

COMPARATIVE ANALYSIS BETWEEN THE MANAGER CONTRACT AND THE ADMINISTRATOR CONTRACT IN THE ACTIVITY OF HOTEL SERVICES FROM ROMANIA

A. NEACŞU¹ C. BĂLTESCU¹ D. BOŞCOR¹
A. ION-DUMITRESCU¹ A. MADAR¹

Abstract: *In the activity of any hotel company, the manager or the administrator plays an important role; that is why the relationships of the hotel units with managers and administrators must be well defined and assumed by both sides by means of specific contracts. Between the manager contract and the administrator contract there are similarities, but also differences. This paper analyzes the advantages and disadvantages that the two contracts present and also the situations in which they are recommended.*

Key words: *hotel services activity, administrator contract, manager contract.*

1. Conceptual issues regarding the manager contract and the administrator contract

Hotel services represent an important part of the economic system through the employment and income which it generates.

Today's lodging industry is more global, consolidated, and culturally diverse than ever before. Lodging professionals should be properly tooled with knowledge, skills and abilities necessary to enable them to face the industry's challenges and ensure their future success. Through the years, the consensus among industry professionals has been that human resources-related skills represent the most important element of hospitality management success.[9]

An important role in the activity of every hotel company is played by the manager or the administrator.

The leadership provided by the general manager is undoubtedly the most important quality he or she brings to this position.[1]

The general manager or administrator orchestrates the department directors in their efforts to meet the financial goals of the organization. The general manager is required to use the full range of managerial skills as performance is the scope of its entire activity.

The plans developed by the general manager provide the vision the business needs to compete for the hospitality markets.

¹ Dept. of Economic Sciences and Business Administration, *Transilvania* University of Braşov.

The job of general manager is a professional position. It is a career goal the achievement of which is based on operations experience and education.

Current research suggests that managing change is one of the leading competencies that a leader must possess. In an organization that needs to make fundamental changes, the work of a leader has three basic elements: [2]

- *Establishing direction.* Seeing where an organization needs to go and expressing that vision in a way that people can understand is vital.
- *Aligning people.* Getting the appropriate people in the organization not just involved but committed to achieving the new goals is a necessity.
- *Motivating and inspiring.* In effect, this step involves keeping people sold and keeping them moving in the right direction.

The relationships of the hotel units with the managers and the administrators must be well defined and assumed by both sides by means of specific contracts.

In the specialized literature, the manager contract [10] is defined as the agreement of will by which a legal person is involved in an economic activity, as owner, entrusting the organization, administration and management of his activity to a manager, based on some aims and measurable performance criteria, all for a price.

This contract is concluded between the owner of the hotel and/or an independent management company or with a designated manager.

In the contract, it is stipulated that the management company or the manager acts entirely as an agent of the owner and on his account.

The hotel staff are the owner's employees, and the financial results, the profit or the loss are recorded in the balance sheet of the owner.

The manager or the management company acts as an administrator of the hotel, on behalf of its owner, for which he receives an indemnity, whose amount is usually set according to the obtained results.

The management contract developed and studied has a number of advantages, such as:

- specialized personnel in the major hotel chains;
- the hotel can get much better performance as a result of a professional administration;
- the continuity of the activity and its revival are ensured due to an increase of the specific activities, of the complexity and dynamism of the economic environment;
- maintaining the independence of the hotel.

In terms of trade, the administration of a company represents all the acts and deeds committed by the administrator of a company, in the spirit of the mandate/his empowerments, regarding the activities of the company: honest acts by means of which the maintenance and the development of the company's patrimony are aimed at.

The administrator must be a good manager under every circumstance, and his activity must join in the spirit of the decisions of the general assembly and of the company's administration.

The administrator [6] is the natural or juridical person authorized by the general assembly of a trading company who, within his granted powers and positions, exercises the will of the company.

The accomplished administrator contract has its basis in law number 31/1990, which contains different disposals, depending on the legal form of the company, and it is a form of the contract of the trading mandate.

The administrator contract is the contract under which a person – the administrator, undertakes to complete acts and deeds, on behalf of the trading company [6] that he represents.

2. Comparative analysis between the manager contract and the administrator contract

The manager contract and the administrator contract present a number of common elements, but also particular features, that will be described below.

