The Moscow Times
30 YEARS
INDEPENDENT NEWS FROM RUSSIA

Structuring of Hotel Agreements in Russia

By Irene Engel

November 28, 2012





Irene Engel

Partner, Head of Hotels & Leisure Practice
CMS

The Russian hotel business is still one of the country's most dynamic industries. A significant number of international hotel chains have been successfully operating hotels in Russia for many years. The experts expect further growth in the hotel industry in the next decade.

Lease agreements and franchise agreements are rarely used to provide the legal structure for a hotel's operation in Russia. International hotel operators usually like to implement their standard management agreements. Due to tax and license registration requirements in Russia, the services are provided on the basis of the Pre-Opening and Technical Assistance Agreement, the Management Agreement, the Marketing and Central Services Agreement and the Trademark (Sub) License Agreement, often involving as a party to the relevant agreement different companies of the hotel operator group. In terms of tax planning for a hotel project, the relevant double taxation treaties should also be reviewed.

According to the Pre-Opening and Technical Assistance Agreement the operator provides assistance in the design, construction and furnishing of the hotel. The operator also provides assistance in ensuring the hotel's compliance with required standards and performs certain services in preparation for the opening of the hotel. The services are mostly provided from abroad and no profit tax is usually paid in Russia.

The Management Agreement instructs the authorities and duties of the operator to direct, supervise, manage and operate the hotel on a day-to-day basis. Since the hotel management and operation services are provided directly in Russia, the fees received by the operator for such services are subject to Russian profit tax. The company acting as the hotel operator needs tax registration in Russia. For this purpose, a branch of the foreign company can be established that also meets the requirements of the tax registration of the hotel operator in Russia.

Marketing and Central Services Agreements deal with marketing, reservation, sales and promotion as well as administrative and corporate executive activities that are provided from the head office or affiliates of the hotel operator outside Russia. Such services usually include preparation, production and distribution of marketing and promotional materials; connection of the hotel to certain reservation systems and strategic alliances; participation in the guest loyalty program; planning, introduction and monitoring compliance with the operator's quality standards; training and other centralized staff support; and support and supervision of hotel's IT department. In general, the fees for these services are paid abroad and are not subject to profit tax in Russia.

The use of the trademark or a trade name is granted on the basis of the Trademark (Sub) License Agreement. This agreement must be registered with the Russian Federal Service for Intellectual Property, Patents and Trademarks (Rospatent) in order to become legally valid and comes into force with this registration. If there are no problems, the registration process takes approximately 2-3 months. The license can be granted only on trademarks that are registered in Russia or have an international registration which includes Russia. The term of the Trademark (Sub) License Agreement is limited to the term of the registration of the trademark in Russia. According to most double taxation treaties royalties are not subject to taxation in Russia. Fundamental of any successful business, is having the right business partner and right legal structure in place.

Original url:
https://www.themoscowtimes.com/2012/11/28/structuring-of-hotel-agreements-in-russia-a19760