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Navigating the Legal Landscape: Short-Term Rental Accommodation in Malaysia and the Path Forward

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ABSTRACT

Short-Term Rental Accommodation ('STRA') encircling activities such as operating short-term rentals and listing owner-occupied accommodations on network media, for example, Airbnb, Agoda, iBilik and Booking.com have raised numerous legal concerns in Malaysia. These include licensing, business registration, security issues, and neighbourhood disturbances. Presently, there is a notable absence of devoted legislation addressing the control of STRA, particularly within the context of Airbnb in Malaysia. This study applies qualitative methods, primarily library research through document analysis, focusing on relevant legislation and case laws in Malaysia and some selected countries. It is imperative to advocate for the establishment of specific legislation to regulate STRA in Malaysia to ensure the protection and welfare of homeowners, tourists, and the public in general and subsequently to achieve Goal 11 of the United Nation's Sustainable Development Goals ('SDGs'), which is to make cities and human settlements inclusive, safe, resilient and sustainable.

Keywords: Accommodations; Malaysia; Rental; Short-term

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1. Introduction

Airbnb,¹ Inc. was founded by Brian Joseph Chesky together with his peer, Joe Gebbia.² Both Brian and Joe were living in the city of San Francisco when in 2007, a big event, namely the Industrial Designers Society of America, was held in San Francisco. Many participants and visitors from all over the world attended the event. Unfortunately, most of the hotel rooms were fully booked, and some visitors were unable to find their accommodation. Brian and Joe needed money to pay for the rental of their apartment. They thought that the situation then presented a good opportunity for them to provide accommodation to those visitors by renting their apartment rooms. Brian and Joe then came up with the business idea of Airbnb, which is to provide accommodation with beds and breakfast services. Airbnb would operate without owning any real property. Instead, Airbnb connects property owners and people looking for accommodation and charge a fee for each booking of 3% (Sabree, 2019).³

Short-term rental accommodation ('STRA') has mushroomed in the past few years in Malaysia and has been considered as a strong rival and competitor to hotels, motels and resort accommodations.⁴ Most hotel, motel, and resort operators think that the emergence of STRA, for example, Airbnb, has affected their business activities. Therefore, in order to ensure that hotels, motels or resorts could compete with STRA activities, some hotel, motel or resort operators have had to ensure that they could offer more attractive promotions and special services to attract customers. This is despite the resultant increase in operating costs.⁵

The legal issue is whether there is a relevant law to manage and regulate the activities of STRA. According to Mahyuddin and Norlailii,⁶ STRA's activities actually bring a lot of good to the tourism industry in the country, but most hotel, motel and resort operators think that the emergence of STRA has affected their business activities and the law related to STRA, in any, is unclear.

Thus, this paper studies the existing legal provisions regarding STRA services and examines the legal provisions in several countries, namely Australia, Singapore, and selected areas in the United States of America and the United Kingdom and further suggests the improvement of the law in Malaysia in relation to STRA services so as to bring it in line with Goal 11 of the United Nation's Sustainable Development Goals ('SDGs'), which is to make cities and human settlements inclusive, safe, resilient and sustainable.

¹ The term is said to be derived from the words 'Air bed and breakfast'.

² Airbnb, 'An Important Announcement From Airbnb' (*Newsroom*, 5 November 2020) <<https://news.airbnb.com/ms/an-important-announcement-from-airbnb/>>.

³ Sabree H, 'APA Yang Dimaksudkan Dengan Nama Akronim Airbnb?' (*Soal Jawab.MY*, 3 January 2019) <<https://soaljawab.my/apa-maksud-perkataan-airbnb/>>.

⁴ Dun and Bradstreet, <https://www.dnb.com/business-directory/company-profiles/airbnb_sdn_bhd.5908707666acd705e3b64d668122e648.html>.

⁵ Grace Xavier, 'Should Airbnb Be Regulated?' (*New Straits Times*, 19 March 2019) <<https://api.nst.com.my/opinion/columnists/2019/03/470654/should-airbnb-be-regulated>>.

⁶ Daud Mahyuddin and Isa Norlaili, 'The Legality of Operating Short Term Rental Accommodation in Waqf Housing' [2021] 2 *Malayan Law Journal* lxii 1-13.

