

# **END OF PROJECT REPORT**

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**Legal Framework to Regulate Peer-to-Peer Accommodation Services in  
Malaysia**

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Researchers:

Asst. Prof. Dr. Mahyuddin Daud (AIKOL)

Prof. Dr. Ida Madieha Abd Ghani Azmi (AIKOL)

Assoc. Prof. Dr. Nor Asiah Mohamad (AIKOL)

## ABSTRACT

Peer-to-peer accommodation (P2PA) services has emerged as tourists preferred choice of stay during travel. Due to its popularity, P2PA services have brought direct impact that influenced property pricing in Malaysia. Despite such opportunity, P2PA services are not regulated under any laws, which created an uneven playing field that threatens the position of hotels in the market, caused privacy, safety and public nuisance. Unregistered P2PA services have caused loss of tax revenue for governments. Locals residing in popular tourist spots may consider moving out as the neighbourhood has turned commercial and have lost its tranquillity they used to enjoy. Hike in property prices and rentals have grossly affected locals' capability to own affordable housing and this trend has started to materialise a decade ago. This research aims to analyse legal issues on P2PA and identifies inadequacies in legislations and relevant policies, and develop an effective legal framework governing P2PA services. This research applies qualitative methods, which includes SWOT analysis, focus group discussions, semi-structured interviews and bench-marking visits. It contributes to the body of knowledge through:-a) discovery of factors and trends why digital citizens are moving towards peer-to-peer accommodation services, as opposed to hotels; b) findings that can measure whether government intervention or regulation is effective to monitor the working of P2PA services; c) discover new theory on how the Internet uniquely transforms the way we connect towards resolving day-to-day issues such as travelling, which in turn gives back to economy. Outcomes from this research are expected to benefit local and federal government authorities that supervise and regulate registration of businesses, tourism and home affairs. This project adds value to the realisation of the 11th Malaysia Plan and the National Ecotourism Plan 2016-2025 and to prepare Malaysia for digital economy and the forthcoming Industrial Revolution 4.0.

## KEYWORDS

Peer-to-peer accommodation, AirBnB, short-term letting, online hosting, short-term stays.

## INTRODUCTION

Peer-to-peer accommodation services (P2PA) has gained popularity, particularly with the introduction of online hosting websites such as Airbnb. The Edge Properties (2018) tracked more than 31,000 private home owners or their agents have listed landed and stratified properties on such websites and attract short-term travellers to rent for work or holiday

purposes. Due to the mushrooming of such service, there lies a need to know real market demands for such services, particularly in big cities like Kuala Lumpur, Penang and Johor - as they brought direct impact that influence property pricing. Despite such opportunity, the existence of peer-to-peer accommodation services have also brought about unprecedented impacts to the Malaysian housing landscape.

As there lacks regulation over peer-to-peer accommodation business in Malaysia, technological convergence of platform operators have created an uneven playing field that threatens the position of traditional hotels in the market (Malaysian Productivity Corporation, 2018). Homes rented for short-term stays have drawn objections from many homeowners, citing safety concerns and public nuisance. Reports have shown that tenants provide invalid background details to homeowners, which has led to fraud and theft. On the other hand, the increase in commercial activities in residential areas has caused decrease in tranquility and privacy to the neighbourhood. Tenants have illegally duplicated keys or access cards, causing cases of break-in and security threats to be on the rise. There were cases where tenants have suffered personal injuries during stay and AirBnB has refused any claim under torts of occupiers' liability because P2PA services are not considered 'Innkeepers' under the Innkeepers Act 1952, unlike registered hotels and inns.

From government point of view, unregistered peer-to-peer accommodation services have caused potential loss of tax revenue – in addition to the above mentioned safety and public nuisance issues. Other registered hotels are required to pay business/tourism tax which were circulated back to further develop the industry. Hence it is unfair for the paying hoteliers as they are paying the cost to support the industry, but peer-to-peer accommodation doesn't have to.

On the other hand, the rise in peer-to-peer accommodation providers in one particular areas may result in price war where revenues brought into Malaysia by them were actually stolen economy from registered hotels. Hence, such may also affect housing price in popular tourist spots where locals no longer consider to be part of the neighbourhood and gradually move out of town due to hike in property prices and rental. Such may grossly affect local's capability to own affordable housing and this trend has started to materialise a decade ago. It was hypothesised that the absence of legal framework to regulate peer-to-peer accommodation services in Malaysia is causing issues on uneven playing field that threatens the position of traditional hotels in the market, safety & privacy concerns, including public nuisance. Hence,

there is a dire need to formulate legal framework to regulate peer-to-peer accommodation services to address the above-mentioned issues to complement national agenda to make Malaysia as the front liner in modern development of digital economy.

## BACKGROUND

P2PA has gained popularity, particularly with the introduction of online hosting websites such as Airbnb. More than 31,000 private homeowners or their agents have listed landed and stratified properties on such websites and attract short-term travellers to rent for work or holiday purposes. Due to such service's mushrooming, supply and demand chains are apparent, particularly in major cities like Kuala Lumpur, Penang, and Johor as they may influence property pricing.

Despite such an opportunity, the existence of P2PA has also brought about unprecedented impacts on the Malaysian housing landscape. As there lacks regulation over peer-to-peer accommodation business in Malaysia, platform operators' technological convergence has created an uneven playing field that threatens traditional hotels' position in the market(Malaysian Productivity Corporation, 2018). Homes rented for short-term stays have drawn objections from many homeowners, citing safety concerns and public nuisance<sup>1</sup>. Reports have shown that guests provide invalid background details to homeowners, which has led to fraud and theft(Rehan & Muniandy, 2019).