Common elements of the two forms of contracts:

1) The first common elements of the two contracts meet in the sphere of the legal characters, as follows:

- a) Both contracts are contracts with **synalagmatic (reciprocal)** character which means that both contracts give rise to obligations on both sides. For example, in both cases, the company has the obligation to pay the financial rights to the administrator or to the manager and they are required to perform the necessary activities for the company.
- b) Both contracts have **onerous title**, which means that both sides seek to obtain economic benefits. For example, the company aims, in both cases, to obtain profit and to accomplish its objectives in the case of the manager contract or the accomplishment of the activity object in the case of the administrator contract, and the manager and the administrator aim to obtain the salary and a part from the profits.
- c) Both contracts are consensual which means that the agreement of will is sufficient for the validity of the contract.

2) Another common element is that to be valid and opposable in the relations with the third parties, the contracts must be in

writing and contain the elements provided by the legislation in force.

3) For a valid conclusion of both contracts, it is necessary that the signatory parties have full legal capacity.

Thus, playing the role of a trader, the company must have its own capacity to perform acts of commerce, for the manager and the administrator this thing being expressly required by law.

4) The quality of manager or administrator can be accomplished by any natural person who fulfils the requirements of law and who concludes such a contract with the owners of the hotel or of the company.

5) Both contracts are concluded on the basis of special legal regulations, Law 31/1990 and Law 66/1993.

6) In terms of clauses, both contracts stipulate loyalty to the company.

Administrators and managers cannot have such a quality in competitive companies or in companies which have the same object of activity, and neither can they do the same type of trade or a competitive one as sole agents or on behalf of another person, under the penalty of rescission and of material liability for damage.

The particular features of the manager contract:

- 1) The manager contract has its legal basis in the law 66/1993 – the law of the management contract and the administration contract has its legal basis in the law 31/1990 and in the trading code.
- 2) In the case of the manager contract, the manager may be a juridical person who has the obligation to appoint a permanent representative, a natural person who will actually perform the position of manager.
- 3) The manager must demonstrate his experience and must compulsorily have specialized higher education, as the

activity of management is the science and the technique of the organization and management of one company.

- 4) The manager is in charge of the damage caused as a result of the non-performance or of the improper performance of the task entrusted through the management contract.

The particular features of the administrator contract:

- 1) The relationships created by the contract between the administrator and the company are relations of mandate because the administrator is appointed by the partners or by the sole trader through the administrator contract.
- 2) The content of the mandate given to the administrator cannot be exclusively contractual.

The public interests of the legal regulation of the trading companies require that certain obligations are provided by the law.

This is clear from the text of the law 31/1990 which states in Article 72 that the administrator's obligations are governed by the provisions concerning the mandate and by the special provisions of the trading companies' law.

This dual nature - contractual and legal - of the obligations and of the liability defines the position of the company's administrator and, at the same time, makes it different from other judicial positions.

3. Conclusions and proposals

The main conclusions are:

Tourism acts as a complex socio-economic phenomenon, resulting from the integration of several subdivisions (distinct branches) of the economy.

- In many countries, the hotel industry is considered as a separate activity of the economy that includes all the activities developed in the accommodation units, the services offered to tourists during and in relation to their stay in the hotel units.

All the relations in which people come with each other, or the legal entities with the state power, the state administration, institutions and trading companies are not conducted at random, but within a framework governed by rule of law.

The legal framework in the hotel domain has two components: the rules of law which have general practicality, the most important being: Law 571/2003 regarding the Fiscal Code, the Commercial Code, Law 31/1990 on trading companies, Law 53/2003 and Labour Code (as amended and completed by Law No. 40 of 2011) and the Accounting Law No. 82 of 1991, and the rules of law specific to the hotel services' activity:

The Government Decision no. 1267 of 8 December 2010 on the issuance of the classification certificates, of the licenses and of patents for Tourism and Regional Development and Tourism Ministerial Order no. 1051/2011 regarding the approval of the Methodological Norms regarding the issuance of the classification certificates, licenses and patents for Tourism and the Minister for SMEs, Trade, Tourism and Liberal Professions nr.636/2008 for the approval of the Methodological Norms regarding the classification of the tourism accommodation units.