2. Literature Review

According to Statista, in both Europe and the United States, 36% of Airbnb users are between the ages of 25 and 34, which is the millennial generation.⁷ According to research by Guttentag and Smith, around 67% of Airbnb users are of the view that Airbnb can be a substitute for hotel services.⁸ Short-term rental accommodations such as Airbnb have offered lower costs, ease of use, and first-hand knowledge of the area via community-based tourism, i.e. local people may interact with visitors and generate money from renting out the vacant area.⁹

In parallel, Tran and Filimonau were of the view that evaluation, feedback and engagement from the guests and hosts in the online reservation platform are important factors in the selection of Airbnb properties.¹⁰ In addition, Zakaraya concluded that recovery from the COVID-19 pandemic is expected to increase tourist response to STRA services.¹¹

According to Teubner *et al*, unlike the conventional method of booking hotels, Airbnb has revolutionised the practice by offering an internet-based platform where individuals may rent out their homes to tourists and by providing a wide range of options, Airbnb has also drawn clients who are budget conscious.¹² According to Nowak *et al*, 'cheaper price,' 'location', and 'authentic experience' were the main factors influencing customers' decision to use Airbnb.¹³

Multiple research studies suggest that there is a negligible correlation between the hotel business concerning the organisational results together with financial performance of hotel companies. This can be shown by the study sample period from 2013 to 2016 found by Blal *et al* that based on the selected 101 hotels in San Francisco, the number of Airbnb postings does not impact hotel revenue per available room (RevPAR).¹⁴ The same result has also been discovered earlier by Choi *et al* but the background study was in South Korea from the

⁷ Statista, 'Share of Airbnb Users by Age Group in the United States and Europe 2017' (*Statista*, 9 August 2020). <<https://www.statista.com/statistics/796646/airbnb-users-by-age-us-europe/>>.

⁸ Daniel A Guttentag, Stephen LJ Smith, 'Assessing Airbnb as a Disruptive Innovation Relative to Hotels: Substitution and Comparative Performance Expectations' (2017) 64 *International Journal of Hospitality Management* 1-10 <<https://doi.org/10.1016/j.ijhm.2017.02.003>>.

⁹ Hongxiu Li, Yong Liu, Chee-Wee Tan and Feng Hu, 'Comprehending Customer Satisfaction With Hotels' (2020) 32(5) *International Journal of Contemporary Hospitality Management* 1713-1735.

¹⁰ Tran, Trang and Filimonau, Viachaslau, 'The (De)Motivation Factors in Choosing Airbnb Amongst Vietnamese Consumers' (2020) 42 *Journal of Hospitality and Tourism Management* 130-140 <<https://doi.org/10.1016/j.jhtm.2019.10.011>>.

¹¹ Siti Zubaidah Zakaraya, 'Pelancongan Kedah PASCA Pandemik Kembali Rancak' (*Sinarharian*, 8 April 2021) <<https://www.sinarharian.com.my/article/132539/EDISI/PelanconganKedah-pasca-pandemik-kembali-rancak>>.

¹² Teubner Timm, Hawlitschek Florian, and Dann David, 'Price Determinants on Airbnb: How Reputation Pays Off in the Sharing Economy' (2017) 5(4) *Journal of Self Governance and Management Economics* 53-80.

¹³ Nowak Brian, Allen Thomas, Rollo Jamie, Lewis Vaughan, He Lin, Chen Amanda, Young Ed and others, 'Global Insight: Who Will Airbnb Hurt More-Hotels or OTAs?' (Morgan Stanley Research, 2015) 232-244.

¹⁴ Blal Inès, Singal Manisha and Templin Jonathan, 'Airbnb's effect on hotel sales growth' (2018) 73 *International Journal of Hospitality Management* 85-92.

sample period from 2010 until 2013.¹⁵ Few other studies made by Alvarado *et al* and Haywood *et al* also summed up the fact that hotels can retain their occupancy rates since Airbnb does not take away their clientele.¹⁶

If STRA is allowed in Malaysia, several rules may be established to make sure that it does not conflict with the laws that are in place.¹⁷ While many studies have been conducted on the impact of short-term rental properties, including the impact of Airbnb on hotel operations, the results are conflicting and unfounded. Thus, a closer look at the interaction between STRA and the hotel business and the relevant laws to govern STRA are important.

3. Discussion

3.1 Existing Laws Relating to Short-Term Rental Accommodations in Malaysia

Currently, there is no specific law regarding the control of STRA, especially Airbnb in Malaysia. However, the Ministry of Urban Wellbeing, Housing and Local Government considers that the Airbnb transaction is a private rental agreement between the homeowner as a host and a visitor through a rental site to rent the property for a few days or for a short period of time.¹⁸ Although there is no federal law regulating Airbnb's dealings, the issue is now subject to state or local government laws in each state to monitor and regulate STRA activities in each state. However, there is no uniformity in the application of the law at the state level to regulate the activities of STRA in Malaysia. Even so, there is legislation that can be used indirectly to regulate STRA for stratified properties.

