



The Netherlands - Hotel Management Agreements

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General

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

HMA's are used across the Netherlands, usually in hotels that are operated under major brands such as Hilton, IHG and Marriot. Every now and then you see a white label hotel operated under an HMA.

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

A regular lease and also hybrid leases with a (partly) revenue-based rent. The market in the Netherlands – from a real estate investment perspective – still seems to be in favour of leases.

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?

The HMA is usually governed by Dutch law albeit that - every now and then – we see an HMA governed by UK or US law. Usually FCPA or UK Bribery law or similar extra-territorial anti-corruption laws are also applicable.

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

Both owners and operators will be aware of VAT and withholding issues on payments and the application (which will change) of taxation treaties.

Term and Termination

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

Usually 20+ years.

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

The terms are usually fixed. Given the substantial investments in hotel operations, HMAs usually do not include early termination rights.

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

The norm is for an HMA term to be fixed. Where early termination is negotiated, for instance in the event of a sale, it is usually subject to exit fees.

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

Usually the HMA includes (a) renewal term(s) of five years sometimes upon mutual agreement between the parties, sometimes in the form of renewal options to the benefit of the operator.

Fees

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

Fee structures vary between operators. Usually there is a base fee calculated on revenue combined with an incentive fee when certain profit hurdles are met.

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

- License fees
- Group services and benefit fees
- Hotel specific services
- Marketing contributions
- Reservation contribution
- IT services fee

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

An FF&E Reserve is the norm. It is usually established on a percentage of the revenue, which usually increases in the years after a hotel opens to the public. The FF&E Reserve usually maximised at a certain percentage. Percentages of 4–5 percent are not uncommon in the Dutch market. The FF&E Reserve is usually kept on a FF&E Reserve account.

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. The operator is usually obliged to operate the hotel in accordance with a certain brand, brand standards and a certain hotel classification.

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

A performance test based on RevPAR against a competitive set (peer group).

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

An operator or owner guarantee is not common. In the event of Opco-Propco structures, non-disturbance covenants are customary.

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 key members.

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 (even if sourced by the operator) and the operator may put operational insurances in place.

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

No. One could debate whether an HMA qualifies as a lease. But this is a theoretical discussion.

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?

Yes, usually an NDA forms part of the HMA.

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

- Licence agreement
- Group services agreement
- IT and technical services agreement, etc.

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 which is not unreasonably withheld. 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?

No.

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

A standard HMA will not provide for this and if it is ever given there is usually an exit fee.

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