management agreements. They are preferred by traditional landlords and are still widely used because owners consider them to be safer and involve less management risk. They are also the preferred option for SOCIMIs (Spanish REITs), which can only invest in rented assets.</p> <p>More sophisticated “industry lease” agreements (where the tenant leases not only the building but also the means to carry out the activity) are common in the Spanish hospitality sector, especially for more turnkey projects or assets where the operator is taking over a going concern.</p> <p>Franchise agreements are also taking off in Spain.</p>
3	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 Spain will commonly be governed by Spanish law. It would be unusual for any other jurisdiction’s laws to be used as the governing law.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	HMA fees are subject to VAT. Other tax issues might depend on whether the operator was a Spanish tax resident entity or not.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	The term of the agreement varies depending on the manager’s policy or standard terms. However it can be said that, in line with international trends, the term of management contracts is now shorter than it used to be prior to the recession.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	The norm is for an HMA term to be fixed, with contractually fixed break options or early termination rights for either party, generally based on performance.



	QUESTION	ANSWER
3	Is it usual to include fees/liquidated damages for early termination?	Exit fees for early termination, other than due to operator default, are common. The level of fees can vary widely depending on a number of issues (e.g. location, brand, scale).
4	What is the usual position in respect of renewal?	Usually it is possible to agree a renewal by mutual consent, but the owner has the final say.

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Fee structures vary between operators. The standard is a base fee calculated on revenues and an incentive fee based on profits. Some branded operators may include royalty fees and other ancillary fees.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	Royalties sometimes apply for branded operators. Having a marketing fee is usual.
3	Are owners typically required to set aside funds for fixtures and fittings?	Yes, this is standard. The amount varies depending on type and age of asset and particular operator.

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	The standard is diligent professional performance, and performance tests are set in the HMA (together with a termination right for failure to meet such tests).
2	What performance measures are commonly used in your jurisdiction?	Performance tests are standard, but the type and nature can vary depending on the operator, nature of the hotel, location, etc. A standard performance test would consider achievement against budget and/or Revpar against a competitive set of local or similar hotels.
3	Is an operator or owner guarantee common in your jurisdiction?	Guarantees on both sides tend to be unusual.
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	The owner employs the labour force of the hotel, but the operator has the right to hire and fire personnel and personally picks the top management, which is sometimes in the employment of the operator itself.
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Non-compete clauses are common and usually negotiated. With branded operators radius clauses are common.



	QUESTION	ANSWER
6	Who is responsible for insurance?	The owner is responsible for the cost of property insurance (even if sourced by the operator) and the operator may put operational insurances in place (albeit this would be an operating expense).
7	Does the HMA give rights in real estate in your jurisdiction?	Not the HMA itself. If the HMA included a purchase option on the hotel, this could be recorded in the Land Registry.
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	No, this is not possible in Spain.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	It is not standard but it is not unheard of, and the idea is becoming slightly more common.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	There could be a number of different agreements depending on the operator; these include: <ul style="list-style-type: none"> ■ (Brand) Licence Agreement ■ Central Services Agreement ■ Technical Services Agreement – on a new build or redevelopment ■ Central Reservation Services Agreement.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	The operator generally aims for subsistence of the HMA in the case of sale or enforced sale: the purchaser will have to subrogate into the HMA and if the contract is terminated there will be exit fees.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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?	The operator’s consent to the sale is not required by law and it is rarely required in the contract, though in practice it is typical for the operator to be involved in the transaction up to a certain point as it controls most of the information on the asset.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	No, HMAs are the preferred option for operators that opt to be asset-light and therefore they rarely ask for a possibility to purchase. Rights of first refusal are common in hotel leases, though.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	No, operators generally try to protect themselves by including exit fees in the event that the HMA is terminated early due to the sale of the property.

UKRAINE

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	Yes, HMAs are the most frequent choice in Ukraine.
2	If not HMAs, what are the alternatives/what is commonly used?	Franchise agreements.
3	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 most common choice.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	<p>There is a number of tax deduction limitations applicable to cross-border payments, e.g. royalties which must be taken into account when structuring split of payments under HMA (royalties vs. service fees).</p> <p>Ukrainian tax legislation prohibits tax gross-up clauses in the agreements. Ukrainian transfer pricing provisions may also extend to payments under HMA made to non-related parties located in low-tax jurisdictions.</p>

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	No.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	Yes, contractual exit options are included.
3	Is it usual to include fees/liquidated damages for early termination?	Yes.
4	What is the usual position in respect of renewal?	This varies between different operators.