Stratified properties are regulated and subject to the Strata Title Act ('STA')¹⁹ and the Strata Management Act 2013 ('SMA').²⁰ The latter SMA has repealed the Common Building and Property Act (Maintenance and Management) 2007.²¹ The purpose of the establishment of the STA and SMA is to make provisions for the upkeep and administration of structures and the common property, as well as for related issues, in addition to playing a role in providing a uniform reference and guide regarding the maintenance and management of the

¹⁵ Ki-Hong Choi, Jinhong Jung, S Yeol Ryu, S Do Kim, and Seong-Min Yeon, 'The Relationship Between Airbnb and the Hotel Revenue: In the Case of Korea' (2015) 8(26) Indian Journal of Science and Technology, 1–8.

¹⁶ Alvarado Claudia, Hennis Stephen, and Haywood Jessica, 'Str: Airbnb's Impact on Nyc's Boroughs', (2016) <<http://www.hotelnewsnow.com/Articles/30455/STRAirbnbsimpact-on-NYCs-boroughs>>; Ki-Hong Choi, Jinhong Jung, S Yeol Ryu, S Do Kim, and Seong-Min Yeon, 'The Relationship Between Airbnb and the Hotel Revenue: In the Case of Korea' (2015) 8(26) Indian Journal of Science and Technology, 1–8.

¹⁷ Metro News, 'Renting Out Your Property Short-Term? Register With Dbkl or Else' (*The Star*, 18 January 2018) <<https://www.thestar.com.my/metro/metro-news/2018/01/18/renting-out-your-property-short-term-register-with-dbkl-or-else/>>.

¹⁸ Meikeng Yuen, 'Airbnb Considered Legal' (*The Star*, 28 August 2016) <<https://www.thestar.com.my/news/nation/2016/08/28/airbnb-considered-legal>>.

¹⁹ Strata Title Act (Act 318).

²⁰ Strata Management Act 2013 (Act 757).

²¹ Common Building and Property Act (Maintenance and Management) 2007 (Act 663) (Repealed).

stratified properties. A power that has been bestowed under the STA to the Management Corporation ('MC') is to impose house rules on residents in a residential area of stratified properties.

In 2017, the Sabah state government established by-laws to prohibit the operation of Airbnb in residential buildings within the state. The primary objective of this prohibition is to safeguard the local tourism industry. By-laws are laws enacted by the Local Council or Municipal Council. In some stratified properties' management, the residents of the said residential area may also be subject to some by-laws set by the management corporation under the STA. After the said by-laws received objections from some Airbnb operators, the Sabah state government has drafted some guidelines for Airbnb operators, that is, only property owners in commercial or mixed-use zones are allowed to rent their 'rental homes' as short-term rentals. They must, however, apply for and obtain written permission from the local authority before running the said activities. Prior to the approval, Airbnb operators must ensure that fire safety requirements are met. According to Datuk Pang Yuk Ming, former Sabah Minister of Tourism, Culture and Environment, Airbnb is considered a business. As such, if an apartment or condominium is constructed for domestic usage, it cannot be utilised for business.²² It is submitted that this policy is in line with the provision of section 116 of the National Land Code,²³ which states that the purpose of the land usage must follow the category of land use which has been endorsed on the issue document of title. Section 31 (1) (e) of the Sabah Land Ordinance²⁴ has a similar provision.

In January 2021, the Building Commissioner under the Penang City Council ('MBPP') issued a letter stating that all the short-term rental accommodations operators shall get prior written consent from the Joint Management Body ('JMB') and MC of the respective building before starting the activities. The management must hold an Annual General Meeting ('AGM') to get approval from at least 75% of strata property owners before allowing Airbnb operators to run Airbnb activities in the said residential area. For any Airbnb operator who has violated this rule, a fine will be imposed. Recently, the Chairman of the Housing, Local Government, Town and State Urban and Rural Planning Committee Jagdeep Singh Deo has suggested to the Federal Government to consider a heavier penalty because the RM200 fine is less effective.²⁵

On the other hand, the State Government of Selangor and the Federal Territory of Kuala Lumpur generally do not prohibit Airbnb activities. However, some local authorities have established some new ways to regulate STRA in the state. For example, Kuala Lumpur City Hall ('DBKL') encourages property owners to register their residences online via the

²² Willie Jude Junaidi, 'Pelancong Ke Sabah Meningkatkan' (*Berita Harian*, 23 October 2017) <<https://api.bharian.com.my/berita/wilayah/2017/10/341017/pelancong-ke-sabah-meningkat>>.

²³ National Land Code (Act 828) (Revised 2020).

²⁴ Sabah Land Ordinance (Sabah Cap. 68).