On the other hand, the increase in residential areas' commercial activities has caused a decrease in tranquillity and privacy in the neighbourhood(Rehan & Muniandy, 2019). Guests have illegally duplicated keys or access cards, causing cases of break-in and security threats to be on the rise. There were cases where guests have suffered personal injuries during stay and Airbnb has refused any claim under torts of occupiers' liability because P2PA services are not considered 'Innkeepers' under the Innkeepers Act 1952, unlike registered hotels and inns.

From a taxation perspective, unregistered peer-to-peer accommodation services have caused a potential loss of tax revenue – in addition to the above-mentioned safety and public nuisance issues. Other registered hotels must pay business and tourism taxes that were distributed back to further develop the industry. Hence, hoteliers argued that it is unfair for paying hoteliers to pay the cost to support the industry, but peer-to-peer accommodation does

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<sup>1</sup> See *Innab Salil & Ors v. Verve Suites Mont Kiara Management Corp* [2020] 2 MLJ 163 for example.

not have to(Rehan & Muniandy, 2019). On the other hand, the rise in peer-to-peer accommodation providers in one area may result in a price war where the revenues brought into Malaysia were stolen economy from registered hotels.

Hence, such may also affect housing price in popular tourist spots where locals no longer consider to be part of the neighbourhood and gradually move out of town due to a hike in property prices and rental. Such may grossly affect local's capability to own affordable housing and this trend has started to materialise a decade ago. However, there is no explicit research data to confirm that P2PA directly impacted property pricing, as the reasons people buy properties differ from one to another. All these issues are taking place under the broad umbrella of the sharing economy, which has been associated with the disruptive innovation theory advocated by Clayton Christensen(Bower & Christensen, 1995). This becomes the underlying notion behind the expansion of P2PA worldwide, which defeated the traditional hotel industry unnoticed.

## OBJECTIVES

- 1)To examine the meaning, objectives and scope of peer-to-peer accommodation;
- 2)To assess and analyse legal issues pertaining to peer-to-peer accommodation and the inadequacies in the present legislations and relevant policies to address them; and
- 3)To analyse, improvise and propose relevant laws to create a sustainable legal framework to govern peer-to-peer accommodation services in Malaysia.

## METHODOLOGY

The research has been conducted using qualitative method, which includes the following:

The research will be conducted using qualitative methods, which includes the following:

- 1)A SWOT analysis of all relevant legislation and cases on housing and peer-to-peer accommodation in Malaysia to assess and evaluate the present legislations, regulations and policies;
- 2)Focus Group Discussion (FGD) and semi-structured interviews among important agencies;
  - a) Ministry of Housing and Local Government Malaysia

- b) Khazanah Research Institute
- c) Home Buyer Association
- d) REHDA Institute and other relevant agencies.
- e) Tourism associations
- f) Relevant universities that conduct research on housing policies (International Islamic University Malaysia, Universiti Malaya, Universiti Teknologi MARA etc)

## FINDINGS

The findings of this projects are as follows.

The 1<sup>st</sup> Research Objective:

- 1)To examine the meaning, objectives and scope of peer-to-peer accommodation

Short term rental had a humble start in 2007. There was an international design conference in San Francisco where conference delegates were looking for alternatives to expensive hotels prices. Two university graduates created a simple website to advertise an apartment in San Francisco and called it ‘AirBed & Breakfast’. The idea was profitable and gradually developed into a successful business model that targeted major events. The website was re-launched in 2009 as Airbnb.com, and had its service expanded beyond shared accommodations to also include the rental of full residences. Since then, Airbnb has expanded in no time and offers booking of millions of room and nights for tourists around the globe (Guttentag, 2015). Interestingly, they were able to do this without owning a single asset – which is exactly what ‘sharing economy’ is all about.

The concept of sharing economy was defined in 2015 by the Oxford Dictionary as “an economic system in which assets or services are shared between private individuals, either for free or for a fee, typically by means of the Internet”. The phrase ‘sharing economy’ applies to ‘any marketplace using the Internet to put together distributed individual networks to share or trade otherwise underused properties’(Ramirez et al., 2016). In a shared economy, asset ownership is not transferred; people generate income by 'sharing' their surplus or underused

properties, also known as collaborative consumption (Tussyadiah & Pesonen, 2018). In the collaborative consumption, peer economy or sharing economy, people use in common with others by renting, lending, trading goods and services (Mareike Möhlmann, 2015).

Schor classified sharing economy activities into four broad categories, namely: (1) recirculation of goods; (2) increased utilization of durable assets; (3) exchange of services; and (4) sharing of productive assets (Schor, 2014). Sharing economy is viewed in different ways, starting from a potential pathway to sustainability and finishing with a frightening form of neoliberalism. According to Martin, sharing economy is “also considered a niche, a field of related innovations and the intermediaries who support and promote the development of these innovations” (Martin et al., 2015).

There are disagreements between service providers on whether they belong in the sharing economy ecosystem. For example, TaskRabbit, an “errands” site, is often included in the sharing economy, but Mechanical Turk (Amazon’s online labour market) were opted out. Airbnb has been practically synonymous with sharing economy, but traditional bed and breakfasts are left out as most of the hosts do not cater to breakfasts. Lyft — a ride service company, claims to be in the sharing economy. However, Uber, another ride service company, claimed that it does not belong in the ecosystem. In this regard, Schor went to suggest that it is open for the media and platform providers to claim whether they are part of the sharing economy (Schor, 2014).

