

SAYING 'YES' OR 'NO' TO SHORT-TERM HOLIDAY LETTING IN STRATIFIED PROPERTIES IN MALAYSIA

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ABSTRACT

This paper determines the legal position of short-term holiday letting involving strata properties. Strata properties are unique where the owners share the common properties and have a say in the management of the properties. Short-term letting is also exciting where it involves online transaction. The current sharing economy trend received mixed views in various jurisdictions and it is still new in Malaysia. This paper adopts content analysis approach where documents, policies and laws related to short-term letting and stratified properties will be analysed. This research seeks to determine whether there are legal and social issues related to short-term letting in Malaysia. A case study on Airbnb is also discussed to gauge the seriousness of the issue. Malaysia has no specific law dealing with short-term letting especially involving stratified properties. Other jurisdictions such as New South Wales, Australia provides laws relating to the requirement to inform the Owner's Corporation of any lease or sublease of strata unit, overcrowding policy as well as review of Bylaws towards protecting the rights and interests of the owner. Strata properties laws in Malaysia lags behind thus short-term holiday letting provisions are much to be desired. Studies are needed to determine the actual impact of short term letting for strata living including any economic benefit arising from short-term accommodation sector or does it cause encroachment to the rights of the owners living in the strata scheme.

Keywords: Short-term letting; Strata properties; Sharing economy; By-laws

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1. INTRODUCTION

Short-term holiday letting is not new in some jurisdictions. Sometimes, it is referred to as 'short term rental properties' or home sharing. Perhaps, it comes into existence as part of economic sharing policy or sharing cities programs and the emergence of various e-services in tourism industries. It may form part of inclusionary housing campaign. Data of properties registered in the websites listing for the services increases every year worldwide and the situation in Malaysia is no difference. Service providers such as the *Airbnb*¹, *Housli*, *HomeAway* and *VRBO* are not new to some tourists or homeowners. They provide a cheaper option for accommodation than hotels using internet services. In fact, these websites based listing provides for homeowners an option to earn side income or money. The types of properties involved also vary. It may include a room in a

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house, a unit of condominium with or without facilities or accessories, and a unit of apartment, landed properties such as terrace houses, bungalows or gated properties. The ranges of prices, which are generally lower than the hotels, attract the guests to choose properties which offer short-term letting other than hotels or a kind of 'Airbnb' services. This research will refer to "Airbnb" as the example of e-service in home-sharing.

Generally, short-term letting may be more popular in urban areas or tourists spots where booking or cancellation of the properties is done on-line, transportation is easy and friendly whereas the option for hotels is always more expensive. The need for specific regulation is obvious since these areas are more regulated where the law applicable includes town planning law or the local authorities' laws. Similar to other on-line services, short-term letting provider such as the Airbnb prefer all communication for booking is done online. The communication means such as Wassup, Wechat or even normal phone messages are cheap, easy and on time. The services are on even without the physical present of the owner which is preferable, sometimes for both, tenant and the landlord. The most important is that the services must meet the expectation of the tenant.

In this paper, the study focuses on the general principles relating to short-term letting and how these principles affect life in strata schemes. In general, matters pertaining to short-term letting is not yet been regulated in Malaysia. Nevertheless, different laws govern different matters relating to short-term letting. For example, a set of laws governs the physical buildings while the management of the building is subject to another set of laws and policies. In Malaysia, the laws that regulate stratified properties or strata schemes are the Strata Titles Act 1985, the Strata Management Act 2013, the Housing and Developers Act 1989 and the Town and Country Planning Act 1976. Nevertheless, in this article, the discussion focuses more on Strata Management Act 2013 since letting of properties relates to management of units rather than titles. In addition, the Contract Act 1950 oversees all types of agreement between the parties including e-contract. In addition, living in strata may subject the properties to tortuous liability, which includes nuisances due to noises, abuse of public or common property etc. In general, there is no specific rule to govern short-term letting.

