

‘ISOLATED IN OUR OWN NEIGHBOURHOOD’: ANALYSIS ON THE PROPOSAL TO REGULATE PEER-TO-PEER ACCOMMODATION SERVICES IN MALAYSIA*

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ABSTRACT

Peer-to-Peer Accommodation services (P2PA) are mushrooming worldwide due to the expansion of digital services and Internet access. Since P2PA services operate fully online, small establishments utilise disruptive technology and surpass traditional hoteliers by surprise. In the first part of this article, we examine the problems caused by P2PA for ‘playing on an uneven field’, avoiding necessary taxes, skipping regulatory and safety requirements, and causing loss of tranquillity to the neighbourhood. Due to these problems, a proposal was moved by the government to regulate P2PA in Malaysia via a self-regulatory guideline, as analysed in the second part of the article. However, due to its non-binding status, the proposal will arguably lead to irregularities in regulatory mechanisms at the state level when enforced. P2PA hosts were asked to comply with regulatory requirements similar to hoteliers, but the platform providers have arguably avoided any P2PA related liability nor responsibility as they operate offshore. Applying qualitative research methods via content analysis and semi-structured interviews, the article concludes by proposing a legal framework to regulate the

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P2PA platform providers, including hosts and agents, which is deemed timely and necessary for Malaysia to safeguard the interests of both tourists and stakeholders.

Keywords: Peer-to-peer accommodation, short-term accommodation, sharing economy, disruptive innovation, Airbnb.

**‘TERPINGGIR DI KAWASAN KEJIRANAN KITA SENDIRI’:
SATU ANALISIS MENGENAI CADANGAN UNTUK
MENGAWALSELIA PERKHIDMATAN SEWAAN JANGKA
PENDEK DI MALAYSIA**

ABSTRAK

Perkhidmatan Sewaan Jangka Pendek (P2PA) sedang berkembang pesat di seluruh dunia kesan dari pengembangan perkhidmatan digital dan akses kepada Internet. Oleh kerana perkhidmatan P2PA beroperasi sepenuhnya dalam talian, syarikat kecil menggunakan teknologi disruptif dan berjaya menyaingi pengusaha hotel tradisional secara mengejut. Pada bahagian pertama artikel ini, kami menganalisa masalah yang disebabkan oleh P2PA kerana 'bermain di lapangan yang tidak sekata, mengelakkan keperluan percukaian, melangkaui peraturan dan syarat keselamatan, dan menyebabkan kehilangan kedamaian di kawasan persekitaran. Oleh kerana masalah-masalah ini, satu cadangan dikemukakan oleh kerajaan untuk mengawalselia P2PA di Malaysia melalui garis panduan kawalan sendiri, seperti yang dianalisa di bahagian kedua artikel ini. Oleh kerana statusnya yang tidak mengikat, cadangan tersebut boleh menyebabkan kecelaruan dalam mekanisme pengawalseliaan di peringkat negeri-negeri apabila ia dilaksanakan. Hos P2PA dibebani dengan keperluan mematuhi pelbagai peraturan, tetapi penyedia platform bebas dari sebarang liabiliti kerana mereka beroperasi di luar negara. Dengan menggunakan kaedah penyelidikan kualitatif melalui analisis kandungan dan wawancara separa berstruktur, artikel ini membuat kesimpulan dengan mengusulkan kerangka perundangan untuk mengawalselia penyedia platform P2PA, termasuk hos dan ejen, yang dianggap tepat pada masanya dan perlu bagi Malaysia untuk melindungi kepentingan pelancong serta pihak berkepentingan.

Kata kunci: perkhidmatan sewaan jangka pendek, penginapan jangka pendek, ekonomi perkongsian, penciptaan disruptif, Airbnb.

Introduction

The advent of P2PA services was one of the activities that stimulates the digital economy. In February 2021, the then Prime Minister of Malaysia Tan Sri Muhyiddin Yassin launched the Malaysia Digital Economy Blueprint that complements the 12th Malaysia Plan and the Shared Prosperity Vision 2030 that aims to “transform Malaysia into a digitally-driven, high-income nation and a regional leader in the digital economy”. To realise the objective, it is predicted that the digital economy would contribute 22.6 percent to the country’s GDP by 2025. As a result, the initiative promises to create 500,000 jobs in the digital sector and have the potential to catalyse the formation of 5,000 start-up firms or start-ups over the next five years. The plan will also serve as a foundation for RM70 billion in new investments in the digital economy. By 2030, the government intends to boost the economic sector’s productivity by 30% above the current level.¹ On that note, Malaysia has been promoting businesses that support the sharing economy enabled by digital technologies.²

The concept of sharing economy is still new in many countries and there has been a considerable dilemma in trying to understand how it works. It has been associated with the theory of disruptive innovation propounded by Clayton Christensen.³

¹ Economic Planning Unit Malaysia, “Malaysia Digital Economy Blueprint,” Economic Planning Unit Prime Minister’s Department Malaysia, 2021.

² Malaysian Digital Economy Corporation, “Who We Are | MDEC,” Malaysian Digital Economy Corporation, 2020, <https://mdec.my/about-mdec/who-we-are/>.

³ See Mahyuddin Daud and Norlaili Mat Isa, “Peer-To-Peer Accommodation Services in Malaysia: Legal Issues and Concerns,” *Malaysian Journal of Consumer and Family Economics* 26 (2021), <https://majcafe-com.bsenetwork.biz/wp-content/uploads/2021/07/Vol-26-2021-Paper-4.pdf>. for a detailed analysis on disruptive innovation. See also Joseph L Bower and Clayton M Christensen, “Disruptive

In their early days, disruptive innovations usually appear financially unattractive to existing businesses. Mainstream consumers typically do not want to use a disruptive product in applications they already know and understand. The risk of disruptive techniques is somewhat different from one customer to another in the long term. According to him, possible income from the perceptible markets is low, and it is also hard to see how broad they would be over the long term. Management efforts required to improve the technology are therefore not worthwhile as sharing economy is a new form of capitalism.

Nevertheless, the aim is to manage disruptive technology of strategic significance in organisational contexts where ‘minimum efforts’ generate huge impact. Guttentag reiterated that disruptive innovation could overturn a market that was dominated by major companies.⁴ Such development of disruptive innovation is not limited to a particular economic sector, due to the expansion of Internet access globally.⁵

The author also argues that the disruptive product appeals to the lower end of the market that creates a completely new market. Finally, it comes down to enhancing customer experience, market performance, decreasing inefficiencies, and most importantly, ensuring free access to the electronic market.⁶ On this note, peer-to-peer accommodation services (P2PA) is one of those new markets that has gained popularity with the introduction of online hosting websites such as Airbnb. They provide a cheaper option for travel accommodation compared to hotels through the Internet. The trend is also similar for ride-hailing services as millennials prefer them for competitive prices and interpersonal

Technologies: Catching the Wave. (Technological Investments),” *Harvard Business Review*, 1995.

⁴ Daniel Guttentag, “Airbnb: Disruptive Innovation and the Rise of an Informal Tourism Accommodation Sector,” *Current Issues in Tourism*, 2015, <https://doi.org/10.1080/13683500.2013.827159>.