Although there is nothing new in ‘sharing’, but sharing economy became popular when the Internet access expanded across the globe. In this regard, the sharing economy has created markets that were not seen before as possessions, which offers “new ways to generate income”. People have shared many things such as cars (Lyft, Sidecar, Uber), spare rooms (Airbnb, Couchsurfing), dogs (DogVacay, Rover), food (Feastly), cars (RelayRides, Getaround), boats (Boatbound), houses (Airbnb, HomeAway), or power tools (Zilok) online (Rimer, 2017).

The European Commission regarding the Presence and the Size of the Collaborative Economy in Europe has assessed five broad sectors on collaborative economy across Europe. They were: (1) Peer-to-peer accommodation; (2) Peer-to-peer transportation: individuals sharing a ride, car or parking space with others; (3) On-demand household services; (4) On demand professional services; and (5) Collaborative finance (such as crowd-funding and peer-to-peer residential lending). The report estimated “generated revenues of nearly €4 billion and facilitated €28 billion of transactions within Europe in 2015” and, assumes that at least “275 collaborative economy platforms have been founded” up to 2016 (Daveiro & Vaughan, 2016).

The sharing economy has proven to surpass the traditional hotel and lodging industry and become “a deep socio-economic trend that is fundamentally changing the way we live our lives” (Daveiro & Vaughan, 2016). Such rapid development of sharing economy makes way for European sustainable development nevertheless “poses significant challenges for policy makers and regulators to keep up” (Daveiro & Vaughan, 2016). Platform providers such as Airbnb allow hosts to rent their spaces for short term at lower rate as compared to traditional accommodations. This creates an environment of win-win situation for all parties that take part in the sharing economy. However, most sharing economy platform providers face legal issues to validate their existence, in particular when they operate are across different jurisdictions (Guttentag, 2015).

The innovative approach to tourism accommodation promoted by Airbnb and other similar companies can best be viewed through the lens of disruptive innovation theory, which was proposed and popularised by Clayton Christensen in several seminal works (Bower & Christensen, 1995; Christensen, 1997; Christensen & Raynor, 2003). This theory describes a mechanism in which a disruption innovation changes a market, often to the point that previously dominant firms are broken down. A disruptive product will usually drift the main performance attribute(s) of prevailing products, but will deliver a distinct collection of benefits, typically based on being cheaper, more convenient, or simpler. Consequently, the innovative product appeals to the market's low-end, or creates a new market. This initial market is small in size and profit margins, so it is unattractive to leading corporations content to concentrate on their more lucrative markets and seek to marginally develop their goods by ‘sustainable innovations’. Nonetheless, the innovation product progresses over time, making it appealing to



more consumers, attracting growing levels of the mass market. It will eventually attract attention from leading firms, but by then the disruptive product may be so entrenched that previously leading firms struggle to compete.

This destructive innovation often refers to a "perennial gale of creative destruction" driving business economies to meet consumer demands. Potential innovators are given the opportunity to compete on the market, and to take on the costly, challenging and dangerous task of designing and producing new goods and services (Ramirez et al., 2016). In other words, disruptive innovation theory describes how companies may hesitate not by falling behind the pace of advancement or ignoring their core consumers, but rather than disregarding the upward encroachment of a disruptive product that lacks in traditionally favoured attributes instead offers alternative benefits (Guttentag, 2015). This process of disruptive innovation can occur in any economic sector, and tourism is no exception. For example, Airbnb has more listings<sup>2</sup> for short term accommodation than any of the world's largest hotel chains (Forbes, 2018).

2) To assess and analyse legal issues pertaining to peer-to-peer accommodation and the inadequacies in the present legislations and relevant policies to address them;

### **3.0 Legal issues surrounding the operations of P2PA**

Malaysia does not have any clear laws to legalise nor control the P2PA industry. In a 2016 statement by the Ministry of Tourism Art and Culture Urban Well-being, Housing and Local Government Malaysia in 2016 had implicitly endorsed the status of Airbnb as legal with the rationale that the online transaction and agreement made between the host and the traveller is considered to be a private agreement between two or more persons. In the absence of any relevant federal legislation in this sense, the regulation of P2PA is currently being dealt with differently by local governments in individual states of Malaysia. For example, Johor Bahru City Council (MBJB) does not require any license for a homeowners to rent out his property where such legal relationship can be made via tenancy contract.

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<sup>2</sup> Airbnb, an online community marketplace where people can list and book short-term lodging accommodations around the world, was founded in 2008 and has grown rapidly at a time when plenty of other industry-disrupting platforms have flourished, including Uber, Craigslist, and Spotify. Airbnb offers listings in 191 countries, and its total number of listings — 4 million — is higher than the top five major hotel brands combined.

As such, legal actions have been taken by local authorities under the pretext of conducting unlicensed business. The City Council of Pulau Pinang (MBPP) has taken strict measures to issue summons against owners who rent their residences for short-term stays. Penang Island City Council (MBPP) has continued its efforts in weeding out illegal and unlicensed lodging houses. In its recent check by officers the council's Commissioner of Buildings (COB), as well as two MBPP departments – Licensing Department and Building Department – three-unit owners in Birch The Plaza Condominium in Datuk Keramat Road were fined RM250 each for operating a business without licence. MBPP issued the summonses under the 1991 MPPP bylaw for Trade, Business, and Industries for the offence of operating a business without licence (The Star, 2016).

