



France - Hotel Management Agreements

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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?

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

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

From 20 to 30 years.

6. 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.

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

Early termination upon sale may be subject to fees or damages.

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

The renewal will often be upon common agreement of the owner and the operator.

Fees

9. 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.

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

11. 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

12. 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.

13. 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.

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

Yes, an AGOP guarantee for the operator.

15. 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.

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?

Non-compete clauses are common and may include a radius subject to city size and type of brand.

17. Who is responsible for insurance?

Insurance of the property will be at owner's cost and subscribed by operators.

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?

Yes.

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

Depending on the operator, the following agreements may also be executed:

- Technical Services agreements;
- Franchise agreements.

Transfers and Assignments

22. 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.

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?

Yes.

25. 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.

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