



Spain - Hotel Management Agreements

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General

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

They exist and are becoming more common; however, management agreements as drafted and imposed by international chains have never been popular amongst hotel owners, many of whom wish to have some involvement in the management of the property. This may explain why the penetration of international chains in Spain has not been high.

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

Real estate lease agreements are the most common alternative to hotel management agreements. They are preferred by traditional landlords and are still widely used because owners consider them to be safer and involve less management risk. They are also the preferred option for SOCIMIs (Spanish REITs), which can only invest in rented assets.

More sophisticated “industry lease” agreements (where the tenant leases not only the building but also the means to carry out the activity) are common in the Spanish hospitality sector, especially for more turnkey projects or assets where the operator is taking over a going concern.

Franchise agreements are also taking off in Spain.

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 Spain will commonly be governed by Spanish law. It would be unusual for any other jurisdiction's laws to be used as the governing law.

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

HMA fees are subject to VAT. Other tax issues might depend on whether the operator was a Spanish tax resident entity or not.

Term and Termination

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

The term of the agreement varies depending on the manager's policy or standard terms. However it can be said that, in line with international trends, the term of management contracts is now shorter than it used to be prior to the recession.

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

The norm is for an HMA term to be fixed, with contractually fixed break options or early termination rights for either party, generally based on performance.

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).

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

Usually it is possible to agree a renewal by mutual consent, but the owner has the final say.

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. Some branded operators may include royalty fees and other ancillary fees.

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

Royalties sometimes apply for branded operators. Having a marketing fee is usual.

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

Yes, this is standard. The amount varies depending on type and age of asset and particular operator.

Performance and Operations

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

The standard is diligent professional performance, and performance tests are set in the HMA (together with a termination right for failure to meet such tests).

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

Performance tests are standard, 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/ or Revpar against a competitive set of local or similar hotels.

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

Guarantees on both sides tend to be unusual.

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

The owner employs the labour force of the hotel, but the operator has the right to hire and fire personnel and personally picks the top management, which is sometimes in the employment of the operator itself.

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 usually negotiated. With branded operators radius clauses are common.

17. Who is responsible for insurance?

The owner is responsible for the cost of property insurance (even if sourced by the operator) and the operator may put operational insurances in place (albeit this would be an operating expense).

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

Not the HMA itself. If the HMA included a purchase option on the hotel, this could be recorded in the Land Registry.

19. Does the HMA need to be recorded against the property, if this is possible in your jurisdiction?

No, this is not possible in Spain.

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

It is not standard but it is not unheard of, and the idea is becoming slightly more common.

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

There could be a number of different agreements depending on the operator, these include:

- (Brand) Licence Agreement
- Central Services Agreement
- Technical Services Agreement – on a new build or redevelopment
- Central Reservation Services Agreement.

Transfers and Assignments

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

The operator generally aims for subsistence of the HMA in the case of sale or enforced sale: the purchaser will have to subrogate into the HMA and if the contract is terminated there will be exit fees.

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?

The operator's consent to the sale is not required by law and it is rarely required in the contract, though in practice it is typical for the operator to be involved in the transaction up to a certain point as it controls most of the information on the asset.

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

No, HMAs are the preferred option for operators that opt to be asset-light and therefore they rarely ask for a possibility to purchase. Rights of first refusal are common in hotel leases, though.

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

No, operators generally try to protect themselves by including exit fees in the event that the HMA is terminated early due to the sale of the property.

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