The next part shall explore on three legal issues namely, the rise of 1) public nuisance and safety concerns, 2) tax collection and issues concerning 3) zoning and registrations in P2PA warranting regulatory interventions.

### **3.1 Issues in public nuisance and safety**

Nuisance has been defined in Section 2 of the Local Government Act 1976 as “any act, omission or thing occasioning or likely to occasion injury, annoyance, offence, harm, danger or damage to the sense of sight, smell or hearing or which is or is likely to be injurious or dangerous to health or property or which affects the safety or the rights of the inhabitants at large”. There is no available public data on the number of nuisance cases occurred in P2PA in Malaysia. Nevertheless, neighbours have reported numerous incidents of public nuisance that occurred in residences operating the P2PA businesses and were tried in courts (Al Sadat Zyed et al., 2020). The case of *Innab Salil & Ors v. Verve Suites Mont Kiara Management Corp* [2020] 2 MLJ 163, for example, was one concerning public nuisance occurring in P2PA. The parties argued on the validity of the decision of joint management bodies in prohibiting P2PA operations in stratified buildings caused by public nuisance<sup>3</sup>.

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<sup>3</sup> See also *Chin Moy Yen & Ors v Chai Weng Sing & Ors* [2017] MLJU 1355 for nuisance case concerning stratified properties used as student accommodation.

In the case of *Innab Salil & Ors v. Verve Suites Mont Kiara Management Corp* [2020] 2 MLJ 163, all joint management bodies and management corporations ('MCs') of residential stratified buildings in and around Kuala Lumpur were directed by the Commissioner of Buildings Kuala Lumpur ('COBKL') to take steps to prohibit units in such buildings from being used as homestays or for short-term rentals for tourists, holidaymakers and temporary accommodation seekers. There were reports that cloned access cards were given to such short-term visitors to allow them to access common property and other facilities. Such also caused nuisance to other residents and compromised their safety and interfered with their quiet enjoyment of their homes and related facilities. The respondent convened an extraordinary general meeting ('EGM') pursuant to the COBKL directive, where a motion was overwhelmingly passed by the majority of parcel owners present to introduce a new by-law ('house rule No 3') prohibiting Verve Suites Condominium parcel owners from using their units to carry on the short-term rental/homestay business. The EGM agreed to allow the respondent, for each day they breached house rule No 3, to fine violators of the by-law RM200. The respondent informed all condominium parcel owners of the implementation of house rule No 3, but some of them challenged it and even challenged before the Strata Management Tribunal on the validity of the by-law but lost.

In accordance with Section 70(7) of the Strata Management Act 2013 ('the SMA 2013'), in the High Court, the respondent initiated a written action against parcel owners who defied house rule No 3. In accordance with Order 33 Rule 2 of the Rules of Court 2012, the parties agreed to let the court decide the action without trial by determining the sole question of law at the heart of the action, i.e. whether house rule No 3 violated section 70(5)(a) of the SMA 2013. The appellants took the view that the renting out of units for short-term rentals or as homestays was a 'deal' in the form of a tenancy exempt from registration which could not be prohibited in accordance with s 70(5)(a) if no additional by-law is capable of operating to prohibit or restrict the transfer, lease or charge of or any other dealing with any parcel of a subdivided building or land. The appellants argued that not only section 70(5)(a) of the SMA 2013 but also Article 13 of the Federal Constitution were in breach of House Rule No 3.

The High Court dismissed the appellants' argument and decided the lawsuit in favour of the defendant. However, the court held that, under Section 70(2) of the SMA 2013, the respondent was not able to impose a daily fine of RM200 for the continued infringement of the by-law. The High Court ruled in its decision that short-term rentals were neither a 'deal' nor a 'tenancy exempt from registration' as defined under the National Land Code and that those who were guests under such arrangements were not in a relationship with the landlord-tenant owners of

the parcel. They merely had a licence to temporarily occupy the units. The appellants appealed against the decision of the High Court but was turned down.

In determining the relationship between guests and hosts on the question of whether a particular relationship is that of a licensor-licensee or landlord-tenant, in the case of *Lim Cheang Hock & Anor v Tneh Poay Lan* [2007] 4 MLJ, the court ruled that, depending on whether the occupant had exclusive possession of the subject property. Lamin J stated in the case of *Shaik Alauddin v Kamarutheen A/L K Dawood* [1988] 3 MLJ 336, “to determine their relationship in that whether it arose out of a tenancy or a license one has to ascertain the nature of the transaction”. Being a guest in P2PA, homeowner only granted possession over the rented premise for a short period of time for a specific transaction, which cannot be granted exclusive possession. Guests simply has been granted a mere licence to occupy the rented premise.

In Sabah, the operation of Airbnb has been declared as unlawful and hoteliers were in favour of the idea that P2PA should be licensed and regulated(The Borneo Post, 2017). Airbnb’s contractual obligations work in such a way that the burden to ensure that Airbnb is legal in a particular country lies on the host. As opposed to tenants, a licensee (guest) will not have exclusive possession as the licensor (host) will have the right to access to the rented premises. P2PA service providers assumes that homeowners have ensured compliance with the law prior to listing their properties on the platform. Such may expose guests to uncertain legal risks of being trespassed, harassed or nuisance while staying at the place, as the extent of legal protection available for them were vague. On this note, Salleh Buang urged for government regulation on P2PA services where legitimate P2PA services should be permitted, but the law should also prevent illegal hotel operators from driving families out of their once-quiet neighbourhood(Salleh Buang, 2017).

