

BRANDED RESIDENCES

Hospitality Spotlight

Our global branded residence team has advised on over **50 HOTEL AND BRANDED RESIDENCE PROJECTS**, and over **75 PROJECTS** involving large scale master-planned communities, malls and mixed-use developments, many of which contain residential and hospitality components.

Branded residence developments are essentially developments that contain private residential components that are intended to be sold and operated in association with a brand. Such developments are sometimes referred to as **"condo-hotels"**, **"hotel serviced apartments"** or **"branded multi-family"** schemes (but should be distinguished from time share, fractional ownership or vacation club schemes where purchasers are only acquiring an interest in an apartment or scheme).

More often, branded residences are developed in conjunction with a hotel. The residences may be in the same or an adjacent building, but may have a separate entrance, reception, lifts, infrastructure and leisure facilities from the hotel. Services will be provided to the residences from the hotel and some hotel facilities (e.g. gym, pool and spa) may be shared. There are also stand-alone branded residence developments that do not contain an associated hotel and which are often supported by a **"clubhouse facility"** that provides the back-of-house necessary to service the residences.

Association with the brand, and the quality assurances and prestige it brings, can enable the developer to achieve a sales price substantially more (often 20-40%) than if the

residences were unbranded. Historically, the majority of branded residence developments have been associated with hotel brands, however, a trend has emerged where **"fashion brands"** are being associated with residence projects which are operated either by a **"white operator"** or by a hotel operator that has entered into dual branding arrangements with the fashion brand owner.

The branded residences will be required to be designed and built in accordance with the hotel operator's (or brand owner's) brand standards, pursuant to a "Residences Technical Services Agreement". Typically, operators require a standard of finishes, furnishing and amenities within the residences that align with the operator's brand, which will differ from operator to operator and brand to brand.

There are strict limitations on the brand's use in the marketing and sales activities and in the ongoing association of the residences with the brand in the "Residence Marketing and License Agreement". Other ancillary agreements are generally also required to govern the relationship between the various parties as set out below.

The operator, who is generally not the developer and is merely licensing its brand for the marketing and sale of the residences, will typically impose strict conditions on the residence sales agreement and sales process, to ensure that no misrepresentations are made, along with full disclaimers of the operator's non developer/investor role.

Some branded residence projects include a managed rental program, which require further consideration and documentation, and there may be limitations on where and to whom such schemes may be offered given securities laws disclosure rules.

SOME KEY INITIAL CONSIDERATIONS...

✓ THE OFFERING

- ▶ An assessment of the potential market for the branded residences will be required to determine the right brand, product mix, configuration, and type and standard of the amenities and shared facilities required to enable the residences to be associated with the desired brand
- ▶ Who is the residences' target audience? (E.g. retirees, families, business travelers, young professionals...) and what is the target socio-economic level (ultra-luxury, luxury, mid-range...)
- ▶ What are the prospective buyers' motivations: a permanent home, a vacation home or as an investment as part of a managed rental scheme?
- ▶ What amenities and leisure facilities are being offered, and are they exclusive to residences or shared with the hotel? If there is no hotel, who will own and operate the facilities being offered to the residences and will these be provided as part of the community facilities or as a separate commercial operation?
- ▶ What is the developer's play? Is there an intention to sell-out and exit the development or to remain involved for the long term? Is there an adjoining hotel? Is this the first of many similar developments or part of a wider strategy?

✓ THE BRAND

- ▶ The choice of brand to be associated with the residences is fundamental, however, there is a broad spectrum of what this may look like. There is a vast difference in the way residences are branded, operated and managed between the hotel operators and brand owners:
 - Full branding and managed by operator – the more expensive option, with 3-6% royalty fees payable to the brand licensor, but often yields the highest premium on sales;
 - 'Serviced by' and 'co-branding' – more of a brand and services association where lower fees are offered by some international operators, however, 'co-branding' is often limited to the name of the development as this is often unpopular with operators.
 - 'Brand badge' – the simplest form of branding where there is a 'look and feel' of the brand (often a fashion brand) but generally no ongoing services arrangements.

✓ THE LOCATION

- ▶ The local legislative framework needs to be carefully considered when developing a branded residence project and detailed analysis will be required to formulate the optimal title structure to support its implementation.
- ▶ Strata, condominium, sectional, commonhold and jointly owned property legislative regimes in different jurisdictions will often require the formation of 'owners associations' or 'body corporates' to assume control over, and the responsibility for, maintenance of the common areas which, unless properly documented and structured at the outset, may not provide the level of control necessary to preserve brand standards.
- ▶ Legislation governing foreign-ownership, off-plan marketing and sales, escrow, defect rectification and managed rental schemes, etc will all need to be taken into consideration.



HOW WE CAN HELP

Our market leading branded residence global team provides comprehensive, market leading advice on all aspects of the structuring, branding, operation and sale of branded residences. Our team can prepare, review and negotiate the

suite of branding, management and sales documentation required to implement a branded residence project, with a depth of experience acting for developers, hotel owners and operators. Such documentation normally includes:

▶ **Residential Marketing and License Agreement** – deals primarily with the granting of the license to use the brand marks and branding royalty fees

▶ **Residence Technical Services Agreement** – deals with the technical obligations and processes the developer must comply with when constructing the residences

▶ **Residence Pre-opening Agreement** – deals primarily with the pre-opening obligations relating to the opening of the residences

▶ **Brand Services and Facilities Agreement** – entered into between the hotel owner and the home owners association/body corporate in respect of the provision of "Brand Services" to the residence common areas to preserve brand standards

▶ **Brand Supervisory Services Agreement** – entered into between the operator and developer whereby the operator agrees to "back-to-back" the management arrangements and supervise the delivery of the Brand Services by the hotel owner under the Brand Services and Facilities Agreement

▶ **A La Carte Services Agreement** – entered into between the hotel owner and the individual branded residence owners for the provision of a la carte services on a user-pays basis

▶ **Purchaser's Brand Acknowledgement** – attached to the sales documentation and executed by the purchasers acknowledging that they have no interest in the brand

▶ **Clubhouse Management Agreement** – used in stand-alone projects where there is no hotel and operator manages a "Clubhouse" and/or residential leisure facilities

▶ **Modified Hotel Management Agreement** – if services are supplied by an associated hotel, the hotel management agreement needs to be tailored to reflect the incorporation of the branded residences services and the legal structure applicable to the hotel and residences

▶ **Managed Rental Scheme Agreement** – required where the hotel owner will operate a managed rental scheme. This agreement is entered into between the hotel owner (or its nominee) and the individual residence owners

▶ **Sales Documentation** – expressions of interest, reservation agreements, promise to sell agreements and sale and purchase agreements must include requisite disclosures and brand protections in order to protect the hotel owner and hotel operator/brand owner

▶ **Condominium/Strata By-Laws** – in most jurisdictions, condominium/strata by-laws must be prepared for multiply-owned developments. We are experts in the structuring of multiply-owned developments within condominium/strata regimes and the preparation of condominium/strata governance documentation, especially in mixed-use hospitality projects where special considerations and provisions are required to protect the hotel owner and the hotel operator/brand owner



MEET OUR GLOBAL BRANDED RESIDENCE TEAM

We are the world-leading go-to firm in the real estate sector, with 31 offices and nearly 700 lawyers globally just in our Real Estate Practice. Operating in multiple jurisdictions but as 'One Firm', we can deliver seamless integrated advice, no matter the legal jurisdiction, the nature or the complexity of your hospitality project.



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