²⁵ 'Kerajaan Pulau Pinang Cadangkan Akta Pembangunan Semula Bandar Di Malaysia' (*Sinar Harian*, 14 September 2021) <<https://www.sinarharian.com.my/article/161423/berita/nasional/kerajaan-pulau-pinang-cadangkan-akta-pembangunan-semula-bandar-di-malaysia>>.

ePenilaian and Hartanah platform.²⁶ With thousands of condominiums throughout the Klang Valley, DBKL has made the management corporation responsible for regulating STRA.

In October 2020, the Federal Court ruled that MC and JMB can prohibit STRA through rules set by their management. This important decision was made in the case of *Innab Salil & Ors v Verve Suites Mont Kiara Management Corp.*²⁷ In this case, the property owner, Innab Salil, owns several units at Verve Suites. His houseguests have been abusing the common facilities of the accommodation, as well as disturbing the residents in the said residential area. After receiving several complaints, the MC approved the new rules and prohibited the residential units at Verve Suites from being utilised for business operations, including offering them as STRA. The new rules were affirmed by a significant majority vote of 96-4 by the residents present at the Extraordinary General Meeting ('EGM'). The court ruled that by-laws passed under s. 70(2) of the STA are valid as long as they are made for the benefit of residents. In other words, even if the State Authority allows the use of land for commercial purposes, such purpose is still subject to the Strata Management Act 2013, especially Section 70. Therefore, approval to use House Regulation No. 3 does not violate the law or exceed s. 70(5) of the STA.²⁸

In another case of *Marc Service Residence Management Corporation v Wawasan Raya Sdn. Bhd & 202 Ors*,²⁹ the plaintiff (Marc Service) represents the management corporation of two blocks of serviced apartments known as Marc Service Residence, while the first defendant, namely Wawasan Raya Sdn. Bhd. is a registered company and the legal owner of one of the strata units in the serviced apartment, namely Unit A-13-3. Later, the unit was rented to Aca Acappella Suite Hotel Sdn. Bhd. for the purpose of STRA services to outside parties. The plaintiff alleged that the defendant had converted the unit to be rented out to outside tenants. This has caused inconvenience to the owners and residents of other units in the serviced apartments because the tenants are constantly changing in the units. As a result of the actions of the defendants conducting business on their premises contrary to the Serviced Apartment House Regulations, the High Court granted an injunction to the plaintiff because if the injunction was not granted, the suffering experienced by the plaintiff would be more serious. The safety, comfort, and general well-being of the residents would also be affected in the serviced apartments.

Based on the above cases, it may be argued that in Malaysia, STRA activities are not generally forbidden. Whether or not an STRA activity is permitted or prohibited depends on

²⁶ Farid Wahab, 'KL Property Owners Must Update Info Online From April 1' (*The Star*, 10 January 2023) <<https://www.thestar.com.my/metro/metro-news/2023/01/10/kl-property-owners-must-update-info-online-from-april-1>>.

²⁷ *Innab Salil v Verve Suites Mont Kiara Management Corp* [2020] 1 Legal Network Series 1131 (FC).

²⁸ Commissioner of Building Kuala Lumpur, Circular 2015/2016 (18 November 2015).

²⁹ *Marc Service Residence Management Corporation v Wawasan Raya Sdn Bhd & 202 Ors* [2020] Malaysia Law Journal Unreported 833 (HC).

the rules and regulations governing the specific property and if it does not violate the express conditions stated in the issue document of title to the said property.

The next issue that we may need to explore is whether operating STRA on waqf housing should be allowed. As in Surah Muhammad (47: 38),

Here you are, being invited to donate a little in the cause of Allah. Still some of you withhold. And whoever does so, it is only to their own loss. For Allah is the Self-Sufficient, whereas you stand in need of Him. If you still turn away, He will replace you with another people. And they will not be like you.

In Islam, God emphasises motivation to share wealth with others. Sharing wealth with others who are in need may experience the security and well-being that comes with having confidence in Allah.³⁰ Allah encourages people to be generous with their wealth and not to be frugal. According to Rahman (2009), the property which has been designated as waqf cannot be traded, assigned ('hibah') to others, or inherited.³¹ These three guidelines must be considered as economic growth and the advancement of waqf assets to fulfil the wishes of the waqif,³² ensuring that *mutawalli*³³ and *mutahiqeen*³⁴ do not contravene waqf laws. It cannot be argued that permitting the *mutahiqeen* to profit from the usage house, which has been designated for waqf purpose to boost their home's economics constitutes manipulation or a departure from the fundamentals of waqf property.

Thus, it is arguable that running STRA within a waqf does not fall under the category of waqf property that involves selling, transferring, or inheriting. STRA only allows another person to temporarily share the use of waqf housing, which is in accordance with the rules of waqf and does not violate them. However, it is suggested that prior to operating STRA in waqf housing, the *mutahiqeen* must follow the correct procedure and get permission from the *mutawalli*.