### **3.2 Issues on tax collection**

With regards to taxation, the Malaysian Productivity Corporation (MPC) during its Public Consultation exercise in developing a Guideline on Short-Term Accommodation in 2018 also found concerns from hoteliers on tax collection(Rehan & Muniandy, 2019). Traditional hotel industry argued that the P2PA services should comply to similar tax requirements that they

similarly do. The Malaysian Association of Hotels (MAH) maintained that the existence of STRA brings threat to the traditional hotel industry for several reasons. At present, there are number of regulatory requirements that hotels must comply to operate, which includes safety, fire prevention, insurance, taxes, licensing, utility charges and etc. since the operating costs of STRA were arguably lower as compared with the traditional hotels, MAH believes that it has created an unhealthy competition in the hotel industry(Rehan & Muniandy, 2019).

To date, P2PA services do not pay any form of taxes since they are not registered business entity in Malaysia. It arguably created an uneven playing field between traditional hoteliers and P2PA service provides where they must comply with several tax requirements under enabling legislations, on top of other safety conditions.

On that note, Airbnb was reported to have signed a Memorandum of Collaboration with the Malaysian Productivity Council to promote digital inclusion and STRA data sharing. Series of discussions are ongoing for the collection of tourism tax(The Malay Mail, 2018). Despite such effort being undertaken by Airbnb, it should be noted that tax collection involving foreign P2PA platforms can be troublesome. The online P2PA platforms were not based in Malaysia hence enforcement of tax legislations may trigger cross-jurisdictional issues. For example, AirBnb has its main business address in the United States and leave the duty for compliance with local laws to the hosts.

### **3.3 Issues on land zoning and registration**

On the other hand, legislations governing stratified properties in Malaysia may have some provisions, which could infer prohibition over unregistered P2PA services. In some cases, the operation of P2PA services in areas gazetted for residential may contravene local by-laws or regulations as businesses should not operate in residential areas. Some local authorities such as Majlis Bandaraya Petaling Jaya however allowed P2PA to operate in mixed development areas where land status was gazetted for commercial use.

Similarly, owners and operators who are renting out their properties in Kuala Lumpur City Hall (DBKL) for short term stays, such as through Airbnb were requested to register their businesses

to determine the actual size of this industry, and in turn to legalise their existence (Reena Raj, 2017). This initiative was in response to the common complaints received, particularly involving public nuisance, usage of common facilities and cleanliness.

In cases where P2PA is operated in stratified properties particularly in Peninsular Malaysia and the Federal Territory of Labuan, they are regulated by Strata Management Act 2013 (SMA 2013) and the Strata Management (Maintenance and Management) Regulations 2015 (SMR 2015).

SMA 2013 prescribes, inter *alia*, a series of by-laws known as the ‘Third Schedule,’ to be implemented and used to control stratified houses. The terms of the by-laws are in effect, mutual covenants to be performed by parcel owners, as well as any charge or assignment, lessee, tenant, or parcel occupant. Accordingly, the Third Schedule self-governing regime provides for some broad but specific provisions which can be interpreted with the effect of controlling and even banning P2PA in stratified buildings; Regulation 8(9) of the Third Schedule provides that a parcel shall not be used contrary to the terms of use of the parcel shown in the plan approved by the local authority.

Regulation 8(9) if strictly interpreted will reveal that a parcel in a residential-approved building cannot subsequently be used for P2PA as it leans towards commercial use of a parcel. In addition to the general ban on causing nuisance in Regulation 10, Regulation 8(8) of the Third Schedule expressly forbids the use of a parcel in a manner that causes nuisance or danger to other owners or their families. As such, the operations of P2PA in stratified buildings can be prohibited on the grounds that regular guest traffic can cause nuisance or jeopardise other residences in the building. To add a legislative bite to these current by-laws, Sections 32(3) and 70(2) of SMA are critical to enabling joint management bodies and companies to “make additional by-laws” by passing special resolutions. Thus, by incorporating clear, fair, and well-drafted clauses to established by-laws, management companies would be able to efficiently control the operation of P2PA in their buildings.

Such legal position is also in *pari materia* with the Privy Council of United Kingdom decision in the case of *O’Connor (Senior) & others v The Proprietors* [2017] UKPC 45. Privy Council has decided to uphold a strata by-law which bans holiday lettings of less than one (1) month. At para 20 of the judgment, Privy Council stated the following to justify the ban: -

“By requiring rentals, and therefore occupation periods, to extend for at least one month, the by-law is seeking to ensure the degree of stability which is necessary to maintain the character of the residential use. In the Board’s view this is properly regarded as part of a legitimate restriction on the use of the strata lot, to ensure that the residential purpose of the development is protected. It does not involve an impermissible restriction on leasing contrary to [the strata law].”

A local working example of this can be seen in the current approach being taken by the Commissioner of Buildings of Kuala Lumpur (COBKL). In its circular dated 18 November 2015, COBKL permitted stratified building management companies to amend their respective legislative requirements with the effect of either restricting or specifically barring short-term stays. More recently, in 2018, the COB also released specific guidance on the protocols to be adopted in making any amendments to its by-laws by management firms. Importantly, Sections 32(3) and 70(2) of the SMA 2013, which empowers management companies to levy a limit of RM200 on every 'parcel holders, tenant or invite' who violates the by-laws, enhance the compliance of any such additional clauses.

