



Poland - Hotel Management Agreements

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General

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

Yes, this kind of contract is commonly used.

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

The alternative to HMAs are lease agreements. Currently, we are also seeing a significant increase in franchising agreements in the Polish market.

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?

English law is the most frequently chosen law for governing HMAs in Poland by international brands. However, local entities stick to Polish 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?

Contracts in the big international hotel sector are usually concluded for a minimum term of 20 years. In the case of domestic hotels, the period is much shorter – sometimes just three years.

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

The term is usually fixed. There are no implied exit options, however, these could be introduced into the contract by the parties at their discretion, which is not the standard solution on the market.

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

Yes, due to the recent supreme court jurisprudence, these liquidated damages should be established at a fair and reasonable level.

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

The potential renewal could be agreed by the parties in the HMA. There are no legal regulations regarding this issue.

Fees

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

Between 3–5 percent and up to 12 percent of the hotel's operating income.

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

Entry fees, reservation fees, trademark fees, loyalty package fees, adaptation (standardisation) fees.

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

In some events the owners participate in the cost of fixtures and fittings, however, this is more frequently seen in lease agreements.

Performance and Operations

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

The standard is to manage the hotel in line with the legal regulations and the standard agreed between the parties.

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

It depends on the different management companies rather than on the market standard, but the most common performance measures are occupancy rate, GOP and RevPAR.

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?

In most situations it sits with the operator.

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?

It is typical for hotels of the same brand that are owned by the operator. It is rather rare when it comes to any other hotels.

17. Who is responsible for insurance?

The operator.

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?

None.

Transfers and Assignments

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

None.

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?

There are no restrictions of this kind.

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.

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