3.2 Existing Laws Relating to Short-Term Rental Accommodations in the Selected Jurisdictions

3.2.1 Australia

Although Malaysia and Australia each have unique political, economic, and social traits, both countries share the common law jurisdiction, especially in land matters. For instance, the Australian Torrens system forms the foundation of Malaysian land law.

³⁰ Daud (n 6).

³¹ Ab Rahman Asmak, 'Peranan Wakaf Dalam Pembangunan Umat Islam dan Aplikasinya' (2009) 17(1) Shariah Journal 113–152.

³² It means acquainted or aware.

³³ The trustee of a waqf.

³⁴ It means belonging to or concerning.

Melbourne and Sydney are both crowned as the world's best and liveable city for several years in a row. Millions of tourists and immigrants swamped into the cities, which had driven up the demand for residential properties, especially commercial disclosure building ('CBD') strata schemes in both capital cities. Ever since the launching of the new forms of sharing economy business method, which is an online platform to provide short-term rental and or short-stay accommodation, i.e. Airbnb back in year 2008, that has changed the profile of the forms of rentals in big cities of Australia like Sydney and Melbourne.³⁵ It may seem that this new sharing economy method may help in stimulating the economy of the local communities and help to benefit the tourism industry. However, with the mushrooming size of Airbnb in the residential market, the backlash to this new sharing economy has raised lingering questions, such as the unruly behaviour of the short-stay accommodation occupants during their occupancy period, causing damages to the common property within the strata scheme, having wild parties during midnight and hence interfering with the peaceful enjoyment of the owner. As such, a true balance must be struck between the rights of the property owners to enjoy peaceful enjoyment of their property³⁶ and the potential economic benefits which may be derived from this short-stay accommodation.

In grappling with such issues arising from the short-stay accommodation, local state governments in Australia have responded quickly by implementing rules. For example, the Victoria State Government made a quantum leap in regulating provisions of STRA in lots or parts of lots affected by an owner corporation by introducing the amendments to the Owners Corporation Act 2006 (Vic)³⁷ to curtail issues arising from the unruly parties who display scants respect towards their short-term neighbours, i.e. the property owners or other occupants during their short-stay at the short-stay accommodation premise.³⁸

3.2.1.1 Owners Corporation Amendment (Short-stay Accommodation) Act 2018

The coming force of the Owners Corporation Amendment (Short-stay Accommodation) Act 2018 introduces a few amendments to Act 69/2006, such as to define the proscribed conduct for short-stay accommodation arrangements and to provide a platform and a complaint process for the aggrieved property owners, empowering the Victoria Civil and Administrative Tribunal ('VCAT') the jurisdiction to hear and to determine short-stay accommodation disputes.

³⁵ Palliyarachchi Rangika and Kariyawasam Kanchana, 'The Rise of Uber and Airbnb: The Future of Consumer Protection and the Sharing Economy' [2021] 28 Competition and Consumer Law Journal 1.

³⁶ Stilianos Dora and Kate Coen, 'Victoria Leads the Way- Owners Corporations Act Reforms to Address Short-Stay Accommodation Issues' (*Australian Property Law Bulletin*, July 2016) <<https://search.informit.org/doi/10.3316/agispt.20162092>>.

³⁷ Act No 69/2006 Owners Corporations Amendment (short-stay accommodation) Bill 2016 (Vic), Explanatory Memorandum, cl 1.

³⁸ Owners Corporations Amendment (Short-Stay accommodation) Act 2018 (Vic), Act No 34/2018.

In the case of *Watergate v Balcombe*,³⁹ Airbnb listing websites were consistently used by Salter and Balcombe to rent out their apartments. However, other unit owners have lodged complaints and the Owner Corporation Watergate referred the complaints to the VCAT. It was contended that Rule 34 of their By-Laws, which prohibits any leasing arrangement lasting longer than thirty days, did not allow for short-term rental. According to Balcombe, the Watergate Owners Corporation lacked the authority to implement Rule 34 under the Victorian Strata Legislation. The Watergate Owner's Corporation then appealed to the Supreme Court of Victoria, where Justice Riordan upheld VCAT's decision that the Owners Corporation did not possess the power to prohibit STRA. It is noteworthy that other states in Australia might not adopt this decision as the decision applies to the state of Victoria only. In Victoria, consent from the property proprietor must be obtained before any sub-letting of the property. In the case of *Swan v Uecker*,⁴⁰ the court determined that the landlord had the right to terminate the tenancy agreement in the event that the tenant violated any of the clauses in the agreement, such as accommodating Airbnb guests on the premises without obtaining prior written consent from the landlord.