On this point, in *Verve Suites Mont 'Kiara Management Corporation v Salil & Ors* [2018] AMEJ 1874, the High Court of Kuala Lumpur explained that management companies are not authorised to sweepingly enforce one of RM200 a day for any violations of the by-laws. Instead, for any violation of the by-laws, management companies are entitled to enforce only a limit of RM200 and the sum of the money received must be properly deposited into the Maintenance Account, as provided for in Regulation 7(2) of the SMR 2015.

In this case, in addition to making it obligatory for the defendant parcel owners to strictly comply with the by-laws, the High Court also ordered an injunction in favour of the management company to bar any parcel owners or their agents from registering or advertising their homes on online sites for short-term rental of any or all of their homes. The respondents appealed to the Court of Appeal but was turned down and the High Court decision was upheld<sup>4</sup>.

In Western Australia, in *Byrne v The Owners of Ceresia River Apartments Strata Plan 55597* [2017] WASCA 104, the Court of Appeal ruled that corporate by-laws of owners would limit short-term (i.e. no longer than three months) rentals. The Court of Appeal ruled that there was

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<sup>4</sup> See *Innab Salil & Ors v Verve Suites Mont Kiara Management Corporation* [2019] MLJU 1496

no limitation in the by-laws on the disposal of units in the strata system, but only a restriction on the way the units could be used. In the light of this confusion as to whether strata by-laws will legally limit short-term rentals, several quarters have also supported the latest Privy Council ruling in *O'Connor*.

On the other hand, Japan adopted the latest *minpaku* law in June 2018 to reduce the legal barriers to rent properties as short-term lodgings. Currently, only some specially named districts allow *minpaku* rentals, but in theory *minpaku* rentals are allowed in Japan after June 15<sup>th</sup>. Space size restrictions will not exist anymore. Nor will owners' representatives be allowed to be on-site. Local governments, however, may still impose their own limits. Kyoto will often prohibit *minpaku* in residential areas. One of the law's new requirements is that people wanting to rent properties as *minpaku* must register with the land ministry. In fact, the ministry already accepts registrations, so owners can start renting rooms when the law comes into force. Perhaps the most controversial feature of the current legislation is that it has no limits on the type of property to use. One of the key sources of concerns regarding Airbnb rentals was condominium owners and tenants who objected to using neighbouring units as de facto rooms without their permission. The new law will not address this issue explicitly, but the land ministry has established guidelines for owners' associations wishing to ban *minpaku* from their buildings (Philip Brasor & Masako Tsubuku, 2018).

Hence, if one wants to remain in a stratified property but does not want the parcels to be used for P2PA operations, Salleh Buang cautioned to double-check the by-laws of the community strata, as there could be no clause limiting P2PA (Salleh Buang, 2017). In furtherance of the above issues, it is submitted that there exist gaps in the legal framework to regulate P2PA in Malaysia, which necessitates further research to be conducted.



3) To analyse, improvise and propose relevant laws to create a sustainable legal framework to govern peer-to-peer accommodation services in Malaysia.

### **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, where there are few legislative hurdles. However, 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 P2PA operators for violation of local bylaws, 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 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 local councils, even in other countries. Nonetheless, it is proposed to enact federal legislation 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 P2PA platform providers including hosts and their agents will be responsible towards ensuring that P2PA complies with relevant legal requirements, and guarantee a safe alternative accommodation for travellers. Such legislation will complement existing federal acts that relate to 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 (Wimmer & Pogoriler, 2006). 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 memorandum of agreements or understanding. In this manner, government co-regulation will be seen more as a collaborative partnership with P2PA platforms. To operate in Malaysia, 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 (Foo Khai Yee, 2018). Another model worth of mention is Hostastay, a Malaysian-based P2PA aggregator that links up with major P2PA services such as Airbnb and works collaboratively with hosts to ensure that they comply with local council requirements.

As far as the liabilities of P2PA platforms are concerned, it is submitted that they should shoulder more responsibilities that are at least at par with 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 (Edwards, 2011). The proposed STRA legal framework is illustrated as follows: -

