



Russia - Hotel Management Agreements

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General

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

Yes, but we break up the overall services into several contracts for tax reasons: an HMA is entered into with a local branch company and then a separate license agreement, central services and technical services agreements are entered into with various offshore operator entities.

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

Franchise is the most common alternative to a management relationship and is used on a more frequent basis nowadays. Franchises (management franchise) are the latest trend as operators become more flexible. Leases are used, but only in very specific cases like chain transactions involving hotels in other jurisdictions where leases are common.

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?

Template management contracts for most international hotel operators are governed by English law. However, there are several international hotel operators which are using Russian law for (i) the HMA only; (ii) for all of their management contracts. Russian hotel operators predominantly use Russian law for their contracts.

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

The majority of the international hotel operators provide licenses from countries with which the Russian Federation has a Double-Tax Treaty and royalties are subject to zero percent withholding.

Term and Termination

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

HMAs for branded operators tend to be longer in duration (20+ years), whereas white label managers will usually be for shorter periods.

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

The term is usually fixed under an English law governed HMA. Where early termination or, for example, flip to franchise is negotiated, it is usually subject to exit fees. Under English law it is unlikely an HMA could have implied early termination (for convenience) rights. Unless a Russian law governed contract specifically provides for exit fee, there is an implied termination (for convenience) right provided under Russian Civil Code where only actual costs shall be paid to the operator.

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

Exit fees for early termination, other than due to operator default, are common. The level of fees can vary widely depending on a number of issues (e.g. location, brand, scale, duration of HMA).

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

This varies between different operators. Usually HMAs will be extendable in tranches of say 5 or 10 years. This can be mutually agreed or at the operator's discretion.

Fees

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

Fee structures vary between operators. The standard is a base fee calculated on revenues and an incentive fee based on profits. Most branded operators intersperse this with royalty fees. Generally, an HMA provides for a small portion of base fee and the rest, along with the incentive fee, is paid under license agreement.

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

Branded operators usually require royalty fees and marketing contributions and other fees for certain centralised services, which may or may not be optional (e.g. revenue management).

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

An FF&E Reserve is very common in Russia. Contributions are 4–5 percent of total revenue (in general). In the first five years it may be less (e.g. first year–2 percent, second–3 percent, etc). How it is operated can vary widely. For some of projects, operators are ready for the FF&E Reserve to be partially or fully non-funded provided an owner provides a bank or mother company guaranty to secure the funds are in place when needed.

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, type 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?

A performance test is fairly standard (together with a termination right for failure to meet such test), but the type and nature can vary depending on the operator, nature of the hotel, location, etc. A standard performance test would consider achievement against budget and RevPAR against a competitive set of local or similar hotels.

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

For branded operators, an operator guarantee would be unusual. Regarding owner guarantors, it will depend on the owner vehicle, if it owns the hotel (e.g. are there are Propco/Opco structures in place).

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

The norm is that all employees are employed with an owner's vehicle, but for some operators there is an exception

for key personnel (general manager and financial controller).

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 and operational insurances (albeit the latter may be negotiated as an operating expense).

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?

HMAs do not generally require registration. License agreements need to be registered with Rospatent.

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

Yes, it is seen more often, but still there is a chance that a specific bank could refuse to enter into it. Therefore, an obligation to obtain is frequently replaced with “use best efforts” or alike.

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

Generally, other agreements include License Agreements, Technical Services Agreements and Centralized Services Agreements.

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?

Yes.

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

This is quite common, but application of this right by operators seems quite remote considering the current market and asset-light strategy of operators.

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

There were a few cases recently in which this has been sought by owners. A standard HMA will not provide for this and if it is ever given there is usually an exit fee.

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