



Ukraine - Hotel Management Agreements

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General

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

Yes, HMAs are the most frequent choice in Ukraine.

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

Franchise agreements.

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 most common choice.

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

There is a number of tax deduction limitations applicable to cross-border payments, e.g. royalties which must be taken into account when structuring split of payments under HMA (royalties vs. service fees).

Ukrainian tax legislation prohibits tax gross-up clauses in the agreements. Ukrainian transfer pricing provisions may also extend to payments under HMA made to non-related parties located in low-tax jurisdictions.

Term and Termination

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

No.

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

Yes, contractual exit options are included.

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

Yes.

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

This varies between different operators.

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, an incentive fee based on profits.

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

Royalty fees, marketing contributions and other fees for certain centralised services.

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?

Contractual performance standards vary between operators, type of hotel etc.

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

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?

Operator guarantees are not common. Owner guarantees may be requested depending on a particular owner group and hotel ownership structure.

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

Personnel are usually employed by the owner, including the 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?

Yes.

17. Who is responsible for insurance?

Owner.

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?

This depends on the bank and the operator. It may be difficult to agree on the NDA with a Ukrainian bank.

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

- (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?

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?

Yes.

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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