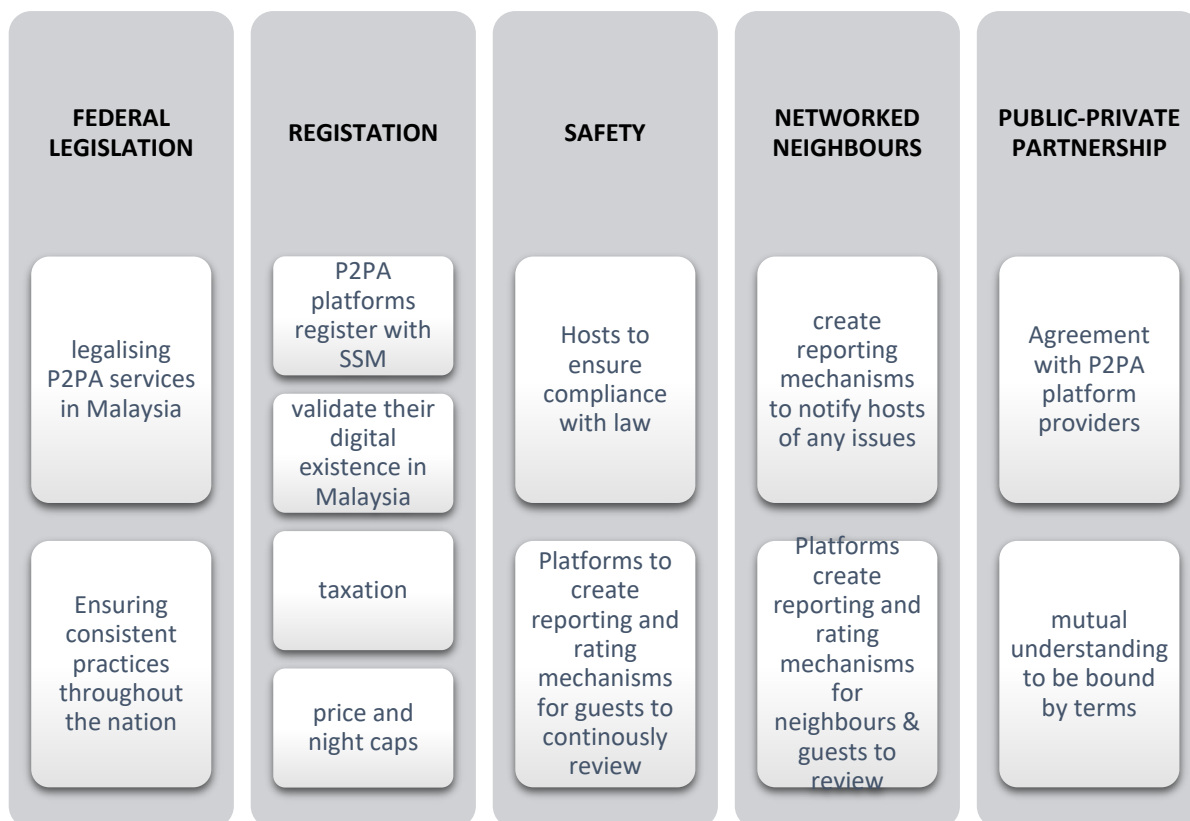


Figure 1: Proposed P2PA Legal Framework in Malaysia

(Source: Mahyuddin Daud)

## CONCLUSION

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 P2PA operations through hosts and their agents. They must comply with required regulatory requirements for various reasons, including safety concerns. However, against all odds, it is often noted that 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 profit out of thin air. Based on our

analysis of the proposed STRA Guidelines championed by 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 P2PA platform providers, including hosts and agents, is timely and appropriate for Malaysia.

## OUTPUT

Output	Title
<b>2 indexed journal articles</b> ( <i>requirement: 2</i> )	<p>Daud, M., &amp; Mat Isa, N. (2021). 'ISOLATED IN OUR OWN NEIGHBOURHOOD': ANALYSIS ON THE PROPOSAL TO REGULATE PEER-TO-PEER ACCOMMODATION SERVICES IN MALAYSIA. <i>IIUM Law Journal</i>, 29(2), 271–298. <a href="https://doi.org/10.31436/iiumlj.v29i2.647">https://doi.org/10.31436/iiumlj.v29i2.647</a></p> <p>Daud, Mahyuddin and Mat Isa, Norlaili (2021) Peer-to-peer accommodation services in Malaysia: legal issues and concerns. <i>Malaysian Journal of Consumer and Family Economics</i>, 26. pp. 110-126. ISSN 1511-2802</p>
<b>1 non-indexed journal article</b>	Daud, Mahyuddin and Mat Isa, Norlaili (2021) The legality of operating short term rental accommodation in waqf housing. <i>Malayan Law Journal</i> , 2. xlii.
<b>3 Conference papers</b> ( <i>requirement: 2</i> )	<p>M. Daud and N. M. Isa, "Regulating Online Peer-To-Peer Accommodation Services in the Malaysian Waqf Housing," 2021 9th International Conference on Cyber and IT Service Management (CITSM), 2021, pp. 1-6, doi: 10.1109/CITSM52892.2021.9588982.</p> <p>Daud, Mahyuddin and Mat Isa, Norlaili (2020) The legality of operating short term rental accommodation in waqf housing. In: 8th Global Waqf Conference 2020, 8th December 2020, Unirazak, Kuala Lumpur.</p> <p>Daud, Mahyuddin and Mat Isa, Norlaili (2021) Global Trend of Regulating Peer-To-Peer Accommodation Digital Platforms. In: First International Conference on Emerging Trends in Industry 4.0 (2021 ETI 4.0), 19<sup>th</sup> April 2021, OP Jindal Univeristy, India.</p>
1 Newspaper articles	Daud, Mahyuddin and Isa, Norlaili Mat (2021) Wujud perundangan khas kawal selia STRA. <i>Berita Harian</i> , 6 May 2021.

## FUTURE PLAN OF THE RESEARCH

The research recommends towards the development of an STRA legal framework in Malaysia to protect tourists and stakeholders alike. The result of this research must be made available for public readings to gain more awareness. Hence, more writeups in the form of book, journal and newspaper articles need to be published. Furthermore, such recommendations will be presented in conferences organised by the Internet regulator in Malaysia to publicise the issue and recommends for necessary policy and legislative changes. Since this research focused on legal aspect of STRA regulation, future research may explore on areas including economy, religious and other relevant areas.

