



# Italy - Hotel Management Agreements

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## General

### 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

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

A duration of 20 years is usually negotiated in HMAs for branded operators.

### 6. 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.

### 7. 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.

**8. 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

**9. 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.

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

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

Contribution and FF&E reserve are usually requested.

## Performance and Operations

**12. 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.

**13. 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.

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

Usually branded operators request the owner to release a parent company guarantee, if it a special purpose vehicle.

**15. 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.

**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-competes are common and usually negotiated.

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

The owner is responsible for the cost of property insurance and the operator may put operational insurances in place.

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

The HMA does not give rights in real estate.

**19. 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.

**20. 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.

**21. 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

**22. 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.

**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?**

Usually the operator requests the insertion of these specific clauses into the HMAs.

**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?**

Such a clause should be expressly negotiated and would imply an early termination clause of the HMA.

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