



RITCH MUELLER

SNDA in Mexico: Protecting
Investment and Hotel
Operations Against Potential
Financial Defaults

Content

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SNDA IN MEXICO: Protecting Investment and Hotel Operations Against Potential Financial Defaults

In recent years, Mexico's hospitality sector has experienced significant growth, attracting both domestic and international investors seeking to capitalize on opportunities in key tourist and commercial destinations. This expansion has brought with it a series of legal and financial challenges for those involved in hotel developments, chief among them the need for robust legal protection mechanisms. These mechanisms not only ensure the operational viability of projects but also safeguard continuity against unforeseen financial setbacks. In this context, the financing of such developments frequently involves the granting of real and personal collateral tied to the underlying real estate assets. As a result, hotel operators – particularly large international brands – routinely seek legal tools to protect their contractual rights against potential enforcement actions arising from the developer's credit default. One of the key instruments for achieving this protection is the **SNDA** (Subordination, Non-Disturbance and Attornment Agreement), a legal arrangement that has gained considerable relevance in hotel financing in Mexico and that is increasingly accepted and utilized in financing transactions with both domestic and foreign lenders.

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WHAT IS AN SNDA AND WHY DOES IT MATTER?

An **SNDA** is a tripartite agreement among the hotel operator (the hotel brand), the property owner (typically the developer), and the lending financial institution. The purpose of this legal instrument is to align the interests of all parties when a hotel property subject to a management agreement is pledged as collateral for structured financing. In its most basic form, the agreement allows the three parties to reach a consensus on the terms and conditions that shall govern an enforcement scenario arising from a default on the financing obligations.

In practical terms, the **SNDA** plays a vital role in ensuring that the hotel operator can continue managing the property under the same contractual conditions, even if the lender enforces the collateral. This is particularly relevant in the Mexican context, where the absence of clear agreements in such situations could lead to operational paralysis or early terminations with significant adverse consequences for the project's profitability and for the operator.

SCOPE OF THE SNDA

One of the most notable features of the **SNDA** is its ability to provide operational certainty to the hotel operator, guaranteeing that – even if the lender enforces the collateral due to a default by the owner or developer – the management agreement will remain in full force and effect. This gives hotel operators a meaningful level of certainty and stability with respect to their long-term projects. This aspect is particularly critical when dealing with international hotel brands, whose involvement in such projects entails long-term commitments, significant economic expectations, and substantial brand exposure that must be shielded from potential changes in the property's ownership structure.



KEY ELEMENTS OF THE SNDA

The **SNDA** is built around three essential components that define its mechanics and effectiveness:

- **Subordination:** The operator agrees that its rights under the management agreement shall be subordinated to the credit facility granted by the financial institution. In practical terms, this means that in the event of collateral enforcement, the lender's claim takes priority over any rights the operator may hold with respect to the property. This subordination is critical in giving lenders the assurance that their debt will be satisfied ahead of any other property rights, thereby making hotel developments more attractive to creditors.
- **Non-Disturbance:** In exchange for the subordination, the lender expressly commits – and undertakes to cause any third party acquiring the asset – to honor the agreement with the hotel operator, ensuring that the hotel's operations are not interrupted, provided the operator is in compliance with its contractual obligations. This commitment is essential to the viability of international hotel operators, who require uninterrupted continuity. For these brands, any disruption can have catastrophic consequences, both economically and reputationally. The legal certainty afforded by this provision is therefore essential to maintaining the confidence of international brands.
- **Attornment:** In the event of enforcement, the hotel operator agrees to recognize the lender or any third party designated by the lender as the new owner of the property. This means the operator will continue its contractual relationship with the new owner under the same terms and conditions, thereby ensuring continuity of hotel activities. This recognition provides a clear pathway for ownership transition, avoiding potential legal disputes that could generate uncertainty and operational delays.

INTERACTION OF THE SNDA WITH TRADITIONAL MEXICAN SECURITY INSTRUMENTS

In Mexico, typical collateral structures in hotel financings primarily include real estate mortgages and security trusts (fideicomisos en garantía). While the **SNDA** does not replace these traditional instruments, it interacts with and complements their structure, enhancing legal certainty for all parties involved:

- **Real Estate Mortgage:** The **SNDA** is used alongside mortgages in scenarios where the lender could, upon a credit default, judicially enforce the real estate collateral. In this context, the **SNDA** provides a clear framework governing how the hotel operator's rights will be handled in an enforcement scenario. Without such an agreement, the operator could face the risk of an interruption of its activities, or a modification or termination of its contractual terms without its consent.
- **Security Trust (Fideicomiso de Garantía):** Under this structure, the hotel property is transferred to a trust administered by a trustee institution. The **SNDA** complements this trust by specifying the trustee's obligations with respect to the continuity of the management agreement, ensuring that the hotel operator can carry on its activities without disruption, even in the event the trust is enforced. This approach, increasingly common in Mexico, offers developers and financial institutions a flexible solution well-suited to the Mexican legal framework.



PRACTICAL CONSIDERATIONS AND FINAL RECOMMENDATIONS

When implementing an **SNDA** in Mexico, it is essential to negotiate the specific terms in detail to ensure that each party has a clear understanding of its rights and obligations. Key practical considerations include:

- **Defining with precision the conditions that trigger non-disturbance protection:** Clearly establishing the criteria under which the financial institution will be required to honor the management agreement – or, where applicable, to modify it – helps prevent ambiguity and potential disputes.
- **Carefully evaluating the interaction with other security instruments:** Including trusts and assignments of collection rights, to ensure that all parties involved have a clear understanding of their respective rights and obligations. A coherent and consistent framework across the various legal instruments is key to avoiding contradictions and ensuring the effectiveness of the protections in place.

SDAs are a powerful tool, increasingly essential and widely accepted in the financing of hotel developments in Mexico. When properly implemented, these agreements not only protect the investment, but also ensure the functional stability of the projects, giving all parties involved the confidence to meet their respective expectations. This contributes to building more resilient projects that are less vulnerable to changes in ownership structure or credit default scenarios, providing a solid foundation for the continued growth of Mexico's hospitality industry.