



# China - Hotel Management Agreements

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By: Jonathan Lynch

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## General

### 1. Are Hotel Management Agreements (HMAs) common in your jurisdiction?

Yes.

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

Franchises and manchise agreements (either a hybrid of a management/franchise agreement or a management agreement that converts into a franchise agreement after a certain number of years) are common 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?

PRC laws normally govern the HMA, although some operators are able to get owners to agree to Hong Kong laws.

### 4. Are there any significant or unusual points to note in respect of tax on HMA payments in your jurisdiction?

No.

## Term and Termination

### 5. Is there a standard contract period of an HMA?

10-15 years.

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

Yes, the term is fixed. Parties negotiate termination for cause in the HMA. Termination at will/without cause is not common, except for rights of termination upon sale of the hotel.

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

Yes.

**8. What is the usual position in respect of renewal?**

Renewal is normally by mutual agreement.

## Fees

**9. Is there a standard fee structure for HMAs (e.g. base + incentive)?**

A mix of a base fee (percentage of gross revenues) and cascaded incentive fees (percentage of gross operating profits) is the typical fee structure. (Base fees for budget/midscale hotels tend to be higher because of the lack of food and beverage and other revenue streams offered in full-service hotels.)

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

License fees (percentage of total revenue), centralized services fee (calculated against the services provided), and marketing service fees (percentage of gross room revenue).

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

Yes.

## Performance and Operations

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

The standard is negotiated in the HMA and will be commensurate to brands of the same caliber in the country.

**13. What performance measures are commonly used in your jurisdiction?**

A standard performance test would consider actual profitability against annual budgeted profitability and provide the owner a right to terminate if for multiple years (normally two consecutive years) the hotel fails to materially meet the budgeted profitability projections.

**14. Is an operator or owner guarantee common in your jurisdiction?**

No. However, relative to owners elsewhere in Asia Pacific, owners of Chinese hotels are more likely to get operators to guarantee a minimum gross operating profit and to top up any shortfall amount in any operating year.

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

The owner employs the hotel employees, including the GM.

**16. 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.

**17. Who is responsible for insurance?**

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

**18. Does the HMA give rights in real estate in your jurisdiction?**

No.

**19. Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?**

No.

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

No.

**21. What other agreements usually sit alongside an HMA in your jurisdiction?**

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

## Transfers and Assignments

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

Operators will require consent to any change in the ownership structure, and consent can be withheld for a number of reasons, including if the owner fails the operator's compliance checks or is deemed a competitor to the operator.

**23. 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.

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

No, except for luxury branded hotels in major gateway cities such as Shanghai or Beijing, where laws are less restrictive on foreign ownership.

**25. Is it usual to include provisions which enable the sale of the property with vacant possession i.e. without the brand?**

Yes, provided that the operator is entitled to compensation for such terminations.

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**Return to Overview page**

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