⁵ Angayar Kanni Ramaiah, “Competition in Digital Economy: Fate of Consumer Welfare in Malaysia,” *Malaysian Journal of Consumer and Family Economics*, 2019.

⁶ Giampaolo Viglia, Hannes Werthner, and Dimitrios Buhalis, “Disruptive Innovations,” *Information Technology & Tourism* 16, no. 4 (2016): 327–29, <https://doi.org/10.1007/s40558-016-0072-1>.

value offered.⁷ On top of providing accommodation, P2PA has also offered a unique traveling experience to travelers.⁸ For example, they introduced local culture and traditions to the tourists that were unique only to such locality. Such travel experiences cannot be discovered if one stays at a hotel, or at least one needs to leave the hotel to discover one. The Edge Properties tracked more than 31,000 private homeowners or their agents which have listed landed and stratified properties in Malaysia on such websites.⁹ On the consumer side, not many Malaysians prefer to stay in P2PA and not many hosts are open to providing such service pre-2010. The demand started to kick in when many new developments were unsold and left without tenants.¹⁰ Seeing this as an opportunity, many landlords converted their vacant homes to holiday villas or apartments – with the hope to earn some income, rather than leaving the homes empty unoccupied. The disruptive technology came at the right time to facilitate landlords or agents to market their properties, and this marked the beginning of the sharing economy in Malaysia.

Why regulate?

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- ⁷ Seojin Lee et al., “A Comparative Analysis of Factors Influencing Millennial Travellers’ Intentions to Use Ride-Hailing,” *Information Technology & Tourism* 23, no. 2 (2021): 133–57, <https://doi.org/10.1007/s40558-021-00194-6>.
- ⁸ Iis P. Tussyadiah and Juho Pesonen, “Impacts of Peer-to-Peer AccommodatiTussyadiah, I. P., & Pesonen, J. (2016). Impacts of Peer-to-Peer Accommodation Use on Travel Patterns. *Journal of Travel Research*, 55(8). <https://doi.org/10.1177/0047287515608505> on Use on Travel Patterns,” *Journal of Travel Research*, 2016, <https://doi.org/10.1177/0047287515608505>.
- ⁹ Mahyuddin Daud and Norlaili Mat Isa, “The Legality of Operating Short Term Rental Accommodation in Waqf Housing,” in *The 8th Global Waqf Conference 2020* (Kuala Lumpur: Unirazak, 2020).
- ¹⁰ Housing Watch, “Housing Affordability - Housing Market Development,” 2021, https://www.housingwatch.my/02_market_04_unsoldproperties.html; Hasniyati Hamzah and Zafirah Alsadat Zyed, “Housing Pathways of Young Starters in Urban Malaysia,” *Journal of Housing and the Built Environment* 36, no. 2 (2021): 705–22, <https://doi.org/10.1007/s10901-020-09777-x>.

Despite the potential it has to offer, P2PA received cold treatments worldwide. Homes rented for short-term stays have drawn objections from many homeowners and neighbours, citing safety concerns and public nuisance. After a long dilemma on how P2PA was left outside of the tourism tax framework, a recent amendment to the Tourism Tax Act has changed the status quo.¹¹ Section 2 of the Tourism Tax Amendment Act 2021 recognises P2PA service provider as a “digital platform service provider” who “provides service relating to online booking accommodation premises to a tourist whether such person is in Malaysia or outside Malaysia”. The new amendment also recognises P2PA premises as “accommodation premises” that provide “service relating to online booking accommodation premises ... delivered automatically over the internet or any other electronic network”. Under the new amendment, Section 20A imposes the duty to pay tourism tax to tourist who stays at any P2PA in Malaysia. Further, Sections 20B and 20C require P2PA platforms that operate accommodation services in Malaysia to collect tourism tax payable to the Director-General of Customs and Excise. They are also required to be registered under the Tourism Tax Act 2021 and have the duty to apply to be registered. Any contravention of these statutory requirements shall attract criminal liability on the part of P2PA platforms.

On the other hand, P2PA services are not considered ‘Innkeepers’ under the Innkeepers Act 1952, unlike registered hotels and inns. Hence the strict compliance to the requirements under the hotel industry may not apply to P2PA services, although leading P2PA platforms such as Airbnb have established a code of conduct to guide hosts on the best hosting practices.¹² The new amendment to the

¹¹ Mohammed Alamin Rehan and Vimala R Muniandy, “Public Consultation Document: Guideline on Short-Term Residential Accommodation (STRA)” (Kuala Lumpur, 2019), [http://upc.mpc.gov.my/csp/sys/bi/%25cspapp.bi.viewfile.cls?file=ql2XXB5sl5U08UbN0vIHhskTWXd9DoqKBqahqLzk2uyZwQOLnf6chWajXp3ufUdHTE_Ecc0A09LkAMnQk0t9pqVp9LmVPNW_ZihUeHwXICjRtEWJozS0eePtC2dYICPXtbOswQnBqY\\$5_5LMtS0XMwo9XfqvzhV37DvZA8HVHSFhz92tGz\\$RBT24gsG64w1](http://upc.mpc.gov.my/csp/sys/bi/%25cspapp.bi.viewfile.cls?file=ql2XXB5sl5U08UbN0vIHhskTWXd9DoqKBqahqLzk2uyZwQOLnf6chWajXp3ufUdHTE_Ecc0A09LkAMnQk0t9pqVp9LmVPNW_ZihUeHwXICjRtEWJozS0eePtC2dYICPXtbOswQnBqY$5_5LMtS0XMwo9XfqvzhV37DvZA8HVHSFhz92tGz$RBT24gsG64w1). See also Mahyuddin Daud and Norlaili Mat Isa, “Peer-To-Peer Accommodation Services in Malaysia: Legal Issues and Concerns.”

¹² AirBNB, “What Legal and Regulatory Issues Should I Consider before Hosting on Airbnb? - Airbnb Help Center,” AirBNB, 2021,

Tourism Tax Act 2021 may change the scenario of how P2PA may bring revenue to the country. Nevertheless, it is still too early to tell whether such imposition of tax may affect housing prices in popular tourist spots, where locals are no longer considered to be part of the neighbourhood, hence gradually moving out of town. Illegal Airbnb operators shall be brought into the tourism tax system, as they are currently not registered with the Tourism and Culture Ministry. Salleh Buang urged for government regulation on P2PA services where legitimate home-sharing should be permitted, but the law should also prevent illegal P2PA operators from driving families out of their once-quiet neighbourhood.¹³

Tourists have shown interest in P2PA services since it provides them with an alternative unique tourism experience made easier through the expansion of Internet access worldwide. Service providers such as Airbnb, Housli, Home Away and VRBO, provide a cheaper option for accommodation compared to hotels through the Internet. They provide homeowners with an opportunity to earn side income. With regards to the regulatory framework, it is noteworthy that Malaysia does not have any specific federal law to legalise nor regulate the P2PA industry. In such absence, regulatory efforts were enforced differently by local governments in Malaysia's respective states. Local governments would fine P2PA operators for operating businesses without appropriate licenses. For example, the City Council of Pulau Pinang has taken strict action in issuing summons against owners who rent their residential properties for short-term stays on the ground of unlicensed business operations.¹⁴

Penang Island City Council has continued its efforts in weeding out illegal and unlicensed lodging houses. Three-unit owners in Birch

<https://www.airbnb.com/help/article/376/what-legal-and-regulatory-issues-should-i-consider-before-hosting-on-airbnb>.

