

## The Mechanics of Interim Management Agreements for Alcohol Beverage and Food Service in Hotel and Restaurant Chain Acquisitions

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Anyone who has purchased a hotel or restaurant knows that continuity of service is important above all else in order to keep guests coming in. Hotels and restaurants generally have liquor licenses and health/food licenses which need to transition to the new ownership in order to keep operations running smoothly. Sometimes, however, the circumstances and timing of the acquisition may cause a gap between the time the new owner takes over and the time new licenses can be obtained. This can cause some problems if new licenses cannot be issued at closing or if temporary licensing is not available, and thoughts turn to the concept of an interim management agreement.

An "Interim Management Agreement" allows a new owner to operate under a former owner's license/s, or allows the new owner to operate under another third party's licenses for a limited period of time. Most jurisdictions allow these agreements when it comes to food service, but their use for alcohol sales and service is highly regulated and varies by jurisdiction. Some jurisdictions do not allow such agreements at all (*e.g.*, Kansas, Massachusetts, Ohio, Washington) and do not have any other temporary means of licensure. Other jurisdictions prohibit interim management agreements on the theory that temporary licensing is available (*e.g.*, California, District of Columbia, Mississippi). Several jurisdictions do allow the agreements; however, the issue is generally governed by administrative enforcement policy instead of statutes or regulations, and therefore it is a good idea to review the issue with regulators in real time rather than relying on a policy which may be outdated and unpublished.

Although the terms of an Interim Management Agreement may vary due to the situation at hand, there are a few common issues and terms which rarely change. First, the parties involved should be prepared to disclose the existence of the agreement to the governing authority regulating alcoholic beverages; some jurisdictions will require that the agreement be filed. Second, it's important to remember that the license holder, as opposed to the new owner, is "in charge" of alcohol service. This means: (1) the license holder must order alcohol products from wholesale

distributors; (2) the license holder retains all revenue from the sale of alcoholic beverages; (3) the license holder is responsible for any alcohol beverage taxes; and (4) the license holder is liable to the governing state agency for any violations. It is also important to note that some jurisdictions have their own format for interim management agreements (e.g., Alabama, Arizona, Nebraska), which is another reason why checking with relevant jurisdictions in advance to confirm the requirements is advisable.

In short, any transaction with a change of ownership involving a liquor license requires careful advance planning to determine what options are available for licensure post-closing. If the parties learn, for example, that interim management agreements are not an option, that information may direct the timing of the closing such that permanent licensure can be obtained concurrently with the closing. In contrast, if the interim management agreement is a viable option, the parties should be afforded the time to negotiate any necessary terms and to confirm that the outgoing owner is willing to assist in this regard before the closing looms.