Meanwhile, s. 159D of the newly amended Owners Corporations Act 2006 states that the owner corporation has to notify the lot owner and short-stay provider, which may include the agent provider in writing. If the Owner corporation decides to take action against the short-stay occupant with regard to the alleged breach under s. 159A, the owner corporation must give notice of the breach and the rectification required to be done by the short-stay provider.⁴¹

3.2.1.2 Fair Trading Amendment (Short-term Rental Accommodation) Act 2018 in New South Wales

The Government of New South Wales has also introduced a new legal framework to govern STRA in 2018 by passing the Fair Trading Amendment (Short-term Rental Accommodation) Act 2018.⁴² The objective of the Fair Trading Amendment (Short-term Rental Accommodation) Act 2018 is to amend the Fair Trading Act 1987 to provide for a code of conduct in relation to the short-term rental accommodation industry and to amend the Strata Schemes Management Act 2015 ('SSMA')⁴³ to allow strata scheme by-laws to prohibit short-term rental accommodation in certain cases. The SSMA gives power to the Owner Corporations to pass any by-laws to restrict any lot from being occupied for STRA in case the short-stay accommodation provider (host) does not use the property for residence purposes. The amendment of the SSMA is vide insertion of s. 137A, which states that a by-law made by a special resolution of an owner corporation may prohibit a lot from being used for a short-term rental accommodation arrangement if the lot is not the principal place

³⁹ [2016] Supreme Court of Victoria 384.

⁴⁰ [2016] Supreme Court of Victoria 313.

⁴¹ Owners Corporation Act 2006, s 159D.

⁴² Fair Trading Amendment (Short-term Rental Accommodation) Act 2018 no 41.

⁴³ Strata Schemes Management Act 2015 no 50.

of residence of the person who, under the arrangement, is giving another person the right to occupy the lot.⁴⁴ Prior to this amendment, the Tribunal, in the case of *Estens v Owners Corporation SP 11825*,⁴⁵ held that the by-laws passed by the Owner corporation prohibiting short-term tenancy were invalid because such by-law had contravened s. 139(2) of the SSMA, which states that no by-laws are capable of prohibiting the dealing of the lot, which may include transfer, lease, mortgage, or other dealing relating to a lot. The Tribunal concurred that the form of STRA falls within the ambit of the dealings under s. 139(2) of SSMA as it consists of a leasehold interest.

The Code of Conduct passed under the 'Fair Trading Amendment (Short-term Rental Accommodation) Act 2018' makes it mandatory and applicable to all participants of STRA, which may include *inter alia* online booking services provider, hosts of the short stay accommodation arrangement and guests (occupant) of this arrangement. Any breaches or non-compliance with this Code of Conduct by the industry participants may trigger the offence provisions under s. 54C and civil penalty provisions under s. 54D of the said Act, which has the objective of regulating the rights and obligations of each industry participant in STRA, providing a dispute resolution and complaints process for issues arising from the short stay accommodation arrangements and outlining approaches to enforce the Code for any non-compliances of the Code of Conduct by the participants of STRA.

Among the key features of this Code of Conduct is the compulsory requirement for the short-stay accommodation premises to be registered with the premises register.⁴⁷ Not only must the premises be registered, but the host must also ensure that the host is registered with the premises register. This requirement is mandatory before premises are advertised and offered for the purpose of entering STRA arrangements on the online reservation system provided by the booking platform.

The Code of Conduct also sets out the rights and responsibilities of fellow industry participants, with the Code imposing obligations on the guests to the neighbours and other occupants of the residential building not to create unreasonable noise that would interfere with the peace of the neighbours and other occupants of the premise. The guests must also not act in a forceful manner or in a manner that could cause distress towards the neighbours and other occupants and intentionally or neglectfully cause damage to common property of the premises and or personal property of the neighbours or other occupants in the same housing area.⁴⁶ If it was found that any guest or host had seriously breached any of the codes of conduct two times on separate occasions within two years, that particular guest or host would be banned and recorded in the exclusion register as an excluded guest or host for five years.⁴⁷ This means that the particular guest or host shall not be allowed to provide short-

⁴⁴ Fair Trading Amendment (Short-term Rental Accommodation) Act 2018 No 41 [NSW] Sch 2, insertion of s 137A into Strata Schemes Management Act 2015.

⁴⁵ SP 11825 [2017] New South Wales Consumer and Commercial Division 63 (NSWCATCD).

⁴⁷ *ibid* rules 2.2.5, 2.3.5, 2.3.6 and 2.4.11.

⁴⁶ *ibid* rule 2.5.2.

⁴⁷ *ibid* rule 4.2.4.

stay accommodation services and enter into any short-stay accommodation arrangement for a specified period of five years.