¹³ Salleh Buang, "Regulating Home - Sharing," *New Straits Times*, 2017, <https://www.nst.com.my/opinion/columnists/2017/06/251179/regulating-home-sharing>.

¹⁴ Daud and Mat Isa, "The Legality of Operating Short Term Rental Accommodation in Waqf Housing."

the Plaza Condominium in Datuk Keramat Road were fined RM250 each for operating a business without a license.¹⁵

Not all states declared P2PA illegal. For example, Dewan Bandaraya Kuala Lumpur decides to allow P2PA operation in the state so long as owners do not violate the terms in the sales and purchase agreements.¹⁶ This has resulted in an inconsistent regulatory pattern across the states in Malaysia, with some states seeking to regulate under the pre-text of operating without a business license but others choosing not to. This point will be further explored in the second part of the paper.

On the other hand, P2PA contractual obligations work in such a way that the burden to ensure that the platform is legal lies on the host or its agent.¹⁷

In this manner, platform providers shall assume that the hosts or their agents have taken care of any local regulatory requirements prior to hosting their homes. It is submitted that while this can be a disruptive business model in the digital economy, it puts the hosts in a highly vulnerable position in cases where crimes were committed in their homes. Platform providers shall not be held answerable to any such risks as they operate beyond the Malaysian border, but at the same time are able to enjoy a steady income from the P2PA services. Even when they operate within the state of origin, Airbnb, for example, they have been seen to be immune from regulation.¹⁸

¹⁵ The Star, “Penang City Council Going after Illegal Homestay Operators,” The Star, 2016, <https://www.thestar.com.my/news/nation/2016/07/22/mbpp-steps-up-crackdown-on-illegal-homestay-operators/>.

¹⁶ Dewan Bandaraya Kuala Lumpur, Interview by Mahyuddin Daud, March 31, 2021.

¹⁷ AirBNB, “What Legal and Regulatory Issues Should I Consider before Hosting on Airbnb? - Airbnb Help Center”; Booking.com, “Booking.Com: Terms and Conditions.,” Booking.com, 2021, https://www.booking.com/content/terms.html?label=gen173nr-1FCAEoggI46AdIM1gEaKEBiAEBmAExuAEXyAEM2AEB6AEB-AECiAIBqAIDuAK7oJqABsACAdICJDcyMDdjNThmLTFmYzctNDBiMC1iMTQzLWVjNTc3MGM0MGQ5NtgCBeACAQ;sid=b2916d76b8e2cf2c95fd9f6640e07398#tcs_s9.

¹⁸ Heather Somerville, “Airbnb’s Section 230 Use Underscores Law’s Reach Beyond Facebook - WSJ,” The Wall Street Journal, 2021,

New York, the most important tourist destination in the United States, is naturally no stranger to Airbnb. In 2018, the New York City Council enacted the Regulation of Short-Term Residential Rentals. It required Airbnb and other home-sharing companies to provide the Mayor's Office of Special Enforcement the hosts' names and addresses each month for short-term (less than 30 days) rental. Among others, platform providers were required to provide the following details including: "the address of the short term rental; the name and address of the rental cost; the URL of the short term rental listing; whether the short term rental was for the entire unit or part of it; the number of days the unit is rented; the fees collected by the online platform for booking services; and information about rent collected by the booking service, where applicable". Nevertheless, P2PA platforms that solely list or advertise offers for P2PA services were excluded from such reporting requirements. Airbnb sued the city in August 2018 as it claimed the law violated its users' privacy and constitutional rights as reported in *Airbnb, Inc. v. City of New York* - 373 F. Supp. 3d 467 (S.D.N.Y. 2019). The United States District Court Southern District of New York agreed with the plaintiffs and therefore issued an injunction that had ceased the enforcement of the law. New York City is Airbnb's largest market, but as many as two-thirds of Airbnb's listings are illegal. When a similar law was enacted in San Francisco, the number of listings on Airbnb dropped by 50%.¹⁹

There have been reports where guests of P2PA services have caused nuisance and loss of tranquillity to once peaceful neighbourhoods.²⁰ In the effort to minimize such risks, the Strata

<https://www.wsj.com/articles/airbnbs-section-230-use-underscores-laws-reach-beyond-facebook-11610298001>; Nik Fes, "Airbnb Cannot Be Stopped by Increasing Regulation | .TR," *Tourism Review*, 2018, <https://www.tourism-review.com/increasing-regulation-cannot-stop-airbnb-news10653>.

¹⁹ Zaw Thiha Tun, "Top Cities Where Airbnb Is Legal or Illegal," *Investopedia*, 2020, <https://www.investopedia.com/articles/investing/083115/top-cities-where-airbnb-legal-or-illegal.asp>.

²⁰ Rehan, Mohammed Alamin, and Vimala R Muniandy. "Public Consultation Document: Guideline on Short-Term Residential Accommodation (STRA)." Kuala Lumpur, 2019. <http://upc.mpc.gov.my/csp/sys/bi/%25cspapp.bi.viewfile.cls?file=ql2XXB5sl5U08UbN0vIHhskTWXd9DoqKBqahqLzk2uyZwQOLnf6chWajX>

Management Act 2013 (SMA 2013) and the Strata Management (Maintenance and Management) Regulations 2015 (SMR 2015) can be interpreted to prohibit short-term stays in stratified buildings. An example is in the case of *Innab Salil & Ors v Verve Suites Mont Kiara Management Corp* [2020] 2 MLJ 163, concerning public nuisance occurring in P2PA. The High Court ruled that short-term rentals were neither a 'deal' nor a 'tenancy exempt from registration' and has upheld the joint management bodies' (JMB)'s house rule to prohibit P2PA operation in the building. Short-term stay in buildings may be prohibited on the basis that the frequent traffic of 'guests' may cause nuisance or endanger the safety of other occupants. The Commissioner of Buildings of Kuala Lumpur (COBKL) has allowed management corporations to amend their respective by-laws with the effect of either regulating or expressly prohibiting short-term stays. The COBKL has further published detailed guidelines on the procedures to be followed by the management corporations in effecting any changes to their by-law. In the case of *Verve Suites Mont' Kiara Management Corporation v Salil & Ors* (2018), the High Court of Kuala Lumpur held that management corporations are not allowed to impose a one-off penalty of RM200 per day for a breach of any of the by-laws. Management corporations are only allowed to impose a maximum of RM200 for each infringement of the by-laws and not for each day the infringement continues. Any sum collected must be duly deposited into the Maintenance Account as prescribed in Regulation 7(2) of the SMR 2015.

Peer to Peer Accommodation in Other Major Cities

These problems are not unique to Malaysia but also have haunted other major cities of the world. In Paris, P2PA has also been accused of causing local residents to move out from the main city. There were government crackdowns on secondary apartments used for short-term rental units with officials fining violators up to 25,000 euros. Paris Mayor, Anne Hidalgo, who appointed the 20-person team running the crackdowns, also considered levying a charge of 1.50 euros per night on person-to-person housing transactions since home rental services

will displace local people from the main city.²¹In Barcelona, Spain, the city has instructed Airbnb to remove 2,577 listings that it found to be operating without a city-approved license or face substantial fines. Airbnb and the city initiated an agreement giving Barcelona officials access to listings data. With this agreement, City officials will be able to refer to host data that details specifically where the apartments are located and who their registered hosts are, something that could previously require substantial investigation. The city's new tourism plan also stipulated that vacation apartments must pay the highest rate of property tax.