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Fee structures vary between operators. The standard is a base fee calculated on revenues, an incentive fee based on profits.
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	Royalty fees, marketing contributions and other fees for certain centralised services.
3	Are owners typically required to set aside funds for fixtures and fittings?	Yes.

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	Contractual performance standards vary between operators, type of hotel etc.
2	What performance measures are commonly used in your jurisdiction?	A standard performance test would consider achievement against budget and/or RevPAR against a competitive set of local or similar hotels.
3	Is an operator or owner guarantee common in your jurisdiction?	Operator guarantees are not common. Owner guarantees may be requested depending on a particular owner group and hotel ownership structure.
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	Personnel are usually employed by the owner, including the General Manager and Financial Controller.
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Yes.
6	Who is responsible for insurance?	Owner.
7	Does the HMA give rights in real estate in your jurisdiction?	No.
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	No.
9	Where financing is taken, is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	This depends on the bank and the operator. It may be difficult to agree on the NDA with a Ukrainian bank.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	<ul style="list-style-type: none"> ■ (Brand) Licence Agreement ■ Central Services Agreement ■ Technical Services Agreement – on a new build or redevelopment ■ Central Reservation Services Agreement.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	Commonly, operators will require consent to any change in ownership of the hotel. There may be restrictions on transfers to competitors, restrictions in relation to financial covenant strength and “reputation” tests.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	Yes.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	No.

UNITED ARAB EMIRATES (UAE)

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	Yes, this is the method by which most of the intentionally branded hotels are operated.
2	If not HMAs, what are the alternatives/what is commonly used?	In recent years, we are starting to see more international operators becoming increasingly willing to enter into Franchise Agreements. This is as a result of having an increasing number of hotel owners that are appropriate partners for a franchise arrangement and an increasing use of asset managers in the hotel sector.
3	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?	Although it is most common for HMAs to be governed by the laws of an alternative jurisdiction, e.g. English law, in recent years there is slowly a willingness on the part of international operators to contemplate local law applying.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	No, other than as of 1 January 2018, VAT of 5 percent was introduced in the UAE.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	Between 15 and 25 years for the initial term with up to two renewals of 5 or 10 year terms.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	Fixed term.
3	Is it usual to include fees/liquidated damages for early termination?	Whilst it is not typical, it is sometimes possible.
4	What is the usual position in respect of renewal?	Renewal upon the mutual agreement of the parties.

Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Base fee (as a percentage of total revenue) and incentive fee (as a percentage of gross operating profit).
2	What other fees and charges are there (such as royalties, accounting, marketing, licence fees, etc.)?	There is usually a licence fee (as a percentage of total revenue), a centralised services fee (usually based on the services used at the hotel) and a marketing fee (which is often a percentage of room revenue).
3	Are owners typically required to set aside funds for fixtures and fittings?	Yes, a separate fixtures and fittings account must be contributed to each month.

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	Standards usually needs to be negotiated into the HMA – it may be possible to negotiate that of a similar operator; e.g. luxury hotels in the country.
2	What performance measures are commonly used in your jurisdiction?	<p>A performance test commonly has two limbs – one is a test against the RevPAR of the Hotel compared to a competitive set of hotels and the other is a comparison against actual total revenue compared to the budgeted total revenue. Failure of the test is if the Hotel has a RevPAR of less than 80–90 percent of the Competitive Set and if the actual total revenue is less than 80–90 percent of the budgeted total revenue.</p> <p>For an operator to fail the test, typically it must fail both limbs of the test for two consecutive years. The HMA may allow the operator to ‘cure’ a failure of the performance test by making a payment. HMAs that provide a ‘cure right’ for the operator usually limit how many times such a cure right can be used by an operator (often no more than twice during the initial term).</p>
3	Is an operator or owner guarantee common in your jurisdiction?	Not at all.
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	Due to UAE law and regulations, it is always the hotel owner who employs the hotel employees.

	QUESTION	ANSWER
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	This is often negotiated as part of the deal.
6	Who is responsible for insurance?	The owner is responsible for 'property' insurances and the operator may procure the operational insurances in order to ensure they are in place and meet their requirements.
7	Does the HMA give rights in real estate in your jurisdiction?	No.
8	Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?	No. Sometimes the parties will register the existence of the Licence Agreement as a registered user agreement before the Government authorities in the UAE in order to protect an international operator's intellectual property rights.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement ("NDA") as part of a management or lease agreement?	Whilst not yet standard practice, it has grown a lot in practice in recent years.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	Technical Services Agreement, Licence Agreement and a Centralised Services Agreement.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	An owner typically cannot transfer without the consent of the operator. The operator will seek to prohibit transfer to a competitor (often broadly defined) or anyone subject to sanctions etc.
2	When a managed hotel is sold (either asset or share deal), is it usual in your 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, definitely.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	Yes, this is common.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	Only if this is negotiated, and such a provision would include liquidated damages to be paid to the operator.