Further, the Code of Conduct imposes a mandatory requirement on the host to inform the owner corporation and/or its neighbour or the occupant directly neighbouring to the STRA that the host is operating STRA on the premise and provide the contact details of the host or its authorised representatives. The obligations of the host of the short-stay accommodation extend to the neighbours, where it is incumbent on the host to take sufficient steps to confirm their guest follows their behaviour obligations provided in the Code of Conduct.

Another key feature of the Code of Conduct is the provision of a mechanism for dispute resolution, particularly on the complaint procedure for the alleged contraventions of the code by the affected industry participants.⁴⁸ Any person who is affected by the breach of the code of conduct by another participant may lodge a complaint with the Commissioner, and the Commissioner may consider the submissions and or evidence put forward by the complainant and the participants, and on the balance of probabilities make a decision on the subject of the complaint.

In resonating with the call to address the regulatory vacuum on the potential issues arising from the short-term rental arrangement, the Queensland State Government too introduces measurements to tackle the issues of 'party house' vide amendments to the Sustainable Planning Act 2009 via the insertion of Part 7A.⁴⁹ In contrast to the term 'short-stay accommodation' used in other states' legislation, the term used in the Sustainable Planning Act 2009 in Queensland is 'party house', which is defined as a premise used by the guest and is not occupied by the owner for a duration of fewer than ten days with fee, ultimately used for party, such as bucks' night, hens' night, raves, wedding receptions or the like.⁵⁰ Before letting the premises for use as a 'party house', the owner must first obtain approval from the local council, which may set out codes of conduct for the 'party house'.⁵¹

3.2.2 Singapore

In Singapore, it is prohibited to rent public housing for a duration of less than six months or three months for private housing unless prior written consent has been granted by the Urban Redevelopment Authority. Short-term rentals are prohibited for both property owners and tenants. This involves leasing it out as a 'hotel', 'hostel', 'motel', 'Bed and breakfast' or 'Homestay' to short-term visitors, often through online booking platforms. Under the Singapore Planning Act 1998, if someone is found guilty of renting out short-term

⁴⁸ *ibid* rule 3.

⁴⁹ Department of Infrastructure, Local Government and Planning, *Regulating Party Houses: Amendments to the Sustainable Planning Act 2009* (July 2015).

⁵⁰ Sustainable Planning Act 2009 (Qld), s 755A(a-d).

⁵¹ Christopher Pearce, 'The Search for a Long-Term Solution to Short-Term Rentals: The Rise of Airbnb and the Sharing Economy' (92016) 35 *University of Tasmania Law Review* 58.

accommodation, they might face a minimum fine of up to \$5,000, and those who are unyielding or engage in transient lodging at certain properties will face legal consequences and can be charged in Court.⁵²

3.2.3 London and Liverpool, England

The number of people renting out properties in London through short-term rental services, which is for a period of less than 90 nights, has increased recently. Various platforms have been used by Londoners for this purpose. In fact, any short-term letting, namely a single stay of less than 90 days in the area of Greater London is prohibited by the 'Greater London Council (General Powers) Act 1973'.⁵³

As such, Airbnb introduced an Airbnb's 90-day rule, also known as the 'Airbnb 90 Day Rule', in January 2017 within the Greater London area. The purpose of this rule is to make the activity of short-term and holiday letting in London legal and the landlords are no longer required to obtain approval from the local authority.

Acknowledging the positive impact of the short-term rental industry on homeowners, guests, and the local economy, the 'Deregulation Act of 2015' was introduced to ease the previous regulations.⁵⁴ As a result of the Deregulation Act, London residents are no longer required to obtain approval from the local authority to rent out their residences for up to 90 nights of short-term stays per year. This has given a welcome boost to the sharing economy in London and has allowed landlords to benefit from the income generated by short-term lettings while complying with regulations.

In Liverpool, landlords too are required to register their short-term rental properties with the council. This helps councils to track properties used for short-term letting and ensure they comply with regulations.⁵⁵

3.2.4 United States of America

Laws regarding STRA in the United States vary by region. In Los Angeles, new regulations have been implemented for short-term (vacation) rentals, initially setting a limit of up to 120 days for rentals. However, there is flexibility to potentially increase the number of allowable rental days in the future.⁵⁶ Meanwhile, house owners are not allowed to rent out a whole

⁵² Urban Redevelopment Authority (URA) of Singapore

<<https://www.ura.gov.sg/Corporate/Property/Residential/Short-Term-Accommodation>>.

⁵³ 'Explaining London's 90-Day Airbnb Rule: A Homeowner's Guide' (Houst, 2024)

<<https://www.houst.com/knowledge/the-90-day-airbnb-rule-and-what-it-means-to-you>>.

⁵⁴ *ibid*.