Airbnb operations have also been blamed to cause increasing rents and housing shortages in Berlin. The Act on the Prohibition of Illegal Repurposing of Housing was passed banning short-term rentals that have not received explicit permission from the Berlin Senate.²²

However, the maximum fine of €100,000 imposed by the 2016 law, has since been overturned.²³ With this law, owner-occupiers could rent out their own home without time restrictions, and rent out second homes for up to 90 days each year if they can justify "legitimate private interests that outweigh the public interest of combatting the housing shortage or if a suitable replacement property is provided".²⁴This was indeed good news for P2PA services. However, despite the ban being lifted, the City Assembly still imposes firm conditions on vacation rentals and permits, as well as more stringent penalties.

Los Angeles on the other hand was facing a housing crisis and a growing homeless population, especially with the trend of commercial Airbnb investors taking homes away from permanent residents. Residents have long reported incidents of nuisance and disturbances of

²¹ Zaw Thiha Tun, "Top Cities Where Airbnb Is Legal or Illegal."

²² Jenny Gesley, "Germany: Law Restricting Airbnb and Other Vacation Rentals Takes Effect in Berlin | Global Legal Monitor," Library of Congress Law, 2016, <https://www.loc.gov/law/foreign-news/article/germany-law-restricting-airbnb-and-other-vacation-rentals-takes-effect-in-berlin/>.

²³ Feargus O'Sullivan, "Berlin's Airbnb Ban Is Over, But the New Rules Are Serious - Bloomberg," Bloomberg, 2018, <https://www.bloomberg.com/news/articles/2018-03-23/berlin-s-airbnb-ban-is-over-but-the-new-rules-are-serious>.

²⁴ Jenny Gesley, "Germany: Law Restricting Airbnb and Other Vacation Rentals Takes Effect in Berlin | Global Legal Monitor."

tranquillity in the neighbourhood – such as strangers coming and going, blocking the driveway, and leaving trash all over the place. In this regard, the Los Angeles Municipal Code was amended to include new provisions that imposed limits to hosting short-term rentals in “primary residence,” not in a second home or an investment property. The goal was to prevent apartments from being bought up and run like hotels — a phenomenon that activists complained was exacerbating the city’s housing crisis.²⁵

A look at the practices in Singapore, the P2PA services offered by platforms such as Airbnb remain illegal in the country. A minimum stay of three months will continue to apply to private residential properties. A national survey conducted by the Urban Redevelopment Authority (URA) found that most of the respondents felt that P2PA would have a negative impact on other residents, where approximately 68 percent of the respondents felt that short-term rentals would raise security concerns in their estate, and 67 percent experienced in the loss of privacy for residents. More than six in 10 felt that short-term occupants could misbehave and cause noise and other disturbances. 56 percent felt that such occupants may damage common facilities. About seven in 10 (69 percent) supported the 80-percent threshold for consent in a strata-titled development and the 90-day annual cap on short-term stays. Although it was recognised that short-term rentals could provide supplementary income, only 7 percent said they intended to let out their homes should the short-term rentals be allowed. Section 12 of the Singapore Planning Act provides that private property owners are not allowed to rent out their properties for less than 3 consecutive months unless permission is granted by the Urban Redevelopment Authority (URA).²⁶

²⁵ Emily Reyes and Ben Poston, “Thousands of Listings Violate L.A.’s New Short-Term Rental Law - Los Angeles Times,” *Los Angeles Times*, 2020, <https://www.latimes.com/california/story/2020-08-09/los-angeles-short-term-rental-violations>.

²⁶ Section 12(1) of the Planning Act makes it unlawful to carry out any development without first obtaining planning clearance. Section 3(3)(ca) defines “development” as any use of a dwelling-house established for a purpose stated in the Fourth Schedule. Further, the Fourth Schedule defines the use of a dwelling-house for the purpose of providing short-term accommodation for a period of less than three consecutive months. Section 12(4) criminalises a violation of section 12(1). See also Singapore

Those who are convicted under these laws may be fined up to \$200,000. If the rental continues even after the conviction, the owner can be fined up to \$10,000 for each extra day of the rental after conviction (or part thereof). Repeat offenders may face an additional sentence of a maximum of 12 months of imprisonment. Renting out a property to too many people at one time is also not allowed as there are restrictions to the occupancy limit of the properties.²⁷

Amsterdam, London, and Australia have been far more receptive to P2PA services than other European destinations. In February 2015, Amsterdam announced a cooperative effort with Airbnb in which the city would levy a tourist tax on rentals, while Airbnb would inform potential hosts of all rules and regulations. Through the enforcement of Section 25A of the UK Deregulation Act 2015, homeowners in London who were interested in renting out their properties on Airbnb have benefited from an amendment to the city's housing legislation, allowing homeowners to rent out their house, flat, or spare rooms for up to three months a year.²⁸

In Australia's state of Queensland, where an Airbnb property is located in a community title scheme, the body corporate for the scheme can through its by-laws regulate the use of the property. The extent of that regulation is however limited by legislation. In Queensland, if the lot has been approved for residential purposes, then the by-laws cannot restrict the type of residential use. On that basis, it was generally accepted that the body corporate could not validly prohibit Airbnb in a

Urban Redelopment Authority, "Short-Term Accommodation," Singapore Urban Redelopment Authority, 2021, <https://www.ura.gov.sg/Corporate/Property/Residential/Short-Term-Accommodation>.

²⁷ Singapore Urban Development Authority, "Status Quo for Regulations on Short-Term Accommodation in Private Residential Properties," Singapore Urban Development Authority, 2019, <https://www.ura.gov.sg/Corporate/Media-Room/Media-Releases/pr19-21>.

²⁸ Airbnb, "Responsible Hosting in the United Kingdom - Airbnb Help Center," Airbnb, 2021, <https://www.airbnb.com/help/article/1379/responsible-hosting-in-the-united-kingdom>; Mara Ferreri and Romola Sanyal, "Platform Economies and Urban Planning: Airbnb and Regulated Deregulation in London," *Urban Studies* 55, no. 15 (2018): 11, <https://doi.org/10.1177/0042098017751982>.

residential scheme (although of course it is not contested that the by-laws can regulate the behaviour of those using the lot, as regards to, for example, noise, use of facilities, parking and so on). However, the recent Privy Council case of *O'Connor (Senior) and others v The Proprietors, Strata Plan No. 51* [2017] UKPC 45 (21 December 2017) held that pre-existing by-laws regulating lot owners' ability to let their units as short-term accommodation should be upheld, despite a ban in legislation on by-laws operating to prohibit or restrict the leasing of a lot. In this case, lot owners in the Turks and Caicos Islands leasing their units as short-term accommodation had purchased the lots subject to and with knowledge of the by-laws prohibiting them from doing just that.