UNITED KINGDOM (UK)

General

	QUESTION	ANSWER
1	Are Hotel Management Agreements (“HMAs”) common in your jurisdiction?	HMAs are widely used across the UK, largely for city centre mid to upper tier hotels under a brand. The significant surge in brand franchise has also seen an increase in white label operators operating franchised hotels. Whilst similar, the two forms of HMA have many differences.
2	If not HMAs, what are the alternatives/what is commonly used?	Lease is the obvious alternative. Most hotel operators resist taking a real estate interest and the growth of corporate owners (and investment into them) with internal operating capacity has seen a growth in franchised hotels.
3	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 the UK will commonly be governed by English law, it would be unusual for any other jurisdiction’s laws to be used as the governing law.
4	Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?	It largely depends on corporate structures. At a simplistic level there should not be, but as Brexit progresses, both owners and operators will be aware of VAT and withholding issues on payments and the application (which will change) of taxation treaties.

Term and Termination

	QUESTION	ANSWER
1	Is there a standard contract period of an HMA?	HMAs for branded operators tend to be longer in duration (20 years +) whereas white label managers will usually be for shorter periods.
2	Is the term usually fixed? Are early exit or similar options included (contractual or implied)?	The norm is for an HMA term to be fixed. Where early termination or, for example, flip to franchise is negotiated it is usually subject to exit fees. Under English law it is unlikely an HMA could have implied early termination (for convenience) rights. The issue appears to have stemmed from US law where an agency relationship may be considered to exist; agency is not viewed in the same way under English law.
3	Is it usual to include fees/liquidated damages for early termination?	Exit fees for early termination other than due to operator default are common. The level of fees can vary widely depending on a number of issues (e.g. location, brand, scale, etc.).
4	What is the usual position in respect of renewal?	This varies widely between different operators. Usually HMAs will be extendable in tranches of say 5 or 10 years. This can be mutually agreed or at the operator’s discretion.



Fees

	QUESTION	ANSWER
1	Is there a standard fee structure for HMAs (e.g. base + incentive)?	Fee structures vary between operators. The standard is a base fee calculated on revenues and an incentive fee based on profits. Some branded operators may intersperse this with royalty fees.
2	What other fees and charges are there (such as royalties, accounting, marketing, license fees, etc.)?	As above, branded operators may require royalty fees and most require marketing contributions and other fees for certain centralised services, which may or may not be optional (e.g. accounting services etc.).
3	Are owners typically required to set aside funds for fixtures and fittings?	An FF&E Reserve is very common in the UK. Contributions and how it is operated can vary widely depending on practical matters associated with the hotel(s) (e.g. is the hotel part of a portfolio, the hotel's age, standing, etc.).

Performance and Operations

	QUESTION	ANSWER
1	What is the usual standard imposed on an operator in respect of the operation of the hotel?	Contractual performance standards vary between operators, type of hotel etc. Generally speaking, HMAs do not usually contain KPIs, SLAs or specific standards as fee structures often mean owner and operator's interests are aligned.
2	What performance measures are commonly used in your jurisdiction?	A performance test is fairly standard (together with a termination right for failure to meet such test) but the type and nature can vary depending on the operator, nature of the hotel, location, etc. A standard performance test would consider achievement against budget and/or RevPAR against a competitive set of local or similar hotels.
3	Is an operator or owner guarantee common in your jurisdiction?	For branded operators, an operator guarantee would be unusual. Regarding owner guarantors it will depend on the owner vehicle, if it owns the hotel (i.e. are there are Propco/Opco structures in place, etc.).
4	What is the usual position in respect of employees? With whom does the liability for the employees sit?	The owner will be the employer, except potentially for the General Manager and, depending on the nature of the hotel, certain other senior staff.
5	Is it usual to have a non-compete clause, e.g. that no other property with that brand can open within a certain radius?	Non-competes are common and usually negotiated.



