Hotel Management Agreements

A multi-jurisdictional guide

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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 over 25 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.

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