In Victoria, P2PA is currently legal in Melbourne if the host has the right to lease the space. According to Airbnb terms and conditions, any listed accommodation must not breach any lease or rental agreements and must comply with all applicable zoning laws.²⁹

In order list property on Airbnb, the property owner or tenant shall have written approval from the property owner for subletting. At the same time, the host must ensure to operate P2PA within the allocated zones. However, if the property is a strata title, hosts should be aware of complications due to shared walls and common areas. In the 2016 landmark decision of *Owners Corporation PS 501391P v. Balcombe* (2016) 51 VR 299, the Victorian Supreme Court held that owners' corporations could not legally create rules to ban short-term leases (maximum 30 days) such as those advertised on Airbnb.

In Sydney, the New South Wales government announced a crackdown on Airbnb properties. As the city with the eighth-most Airbnb listings worldwide, according to Statista, this poses a massive change.³⁰

New reforms to the Fair Trading Amendment (Short-term Rental Accommodation) Act 2018 and the Fair Trading Amendment Law (No 2) 2020 resulted in substantial impacts on short-term stay provisions. First, the interpretation of leases of three months or less excludes P2PA from the traditional tenancy system that would otherwise provide clarity to the P2PA sector, which has so far striven to be compliant with

²⁹ AirBNB, "What Legal and Regulatory Issues Should I Consider before Hosting on Airbnb? - Airbnb Help Center."

³⁰ Zaw Thiha Tun, "Top Cities Where Airbnb Is Legal or Illegal."

typical residential legal frameworks. Secondly, the owner corporations have now implemented legislation banning the use of the P2PA strata lot, but only where the lot is not the main residence of the P2PA host. Such an arrangement will essentially limit P2PA to situations where the occupant rents for a certain period as P2PA during holidays or when a spare room is rented while the host remains in the property. Any other agreements can now be limited if the owner corporations hold a special decision requiring at least 75% of votes in favour of enacting new P2PA by-laws.

Japan, which has the seventh most Airbnb listings in the world, has also introduced new Minpaku legislation to allow P2PA which came into effect on June 15, 2018. All Japanese Airbnb hosts are required to obtain a government-issued registration number and adhere to several regulations. Airbnb is required to cancel existing bookings in any unregistered properties 10 days before the starting date – a complication impacting a considerable number of travellers.³¹

Based on the above analysis, it can be argued that P2PA suffers from arising issues on housing inadequacy, hike in property pricing, uncontrollable rental rates, nuisance, tax evasion, safety, and causing loss of tranquillity. This called for numerous regulatory initiatives from the governments, such as New York and Singapore to name new. As Malaysia is not alone in this problem, there have been attempts to regulate. The next part explores the current development on the establishment of a legal framework to regulate peer-to-peer accommodation services in Malaysia.

Development of Legal Framework on P2PA in Malaysia

The state governments in Malaysia have enforced a ban on P2PA that were operated on residential land titles, mostly based on operating a commercial activity without a valid license. P2PA is considered a commercial activity, hence if an apartment is built as a residential property, it cannot be used for commercial purposes. The move to ban P2PA was also to safeguard the safety of the people and balance the interests of hotels, especially among the international hotel chains. If

³¹ Airbnb, “Relevant Laws and Regulations in Japan - Airbnb Help Center,” AirBNB, 2021, <https://www.airbnb.com/help/article/920/relevant-laws-and-regulations-in-japan>.

development has a commercial title, which includes serviced apartments, SoHo, and SoVo units, then operating an Airbnb unit would not be an issue. Stratified residential property will be subjected to the Strata Management Act 2013, as the Management Corporation or Joint Management Body has the power to regulate by-laws under Section 70.

In Malaysia, P2PA services are also referred to as the ‘Short-term Residential Accommodation’ (STRA). The operations of P2PA have attracted public concern in recent years. Apart from offering productivity growth and economic opportunities, the operations of P2PA have caused issues and challenges in terms of validating its existence in the present regulatory frameworks – on top of the legal issues mentioned in the first part of this article. This led to the intensive national study led by the Malaysian Productivity Corporation in 2019.³² Citing common issues found in other jurisdictions such as nuisance, safety, and non-compliance with local by-laws, the study establishes valid reasons to regulate P2PA. The draft of the P2PA guidelines has been developed by the Malaysian Productivity Cooperation (MPC) based on the existing legal laws, benchmarking studies, input from key stakeholders, policymakers, regulators, and regulatees. In this regard, the authors adopted a qualitative method of semi-structured interviews with the officers of the MPC. Semi-structured interviews allow the respondents the freedom to express their views on their terms and can provide reliable, comparable qualitative data to better understand the necessity and legal issues surrounding the call for STRA regulation.³³

The first question before the MPC embarked on the establishment of the STRA framework, was to clarify whether the government should intervene in the private domain of netizens, especially in contractual transactions between individuals on private

³² Rehan, Mohammed Alamin, and Vimala R Muniandy. “Public Consultation Document: Guideline on Short-Term Residential Accommodation (STRA).” Kuala Lumpur, 2019. [http://upc.mpc.gov.my/csp/sys/bi/%25cspapp.bi.viewfile.cls?file=ql2XXB5sl5U08UbN0vIHhskTWXd9DoqKBqahqLzk2uyZwQOLnf6chWajXp3ufUdHTE_Ecc0A09LkAMnQk0t9pqVp9LmVPNW_ZihUeHWX1CjRtEWjozS0eePtC2dY1CPXtbOswQnBqY\\$5_5LMtS0XMwo9XfqvzhV37DvZA8HVHSHFhz92tGz\\$rBT24gsG64w1](http://upc.mpc.gov.my/csp/sys/bi/%25cspapp.bi.viewfile.cls?file=ql2XXB5sl5U08UbN0vIHhskTWXd9DoqKBqahqLzk2uyZwQOLnf6chWajXp3ufUdHTE_Ecc0A09LkAMnQk0t9pqVp9LmVPNW_ZihUeHWX1CjRtEWjozS0eePtC2dY1CPXtbOswQnBqY$5_5LMtS0XMwo9XfqvzhV37DvZA8HVHSHFhz92tGz$rBT24gsG64w1).

³³ D. Cohen and B. Crabtree, “Qualitative Research Guidelines Project,” Robert Wood Johnson Foundation, 2006.

properties. As the operation of the STRA transcends into commercial use of buildings, its operation must fall under the existing commercial framework regulating tourism businesses. Since P2PA platform providers are mostly foreign companies trading over the Internet, bringing them into the existing commercial framework has proven challenging. When P2PA platforms started to come into Malaysia around 2010, they were carrying out business in Malaysia in ‘a shadow’. However, when their existence attracts legal issues, the government decided that it should intervene and regulate these private yet commercial affairs through the development of the STRA guideline. The guideline helps policymakers and regulators to respond to issues relating to P2PA in residential areas. It provides a general regulatory framework but does not include exhaustive details and local conditions. The implementation of this guideline how may require changes or the introduction of new regulations by respective ministries and regulators. As the guideline is self-regulatory, the decision to adopt and adapt lies in the respective local councils. It is intended to operate in an integrated regulatory framework, where each component of federal, state, and local authorities and regulatory requirements can be harmonised.³⁴

