



Maldives - Hotel Management Agreements

3 JAN 2019

By: Jonathan Lynch

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General

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

Yes, very common.

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

Some international operators, normally those with strong track records managing hotels in the Maldives, have agreed to franchise arrangements in recent years.

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?

Maldivian law commonly governs HMAs, although alternative laws, normally English or Singapore law, may be agreed to.

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?

15-25 years.

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

Yes, the term is fixed. Contractual exit options, e.g. failure to maintain the rights to the underlying land lease, breach, underperformance, are negotiated in the HMA.

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

Yes. Most operators will seek lost management fees that otherwise were owed for the duration of the unfulfilled operating term in the event of any early termination.

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

Renewal is at the discretion of the owner or by agreement. Renewals tend to be for longer periods (e.g. ten years) due to the prevalence of upscale/luxury hotels in the market.

Fees

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

Fees vary depending on brand, operator, and hotel location. Fees normally are a percentage of total revenue (e.g. 1-3 percent), and a percentage of gross operating profit (e.g. 0-8 percent, depending on how profitable the hotel is).

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

License fees (normally a percentage of total revenue), centralized services fee (based on the services provided), and marketing service fees (based on either gross room revenue or total 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 generally is for the hotel to be operated similarly to hotels in the same class in the market, with the same care as other prudent operators, and, where agreed by operator, with the aim of maximizing long-term profitability.

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

Either or both of the GOP test and the RevPAR test, the former being a test as to how the hotel's annual profits stack up against the performance proposed by the operator during the budget approval process, the latter being a test as to how the hotel's gross room revenue stacks up against competitive hotels in the market. Operators almost always require a right to cure any underperformance before the owner can terminate an HMA for failing either test.

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

No.

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

The owner is almost always the employer of record.

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, and the clause may extend to derivatives of the brand.

17. Who is responsible for insurance?

The owner. The operator may seek to obtain operational insurances in the owner's name however.

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?

Yes, the HMA needs to be registered with the Ministry of Tourism, and furthermore the operator needs to be registered with the Ministry of Economic Development. This process is to occur pre-signing of the HMA. Failure to obtain such registrations may impact enforceability of the HMA in the Maldives.

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 operator's compliance checks or is deemed a competitor.

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, and the owner will require the consent of the relevant authorities in the Maldives to any sale.

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

No.

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

No, but if agreed, the operator would likely require a termination fee.

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AUTHORS



Jonathan Lynch

Of Counsel

Singapore | T: +65 6512 9595

jonathan.lynch@dlapiper.com