⁵⁵ Hostaway, 'Airbnb Rules in Liverpool' <<https://www.hostaway.com/blog/airbnb-rules-in-liverpool>>.

⁵⁶ Jeff Daniels, 'Los Angeles Passes Regulation Targeting Airbnb and Other Short-Term Rental Services' (CNBC, 12 December 2018) <<https://www.cnbc.com/2018/12/12/los-angeles-passes-regulation-targeting-airbnb-rental-hosts.html>>.

house for fewer than thirty days as this is considered illegal in New York. Short-term rentals are permitted under the condition that the homeowner resides in the property throughout the rental period and accommodates no more than two tenants. This arrangement is particularly suitable for older couples who appreciate the presence of young travellers and the home-like atmosphere it provides.⁵⁷

4. Recommendations

Any prospective host or landlord may utilise their premises for short-term rentals in the absence of any special laws restricting the practice. Their operations might be regulated by by-laws, covenants, or deeds. The owners may decide to impose limitations or forbid short-term leases completely. The lack of regulation around homestay and short-term rental businesses in Malaysia is a cause for worry. Can it be said that these practices are legal if there are no complaints about them?

As such, the authors are of the view that a few recommendations could be made following lessons learned from other jurisdictions.⁵⁸ Firstly, state laws and regulations are required, and they should contain provisions for service registration and a code of conduct. Before engaging in any form of Airbnb business, it is imperative that homeowners or tenants who intend to engage in STRA to verify the local regulations set by the local council or municipal authority. As discussed earlier, the legal restrictions on STRA remain conflicting and can often be perplexing. Next, to prevent any incident that might damage the reputation of the country, the Ministries in charge of STRA may work together with the respective homeowners and occasionally provide specialised training sessions on the subject to them. Meanwhile, any management corporation for the stratified properties should actively encourage STRA by implementing explicit requirements in their by-laws and providing guidance for oversight.

Besides relying on the location regulations set by the local council or municipal authority, self-regulation on platforms like Airbnb is also another mechanism that could be applied to govern the conduct of both hosts and guests, rather than strict external regulations imposed by the local council or municipal authority. Airbnb's self-regulation allows quick responses to market developments and user needs. The platform will be more flexible by responding to comments and new challenges by updating its policies and guidelines without the time-consuming and bureaucratic processes that are commonly connected with government regulations. One of the challenges of self-regulation is guaranteeing uniformity and fairness on a worldwide scale with varied cultural norms and legal systems. Critics claim that self-regulation may fail to sufficiently protect both hosts and guests, as well as address broader societal concerns, including neighbourhood impact.

⁵⁷ Mayor's Office of Special Enforcement, Notice of Adoption of Final Rules Governing Registration and Requirements for Short-Term Rentals (4 November 2022).

⁵⁸ Nor Asiah Mohamad, 'Saying "Yes" or "No" to Short Term Holiday Letting in Stratified Properties in Malaysia' (2020) 21(1) *International Journal of Business and Society* 137-151.

Meanwhile, the reciprocal review rating system, which involves both hosts and guests together with leaving the relevant reviews, plays a huge role in ensuring that both parties provide safe and fair practices in short-term rental. By doing so, it will create mutual accountability among hosts and guests. Both hosts and guests will know their behaviour and adherence to the terms will be documented openly to the public and will become a reference to future potential hosts or guests. The reciprocal review rating system will provide valuable information about the reliability and trustworthiness of both hosts and guests too by showing the record of interactions between the parties. Positive reviews can give prospective guests greater confidence when making reservations and hosts can feel more comfortable greeting guests who have left positive evaluations themselves.

The Malaysian government has acted in response to the United Nation's Sustainable Development Goals (SDGs).⁵⁹ The housing issue would relate to Goal 11, which is to make cities and human settlements inclusive, safe, resilient and sustainable. Although the issue of STRA may not be related to Goal 11 of the SDGs directly, it is suggested that a peaceful environment in a housing resident area, for example, in stratified properties, will make the housing area safe and sustainable, thereby ensuring access to a safe living environment.

5. Conclusion

As per the discussion above, it can be concluded that Malaysia still lacks specific laws to regulate STRA activities even though STRA activities can generate side income for the hosts and create additional options for the visitors and tourists to switch from hotel services to STRA services due to the reasons of cost and convenience. In contrast, some other countries have specific laws to regulate STRA activities and it is hoped that the Malaysian government can draft and coordinate integrated legislation to be implemented in each state with the cooperation of the Federal Government, State Government and Local Council to boost the tourism industry in Malaysia and taking care the interest of both hosts and guests.

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⁵⁹ Ministry of Economic Affairs, 'Sustainable Development Goals, Economic Planning Unit, Prime Minister's Department' <<https://www.epu.gov.my/en/sustainable-development-goals>>.