At first, the MPC used the terminology of ‘short term accommodation’ without reference to residential properties. However, the Tourism Ministry highlighted that the proposed guideline must cover residential areas, as most of the operators were doing business in residential zones. Hence, the word ‘Residential’ was added to the STA and from therein coined as ‘STRA’. However, there are state local councils that remain with their position in banning the STRA to operate in residential areas, for example, the Majlis Bandaraya of Petaling Jaya, Majlis Perbandaran Pulau Pinang, and Sabah. In these scenarios, it justifies the reason for the STRA to be drafted as a guideline. As far as the operation of commercial entities in a township is concerned, the authority still vests in the local councils. Other countries have their own adopted terminologies, such as ‘Minpaku’ for Japan. In the Malaysian context, the word ‘accommodation’ applied in the STRA Guideline came from Section 2 of the Tourism Industry Act, which includes “any building, including hostels, hotels, inns, boarding-houses, rest houses, and lodging houses, held out by the proprietor, owner or manager,

³⁴ Malaysian Productivity Corporation, Interview by Mahyuddin Daud, July 17, 2020.

either wholly or partly, as offering lodging or sleeping accommodation to tourists for hire or any other form of reward, whether or no food or drink is also offered". The United States and Australia on the other hand use the term 'rental' to describe the service.

When asked whether P2PA operations would affect property pricing in Malaysia, the MPC believes that they would not significantly influence the market since people purchase houses for various reasons. There is however no reliable data or study to support such opinion. Nevertheless, it is undeniable that the STRA activities can help homeowners to obtain side income that could be used to pay for the property mortgage and maintenance costs. This would ensure that although there are no residents in the accommodation, the building can be maintained as needed. The STRA can also act as a marketing tool for unsold overhang properties that would be unoccupied to ensure the units can generate income for the potential owners. As far as government-subsidized development is concerned, there is a worry that the STRA operation in the area may cause a negative impact for first-home buyers as it could limit the number of available units. However, it all depends on the terms and conditions stipulated in the Sales and Purchase Agreement of the respective properties. If sub-letting is allowed, the owner/agent must ensure that all requirements are fulfilled to operate the STRA in their premises. Some government-subsidised developments place a moratorium period in relation to selling the property. But if the sale and purchase agreement does not prohibit STRA activity, owners can proceed to operate the STRA. However, in principle, STRA activities should not be allowed in government-subsidised homes, especially for the first-home buyers as it is against the objective of such schemes i.e., to assist them to buy homes and not for commercial purposes. However, taking into consideration that most government officers are subjected to work transfer, the houses they bought are generally left unoccupied. Therefore, instead of leaving them unoccupied, allowing the STRA operations would activate the neighbourhood. This would however depend on the local authorities to allow STRA or otherwise. A clear example is practised in Singapore, whereby 2 ways listing properties on Airbnb are against Singapore's housing laws: a) Renting out a Housing and Development Board (HDB) flat to tourists/foreigners; and b) Renting out the property for a very short time. The HDB flats owners are prohibited from renting out their flats for less than 6 months. Those who are convicted under these

laws may be fined or their HDB properties may be compulsorily acquired by the HDB.³⁵

In contrast with the Australian experience, the Australian Housing and Urban Research Institute argued that in most cases, the use of blockchain in the STRA eliminates transaction costs, such as reducing property acquisition fees by smart contracts. For the time being, they do not reflect a significant shift in the way property is purchased and sold. For example, start-ups that promote fragmented land ownership or crowdsourcing financing for construction projects still need to comply with the Australian corporate legislation. Research indicates that P2PA platforms such as Airbnb are not likely to dramatically worsen rental affordability at the metropolitan level, provided that the commercial Airbnb listings account for only 1-2 percent of the total rental stock in Sydney and Melbourne. However, the results also indicate that these networks influence the supply of rental properties in high-demand inner-city areas with substantial tourism appeal.³⁶

Under the STRA Guideline, if hosts operate STRA in a stratified property, Section 70 empowers the joint management bodies (JMB) to make additional rules, resolutions, or by-laws to which the hosts are bound to comply. Though this may have been enforced as ‘top-down’, the proposed STRA Guideline attempts to address legal issues such as nuisance through a co-regulatory mechanism. Nuisance occurs in STRA operated unit, the neighbours may lodge complaint as a nuisance control mechanism with the host/agent, the STRA platform, and the police. The local authority may take action to destroy, dismantle, and remove any nuisance of public nature in the locality, as specified in the Local Government Act 1976, and may take legal action against anyone who commits any nuisance of such type. This is already in place so far as Airbnb is concerned, where nuisance complaints can be lodged by neighbours directly to Airbnb, which will, in turn, notify the hosts of such issues.³⁷ Neighbours should also consider lodging complaints

³⁵ Singapore Urban Development Authority, “Status Quo for Regulations on Short-Term Accommodation in Private Residential Properties.”

³⁶ Christopher Pettit et al., “Policy Evidence Summary: How Technology Is Reshaping the Housing Market,” 2018, 3–4, <http://ahuri.edu.au/research/final-reports/308>.

³⁷ Airbnb, “Party and Events Policy,” Airbnb, 2021, <https://www.airbnb.com/help/article/2704/party-and-events-policy>.

directly to the host to take precautionary measures for the guests, and this may be done through the imposition of house rules.

With regards to the responsibility of hosts and agents the STRA Guideline describes the functions and obligations of the hosts and agents so that nuisance can be avoided during the STRA operation:

1. Provide the STRA property House rules (i.e., noise inspection, limits of occupancy, etc.);
2. Emphasise the nature of laws on nuisance and the applicable fines to its guests;
3. Adhere to any regulations provided in relation to nuisance by the Joint Management Body or the Management Corporation;
4. Communicate with and be responsible for dealing with community concerns about the STRA operations;
5. Contact the STRA platforms where accommodation is specified in order to administer STRA activity complaints; and
6. Keep track of all residential accommodation issues or events that are used for STRA service in cases where an incident impacts the Local Authority's license renewal.

As far as complaints prevention and control are concerned, the parties involved in the prevention and handling process of STRA property complaints should have a 'neighbour platform' to report any nuisance on platform listings and any further steps to be taken in dealing with the complaints. The STRA hosts or representatives should be involved in the dispute resolution process in addressing the concerns of the neighbourhood and the outcome should be reported to the platform providers for improvement in service delivery.

With regards to ensuring that verified listings are advertised, we asked the MPC whether the government should resolve the matter via contractual relations with the STRA platforms. For example, in ensuring that verified listings are advertised, such STRA Platform may be subject to penalty or may lose the right to operate their business in the jurisdiction. Under the STRA Licensing and Registration Framework, the STRA platforms fall under the Travel agency business, which requires them to be registered as prescribed by the Tourism

Industry Act 1992. Failing to carry out such an obligation is an offense under the said Act. As the STRA is a new business model that does not fit into the traditional business model requirements, the Ministry of Tourism, Arts and Culture (MOTAC) is looking forward to creating a new category of the online travel agency business and is currently under discussion with the STRA platforms to develop suitable registration requirements that fit their business model.

Any person who wishes to operate the STRA is required to be licensed by the Local Authority of the respective jurisdiction. Under the licensing regime, Hosts and Agents must follow five (5) steps before one can list a residential accommodation on an STRA Platform. The five (5) steps required to be completed by Hosts and Agents comprise of:

- a. Compliance with the eligibility requirements;
- b. Registration of business with the Companies Commission of Malaysia;
- c. Compliance with the Strata Management Act 2013 [Act 757] (if applicable);
- d. Application of license with the relevant Local Authority; and
- e. Staying compliant with the applicable laws.