- The manager contract is defined as the agreement of will by which a legal person is involved in an economic activity, as owner, entrusts the organization, the administration and the managing of the activity to a manager, based on some aims and measurable performance criteria, all for a price.

- The administrator contract is the contract under which a person – the administrator, undertakes to complete acts and deeds, on behalf of the trading company that he represents.

The administrator contract has its basis in law number 31/1990, which contains

different disposals, depending on the legal form of the company, and it is a form of the contract of the trading mandate.

Both contracts analyzed have a number of features in the area of legal characters, as follows:

a) Both contracts are contracts with **synalagmatic (reciprocal)** character which means that both contracts give rise to obligations on both sides. For example, in both cases the company has the obligation to pay the financial rights to the administrator or to the manager and they are required to perform the necessary activities for the company.

b) Both contracts have **onerous title**, which means that both sides seek to obtain economic benefits. For example, the company aims, in both cases, to obtain profit and to accomplish its objectives in the case of the manager contract or the accomplishment of the activity object in the case of the administrator contract, and the manager and the administrator aim to obtain the remuneration and a part from the profits.

c) Both contracts are consensual which means that the agreement of will is sufficient for the validity of the contract.

- The manager contract has its legal basis in the law 66/1993 – the law of the management contract and administration contract has its legal basis in the law 31/1990 and in the commercial code.

- Unlike the administrator contract, in the case of the manager contract, the manager may be a juridical person who has the obligation to appoint a permanent representative, a natural person that will actually perform the function of manager.

- Another common element in the case of the two contracts made and analyzed is that, in order to be valid and opposable in the relations with third parties, the contracts must be written and contain the

elements provided by the legislation in force.

- For a valid conclusion of both contracts, it is necessary that the signatory parties have full legal capacity.

Thus, being a trader, the company must have its own capacity to perform acts of commerce, for the manager and the administrator this thing being expressly required by law.

- The position of manager or administrator in the hotel activities can be filled by any natural person who fulfils the requirements of law and who concludes such a contract with the owners of the hotel or of the company.

In case of large-scale hotel companies (for example, large hotel chains which offer not only accommodation but also food services, recreation, treatment etc.), whose management and coordination is complex, the use of manager contracts is recommended to ensure the high standards of the professional leadership, because the position of manager can only be held by a person with higher education and an extensive experience in the field.

The manager contracts are more recommended to be concluded because by means of them clearly defined objectives, which the manager has the duty to carry out, can be drawn.

The manager contract offers the possibility to establish some financial guarantees entrusted to the manager, thus ensuring the contracting company of the full involvement of the manager in the good running of the company.

The administrator contract profile is recommended for small companies (for example, boarding houses, hostels) whose activity is of large-scale and where it is not necessary that the person who is dealing with the business have expanded professional skills.

References

1. Bardi, J. A.: *Hotel Front Office Management*. fifth edition, John Wiley & Sons, Inc. New Jersey, 2011, pp. 50-52.
2. Barrows, C. W., Powers, T., Reynolds, D.: *Management in the Hospitality Industry*. tenth edition, John Wiley & Sons, Inc. New Jersey, 2012, pp. 654-657.
3. Căprărescu, G., Bucă-Chendi, G.: *Bazele managementului*. Editura Uranus, Bucureşti. 2003.
4. Ionciă, M.: *Economia serviciilor. Teorie şi practică*. Editura Uranus, Bucureşti, 2003, pp. 83-92.
5. Ispas, A.: *Economia turismului*. Editura Universităţii „Transilvania” din Braşov, Braşov. 2010, pp. 205-216.
6. Măgureanu, G.: *Legislaţie hotelieră*. Editura Universul Juridic, Bucureşti. 2010, pp. 83-114.
7. Minciu, R.: *Economia turismului*. Editura Uranus, Bucureşti. 2001, pp. 215-284.
8. Nistoreanu, P.: *Managementul în turism servicii*. Editura ASE Bucureşti, 2005, pp. 26-32.
9. O’Fallon, M. J., Rutherford, D. G.: *Hotel Management and Operations*. fifth edition, John Wiley & Sons, Inc. New Jersey, 2011, p. 436.
10. Legea 66/1993 – legea contractului de management.
11. Legea 31/1990 privind societăţile comerciale.