	QUESTION	ANSWER
6	Who is responsible for insurance?	The owner is responsible for the cost of property insurance (even if sourced by the operator) and the operator may put operational insurances in place (albeit this would be an operating expense).
7	Does the HMA give rights in real estate in your jurisdiction?	Not in itself. However, where key money is granted or rights of first refusal on a sale etc., restrictions can be registered on the title of the hotel.
8	Does the HMA need to be recorded against the property, if this possible in your jurisdiction?	Not the HMA itself but rights under the HMA may be per the above.
9	Where financing is taken is it standard to obtain a Non-Disturbance Agreement (“NDA”) as part of a management or lease agreement?	This depends on the bank and the operator. Traditionally, NDAs have always been required where there is finance and a management agreement.
10	What other agreements usually sit alongside an HMA in your jurisdiction?	There could be a number of different agreements depending on the operator; these include: <ul style="list-style-type: none">■ (Brand) Licence Agreement■ Central Services Agreement■ Technical Services Agreement – on a new build or redevelopment■ Central Reservation Services Agreement.

Transfers and Assignments

	QUESTION	ANSWER
1	What are the standard rights/restrictions in respect of transfer/sale of the hotel?	Transfer rights under HMAs can vary widely. Commonly, operators will require consent to any change in ownership of the hotel. There may be restrictions on transfers to competitors, restrictions in relation to financial covenant strength and “reputation” tests.
2	Is it usual to provide that the owner must procure that any transferee of the property takes the property subject to the HMA and such transfer is prohibited without the operator’s consent?	Yes.
3	Do HMAs commonly include a right of first refusal for the operator to purchase the hotel?	Traditionally this has been common in the UK.
4	Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?	More recently this has been sought by owners. A standard HMA will not provide for this and if it is ever given there is usually an exit fee.



CONTACTS

AUSTRIA



Jasna Zwitter-Tehovnik
Partner
Vienna
T +43 1 53 178 1025
jasna.zwitter-tehovnik@dlapiper.com

ITALY



Francesco de Blasio
Partner
Rome
T +39 06 6888 0522
francesco.deblasio@dlapiper.com

BELGIUM



Mathieu Higny
Lead Lawyer
Brussels
T +32 2500 6543
mathieu.higny@dlapiper.com

KINGDOM OF SAUDI ARABIA



Tom O'Grady
Partner
Dubai
T +971 4 438 6322
tom.ogrady@dlapiper.com

FRANCE



Antoine Mercier
Partner
Paris
T +33 1 40 15 24 09
antoine.mercier@dlapiper.com

THE NETHERLANDS



Rutger Oranje
Partner
Amsterdam
T +31 (0)20 5419 810
rutger.oranje@dlapiper.com

GERMANY



Florian Biesalski
Partner
Frankfurt
T +49 69 27 133 420
florian.biesalski@dlapiper.com

NORWAY



Bjørn Slaatta
Partner
Oslo
T +47 241 31 648
bjorn.slaatta@dlapiper.com

HUNGARY



András Posztl
Partner
Budapest
T +36 1 510 1130
andras.posztl@dlapiper.com

POLAND



Michał Synowiec
Counsel
Warsaw
T +48 22 540 7430
michal.synowiec@dlapiper.com



PORTUGAL



Hugo Correia
Partner
Lisbon
T +351 213 583 632
hugo.correia@dlapiper.com

UKRAINE



Alla Kozachenko
Legal director
Kiev
T +380444909568
alla.kozachenko@dlapiper.com

ROMANIA



Alin Buftea
Partner
Bucharest
T +40372155807
alin.buftea@dlapiper.com

UNITED ARAB EMIRATES



Tom O'Grady
Partner
Dubai
T +971 4 438 6322
tom.ogrady@dlapiper.com

RUSSIA



Pavel Elnikov
Senior Associate
Moscow
T +74952214410
pavel.elnikov@dlapiper.com

UNITED KINGDOM



Matthew Duncombe
Partner
Leeds
T +44 113 369 2948
matthew.duncombe@dlapiper.com

SPAIN



Ines Chamarro
Legal Director
Madrid
T +34 91 788 7332
ines.chamarro@dlapiper.com

ABOUT US

DLA Piper is a global law firm with lawyers located in more than 40 countries throughout the Americas, Europe, the Middle East, Africa and Asia Pacific, positioning us to help clients with their legal needs around the world.

DLA Piper was one of the first firms to develop a dedicated global hospitality and leisure sector group. We now have over 200 lawyers with a proven track record advising the industry on a diverse range of issues.

Our knowledge and experience enables us to determine trends, identify opportunities and threats to growth, create solutions and deliver commercial robust advice. We know the sector, its key players and its unique factors.



praised by clients for its strong cross-border capabilities: 'Having experienced attorneys overseas guide us through the maze of challenges, while working in concert with us on domestic matters, is something that few other firms are able to offer.'

Chambers & Partners 2017





www.dlapiper.com

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com.

This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2018 DLA Piper. All rights reserved. | MAR18 | 3281682