These requirements are explained in the next part.

Eligibility of hosts and agents

In relation to the eligibility requirement, the condition is two-fold. Any person who wishes to operate the STRA must meet two (2) main conditions relating to (a) Host and Agent, and (b) a residential accommodation host/agent must be a Malaysian citizen or permanent resident in Malaysia. Hosts and Agents are required to ensure that the residential accommodation being used to operate the STRA, possesses a Certificate of Compliance and Completion (CCC) issued pursuant to the Uniform Building by-Laws 1984, and are compliant with other relevant requirements imposed by the local councils.

Registration of Business

Hosts and Agents are required to register their business with the Companies Commission of Malaysia (“SSM”) as provided under the Registration of Businesses Act 1956 before conducting the STRA operations. Hosts and Agents may choose a suitable business entity to conduct the STRA operation which includes enterprise, private limited company, or limited liability partnerships as provided under the Registration of Businesses Act 1956.

Compliance with the Strata Management Act 2013 [Act 757]

Where the STRA property operates in a stratified building, hosts and agents shall comply with the Strata Management Act 2013 where Section 21 and 59 provides for control, management, and administration. The power to control and regulate the use and enjoyment of strata property is vested in the Joint-Management Body or Management Corporation of the building. Hosts and Agents must ensure that the by-laws passed by the Joint-Management Body or Management Corporation have no express prohibition against the operation of the STRA within the building. Similarly, in order for the Joint-Management Body or Management Corporation to impose additional conditions or to prohibit the STRA operation within the building, such requirement must duly pass as by-laws pursuant to the Strata Management Act 2013.

Application for a license with the Local Authority

The Local Authority is empowered under the Local Government Act 1976 to license the STRA operation in a manner deemed fit by such Local Authority. License from the Local Authority is required to be obtained by the Hosts and Agents prior to operating the STRA. Hosts and Agents are recommended to check with the respective Local Authority for rules and regulations applicable to each locality as one locality might impose a different set of rules and requirements from another.

Compliance with applicable laws

Once the Hosts and Agents have obtained the STRA license to operate the STRA from the Local Authority, the Hosts and Agents shall comply with the terms and conditions prescribed with the STRA license issued. Non-compliance with the prescribed terms and conditions may result in the revocation of the license, penalties, or the inability to renew the STRA license. Among others, the general terms and conditions which may be imposed by the Local Authority include, but are not limited to, the following:

- a. Renewal of license from the Local Authority: Hosts and Agents must submit an annual summary or logbook of the STRA activity to the Local Authority during the license renewal process;
- b. Renewal of business registration with the SSM: Hosts and Agents must adhere to the validity period of business entities registered with the SSM. Generally, a new business registration may be valid for a period of one (1) year and does not exceed five (5) years for each registration of business entity;
- c. Paying applicable taxes: Hosts and Agents shall remit applicable taxes imposed in relation to the STRA operations; and
- d. Display of approval: Hosts and Agents shall display a valid license or other form of authorisation as approved by the Local Authority at a place visible to the guests and the Local Authority (in cases of inspection by the Local Authority).

The proposed Nightcap varies according to the type of rentals which the Hosts and Agents have applied from the Local Authority as follows:

Type of property	Proposed Nightcap
Residential	<p data-bbox="428 1225 644 1251"><u>Type 1 - Hosted rental</u></p> <ul style="list-style-type: none"> <li data-bbox="428 1263 621 1289">▪ No nightcap <p data-bbox="428 1307 676 1333"><u>Type 2 - Un-hosted rental</u></p> <ul style="list-style-type: none"> <li data-bbox="428 1350 971 1437">▪ Maximum of ninety (90) to one hundred eighty (180) days over a twelve (12) month period on all platforms accumulated, per accommodation. <p data-bbox="428 1454 852 1480"><u>Type 3 - Hybrid hosted and un-hosted rental</u></p> <ul style="list-style-type: none"> <li data-bbox="428 1498 724 1524">▪ No nightcap for hosted

Type of property	Proposed Nightcap
	<ul style="list-style-type: none"> ▪ Maximum of ninety (90) to one hundred eighty (180) days over a twelve (12) month period on all platforms accumulated, per accommodation.
Commercial	<u>Type 4 – Commercial</u> <ul style="list-style-type: none"> ▪ No nightcap

Source: Malaysian Productivity Corporation³⁸

Each local authority shall have the discretion to determine the number of nightcaps, which shall include an increase of the nightcap subject to additional terms and conditions. Local authorities may make such determination based on the number of hotels, local budget hotels, etc.; whether it is a tourist area or a tourist attraction in the area; the nature of the location, i.e., urban, rural, etc., and the level of developments in an area. On this note, P2PA platforms will be required to perform data-sharing with the local authority to help hosts and agents to comply with the nightcap requirement. To ensure that the STRA Platforms facilitate the implementation of the nightcap, all STRA Platforms are required to report periodically to the MOTAC affirming that they have taken reasonable care to verify that the licensed Hosts and Agents using online booking services comply with the Night Cap requirement. In addition to this reporting requirement, the STRA platforms are recommended to maintain business records for each of their hosts and agents with respect to their STRA operation and to provide this information to the MOTAC upon request. If compared with the case of the New York City Council discussed above, this proposal has been argued to infringe on users' privacy and constitutional rights. Hence, one needs to be extra careful if data sharing is made compulsory as any data transfer would require the consent of the data subject, or otherwise, it would be contrary to the Malaysian Data Protection Act 2010 or other data protection laws. Another foreseeable problem would

³⁸ Rehan, Mohammed Alamin, and Vimala R Muniandy. "Public Consultation Document: Guideline on Short-Term Residential Accommodation (STRA)." Kuala Lumpur, 2019. [http://upc.mpc.gov.my/csp/sys/bi/%25cspapp.bi.viewfile.cls?file=ql2XXB5sl5U08UbN0vIHhskTWXd9DoqKBqahqLzk2uyZwQOLnf6chWajXp3ufUdHTE_Ecc0A09LkAMnQk0t9pqVp9LmVPNW_ZihUeHWXICjRtEWjjozS0eePtC2dYICPXtbOswQnBqY\\$5_5LMtS0XMwo9XfqvzhV37DvZA8HVHSHfz92tGz\\$rBT24gsG64w1](http://upc.mpc.gov.my/csp/sys/bi/%25cspapp.bi.viewfile.cls?file=ql2XXB5sl5U08UbN0vIHhskTWXd9DoqKBqahqLzk2uyZwQOLnf6chWajXp3ufUdHTE_Ecc0A09LkAMnQk0t9pqVp9LmVPNW_ZihUeHWXICjRtEWjjozS0eePtC2dYICPXtbOswQnBqY$5_5LMtS0XMwo9XfqvzhV37DvZA8HVHSHfz92tGz$rBT24gsG64w1).

be if the platform provider's origin state refused to provide data citing a violation of the user's constitutional rights.