## REFERENCES

- Al Sadat Zyed, Z., Yong, M. Y., & Tedong, P. A. (2020). Public users' perception of Airbnb in Malaysia: should we regulate? *Property Management*, 38(5), 627–642.  
<https://doi.org/10.1108/PM-09-2019-0050>
- Bower, J. L., & Christensen, C. M. (1995). Disruptive technologies: catching the wave. (technological investments). *Harvard Business Review*.
- Daveiro, R., & Vaughan, R. (2016). Assessing the size and presence of the collaborative economy in Europe. In *PwC UK*.
- Edwards, L. (2011). *The Role and Responsibility of Internet Intermediaries in the Field of Copyright and Related Rights*.  
[http://www.wipo.int/copyright/en/doc/role\\_and\\_responsibility\\_of\\_the\\_internet\\_intermediaries\\_final.pdf](http://www.wipo.int/copyright/en/doc/role_and_responsibility_of_the_internet_intermediaries_final.pdf)
- Foo Khai Yee. (2018). *EPF, Grab sign MoU to improve retirement savings of ride-hailing drivers* | *The Edge Markets*. The Edge Markets.  
<https://www.theedgemarkets.com/article/epf-grab-sign-mou-improve-retirement-savings-ridehailing-drivers>
- Forbes. (2018). *The Airbnb Effect: Cheaper Rooms For Travelers, Less Revenue For Hotels*. Forbes.
- Guttentag, D. (2015). Airbnb: disruptive innovation and the rise of an informal tourism accommodation sector. *Current Issues in Tourism*.

<https://doi.org/10.1080/13683500.2013.827159>

Malaysian Productivity Corporation. (2018). *RURB Tourism Home Sharing Economy: Recommendation on Short Term Accommodation Regulatory Framework*.

<http://www.mpc.gov.my/wp-content/uploads/2018/10/RURB-Tourism-STA-regulatory-framework-website.pdf>

Mareike Möhlmann. (2015). Collaborative consumption : determinants of satisfaction and the likelihood of using a sharing economy option again. *Journal of Consumer Behaviour*.

Martin, C. J., Upham, P., & Budd, L. (2015). Commercial orientation in grassroots social innovation: Insights from the sharing economy. *Ecological Economics*.

<https://doi.org/10.1016/j.ecolecon.2015.08.001>

Philip Brasor, & Masako Tsubuku. (2018). *New minpaku law will alter Japan's rental and hospitality landscape*. Japan Times.

<https://www.japantimes.co.jp/community/2018/04/01/how-tos/new-minpaku-law-will-alter-japans-rental-hospitality-landscape/#.XHZeSEogzaM8>

Ramirez, E., Ohlhausen, M. K., & Mcsweeny, T. P. (2016). *The "Sharing" Economy : Issues Facing Platforms, Participants & Regulators* (Issue November).

Reena Raj. (2017). *DBKL: Airbnb, short-term stays registration needed to gauge market size*.

The Malay Mail. <https://www.malaymail.com/news/malaysia/2018/01/19/dbkl-airbnb-short-term-stays-registration-needed-to-gauge-market-size/1557829>

Rehan, M. A., & Muniandy, V. R. (2019). *Public Consultation Document : Guideline on Short-Term Residential Accommodation (STRA)*.

[http://upc.mpc.gov.my/csp/sys/bi/%25cspapp.bi.viewfile.cls?file=q12XXB5s15U08UbN0vlHhskTwx9DoqKBqahqLzk2uyZwQOLnf6chWajXp3ufUdHTE\\_Ecc0A09LkAMnQk0t9pqVp9LmVPNW\\_ZihUeHWX1CjRtEWjozS0eePtC2dY1CPXtbOswQnBqY\\$5\\_5LMtS0XMwo9XfqvzhV37DvZA8HVHSHfz92tGz\\$rBT24gsG64w1](http://upc.mpc.gov.my/csp/sys/bi/%25cspapp.bi.viewfile.cls?file=q12XXB5s15U08UbN0vlHhskTwx9DoqKBqahqLzk2uyZwQOLnf6chWajXp3ufUdHTE_Ecc0A09LkAMnQk0t9pqVp9LmVPNW_ZihUeHWX1CjRtEWjozS0eePtC2dY1CPXtbOswQnBqY$5_5LMtS0XMwo9XfqvzhV37DvZA8HVHSHfz92tGz$rBT24gsG64w1)

Rimer, R. S. (2017). *Why do people choose to stay with Airbnb?* Modul Vienna University.

Salleh Buang. (2017). *Regulating home - sharing*. New Straits Times.

<https://www.nst.com.my/opinion/columnists/2017/06/251179/regulating-home-sharing>

Schor, J. (2014). *Debating the Sharing Economy*. Great Transition Initiative.

<https://doi.org/10.22381/jsme4320161>

- The Borneo Post. (2017). *Airbnb operators need to be licensed*. The Borneo Post.  
<http://www.theborneopost.com/2017/08/23/airbnb-operators-need-to-be-licensed-sha/>
- The Malay Mail. (2018). *Airbnb says in discussions with authorities to collect tourism tax*.  
The Malay Mail. <https://www.malaymail.com/news/malaysia/2018/11/26/airbnb-says-in-discussions-with-authorities-to-collect-tourism-tax/1697186>
- The Star. (2016). *Penang city council going after illegal homestay operators*. The Star.  
<https://www.thestar.com.my/news/nation/2016/07/22/mbpp-steps-up-crackdown-on-illegal-homestay-operators/>
- Tussyadiah, I. P., & Pesonen, J. (2018). Drivers and barriers of peer-to-peer accommodation stay : An Exploratory Study with American and Finnish Travellers. *Current Issues in Tourism*, 21(6), 703–720. <https://doi.org/10.1080/13683500.2016.1141180>
- Wimmer, K., & Pogoriler, E. R. (2006). *International Jurisdiction and the Internet*.  
Covington & Burling LLP. <http://euro.ecom.cmu.edu/program/law/08-732/Jurisdiction/InternationalJurisdiction.pdf>