As far as fire safety requirements are concerned, any residential accommodations being used for the STRA operations are subject to the existing fire safety requirements provided under the law. At present, any residential accommodations being used for the STRA operations will be deemed to have complied with the fire safety requirements if the Hosts and Agents can provide the Certificate of Compliance and Completion (CCC). This is because, for the Certificate of Compliance and Completion (CCC) to be issued, such residential accommodation would have to comply with the fire safety requirements provided under the Uniform Building By-Laws 1984. It is also recommended for the Hosts and Agents to install smoke detectors/alarms; provide portable fire extinguishers to be placed in a prominent position; and prepare an emergency evacuation plan at the residential accommodation as part of safety best practices.

Analysis and Recommendation

It may be observed from the above discussion that there are different approaches and responses from various states concerning the regulation of P2PA. In the first category, we can see that only the cities of Amsterdam and London are supportive of P2PA, albeit with a few legislative hurdles. Most cities in the world fall under the second category, where the response to P2PA services has been rather aggressive. Some states impose fines on the P2PA operators for violation of local by-laws, citing reasons such as operating a business without a license. Nonetheless, we can observe that most cities are moving towards imposing statutory regulations on P2PA hosts and their agents, with the view to increase safety, development planning, increase effective tourism tax collection and ensure that current market values of houses remain competitive.

Given the status quo in Malaysia that some states prohibit the P2PA activities operated in residential titles, the move should be geared towards guiding this new industry to be properly registered and monitored under a sustainable legal framework. It can be observed that housing matters fall under the jurisdiction of the local councils, even in other countries. Nonetheless, it is proposed that federal legislation should be enacted to crystallise the intention of legalising P2PA

services in Malaysia. Such legislation will provide the legal framework governing the registration of P2PA business, price control, relevant taxes, safety requirements, and platform providers' liabilities. This would ensure that the P2PA platform providers including hosts and their agents will be responsible for ensuring that the P2PA complies with relevant legal requirements, and guarantee a safe alternative accommodation for travellers. Such legislation will complement the existing federal acts that relate to the P2PA.

Although these proposals may call for tighter government regulation, dealing with offshore P2PA platform providers may be cumbersome, especially when one is uncooperative. One possible reason why P2PA platforms demonstrate an 'uncooperative attitude' is largely due to the cross-border jurisdictional issue, which is commonly experienced when dealing with intermediary services outside of state jurisdiction. Businesses must also assess the degree to which they can comply with different municipal laws; they must foresee not only whether they can expect to be prosecuted, but also the extent to which the rule of jurisdiction may apply.³⁹ Hence, it is proposed that the government should take the path of contracting with offshore P2PA platforms as part of the P2PA legal framework. Major P2PA platforms such as Airbnb may be brought into the regulatory framework through negotiation and signing of a memorandum of agreements or understanding. In this manner, government co-regulation will be seen more as a collaborative partnership with the P2PA platforms. To operate in Malaysia, the P2PA platforms must mutually agree to register their business locally with SSM and to impose other terms as agreed. A working example of this is Malaysia's relationship with Grab. Through memorandums of understanding, riders working with Grab services are able to enjoy improved benefits from time to time.⁴⁰ Another model worth of mention is the 'Hostastay', a Malaysian-based P2PA aggregator that links up with major P2PA

³⁹ Kurt Wimmer and Eve R. Pogoriler, "International Jurisdiction and the Internet," Covington & Burling LLP, 2006, <http://euro.ecom.cmu.edu/program/law/08-732/Jurisdiction/InternationalJurisdiction.pdf>.

⁴⁰ Foo Khai Yee, "EPF, Grab Sign MoU to Improve Retirement Savings of Ride-Hailing Drivers | The Edge Markets," The Edge Markets, 2018, <https://www.theedgemarkets.com/article/epf-grab-sign-mou-improve-retirement-savings-ridehailing-drivers>.

services such as Airbnb and works collaboratively with hosts to ensure that they comply with local council requirements.

As far as the liabilities of the P2PA platforms are concerned, it is submitted that they should shoulder more responsibilities that are at least at par with the hosts and agents in guaranteeing a safe and enjoyable accommodation experience for travellers. The concept of ‘innocent carrier’ that absolves Internet service providers from liability resulting from third-party content should be an exemption in the case of P2PA. This is to ensure that the platforms take more responsibility than just listing properties and charging fees out of thin air.⁴¹ The proposed STRA legal framework is illustrated as follows: -

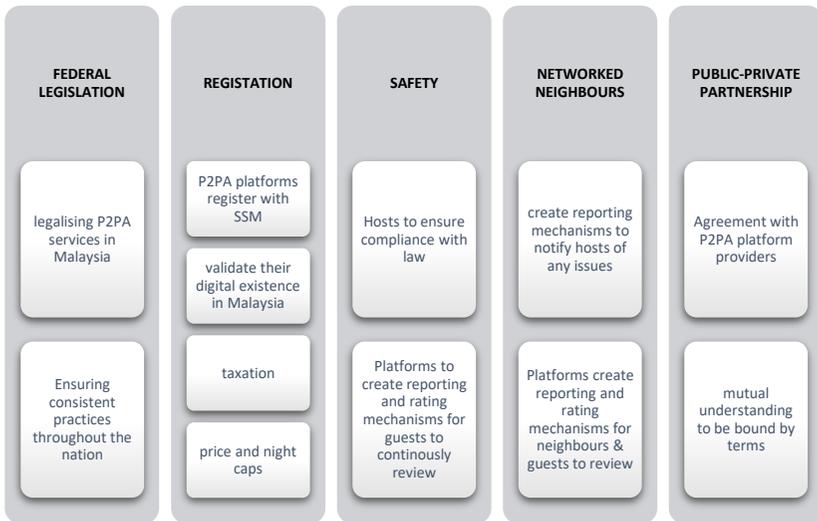


Figure 1: Proposed P2PA Legal Framework in Malaysia

(Source: Mahyuddin Daud)

Conclusion

⁴¹ Lilian Edwards, “The Role and Responsibility of Internet Intermediaries in the Field of Copyright and Related Rights,” 2011, http://www.wipo.int/copyright/en/doc/role_and_responsibility_of_the_internet_intermediaries_final.pdf.

In a nutshell, the expansion of digital platforms and internet connectivity has led to the emergence of P2PA worldwide. Since P2PA services are entirely online, small establishments such as Airbnb have been able to use revolutionary technologies and have unexpectedly overtaken conventional hoteliers by surprise, ignoring the hotel industry's regulatory requirements. P2PA has been accused of playing on an uneven field, missing the requisite taxes, skipping security requirements, and causing the community to lose its tranquillity. This paper finds that most cities control the registration of the P2PA operations through hosts and their agents. They must comply with the required regulatory requirements for various reasons, including safety concerns. However, against all odds, it is often noted that the P2PA hosts are those who were obligated to comply with regulatory requirements, but due to cross-border jurisdictional problems, platform providers absconded free and made a profit out of thin air. Based on our analysis of the proposed STRA Guidelines championed by the MPC, we submit that the proposal in its current form requires a reconsideration. As P2PA operates within states jurisdictions, the proposal in its current form will only lead to inconsistent regulatory approaches in different states across Malaysia. To protect both tourists and stakeholders, the implementation of federal legislation to govern the P2PA platform providers, including hosts and agents, is timely and appropriate for Malaysia.