2. DEFINITION AND SCOPE OF SHORT-TERM LETTING

'Short-term letting' or 'Short term rental' refers to 'sharing room or house service' to others with a determined price. It is commonly associated with holiday or business purpose. Nevertheless, the definition varies slightly depending on the common practice of the places. For example, in the United States, each city employs different definitions of what constitutes a "short-term letting or rental property". The definition is important because the laws applicable differ depending on the types of properties, which later determine the types of licenses and permits and any other laws that may become applicable. Furthermore, the laws vary from state to another state.

Definition on short-term letting and its scope is developed to include several elements and depending on several factors. There are:

- i. Type of Properties*

Short-term rental property may be defined as “a residential dwelling unit, containing more than four sleeping rooms that is used and/or advertised through an online marketplace for rent for transient occupancy by guests. ”Sometimes, a definition of a short-term rental is provided as “the rental of a shared room, a single room, multiple rooms or an entire property for a period ranging from 1-29 days.” Obviously, there are different definitions for the term and for different types of properties may be subject to different laws. For example, the multi high-rise properties or known as stratified properties or the strata or condominium will be subject to strata or condominium laws. A property in guarded and gated area may be subjected to rules and regulation determined by the local authority as well as the management of the scheme. In city area, under the planning or the local authority, residential zoning may be imposed and a stricter law may be applicable in order to maintain the law and order of the area. Thus, if a short-term letting may be adopted and regulated in Malaysia, different policies may be determined to ensure that it does not run contrary to the existing laws. (Alexis, 2018)

ii. Length of Stay

Another criterion for short-term letting is the duration of the period of stay. Many jurisdictions have determined the duration for short-term stay. In Nashville for example, the length of stay must be limited to a period between 1-29 days. However, in Santa Monica, CA, short-term rental regulations are much stricter and prohibit the rental of an entire unit for less than 30 days. Similarly, in New Jersey, the state government recently regulates short-term rentals to require a minimum stay of 30 consecutive days so as to avoid a negative impact on the quality of life in residential neighborhoods. The period of stays would help the authority to monitor and stabilize the area but at the same time avoiding over-regulated issue.

Similarly, when a place that was originally planned as a place for abode or residential but later used as a place for rental will certainly call for determination whether the use of the properties falls contrary to the laws or guidelines prescribed to it. An area is a residential area when the land use is under the category of 'building' or the area is defined as a planned community or cluster of separate or independent structures planned on land that is alienated for 'building' and occupied primarily by private residences or used as place of abode. (Guideline for Siting and Zoning of Industry, 2012). Applying this definition and taking into consideration the lack of specific law on short-term letting, it suggests that the use of land for short-term letting does not breach the law as long as the purpose is as a place of abode irrespective of the length of stays. Thus, some countries provide specific law to determine the number of days fall under short-term letting.

For example, in Singapore, the amendment to Planning Act 1998 (Cap.232) has strictly prohibited any kind of letting of premises for less than 180 days. This has resulted in total prohibition of any kind of short-term letting services similar to Airbnb or Home Away (Chua, 2017). While 80% of the flat in Singapore are public housing, thus the law specifically sets that no flat owner is allowed to rent out the flat for a period below six months. The consequence for flouting the law is that the owner can be fined or the Housing Board may acquire their flats. Nonetheless, owner of private house can rent out for a period less than 3 months. The Singapore authorities also impose a heavy penalty up to \$200,000.00 fine.

Effective from June 2018, the Japan government proposes to regulate short-term letting to the maximum of 180 days a year. Nevertheless, some tourists area such as Shinjuku and Kyoto city

municipals have decided to introduce a stricter law limiting the days to only 150 days a year (Japan Property Central, 2017). It is provided under their laws that host must comply with several requirements including registration of the services as well as the maximum number of days allowable for renting out. It also states that the local authority has the power to introduce a tighter law and the penalty may reach to 1,000,000 yen (“Shinjuku Plans to ban short-term accommodation on weekdays”, 2017).

In France, homeowners are prohibited from renting out their properties for more than 120 days a year. Raids and spot checks are regularly conducted by the authorities in Paris to ensure that Airbnb hosts are not in breach of the laws and regulations (Coffey, 2017). The enforcement of the law is important to build trust and confidence among the people. A similar restriction is taking place in London. A 90-day rule was introduced in 2016 and no property can be rented out on Airbnb or any similar short-term letting listing, for more than 90 days without getting planning approval from the authority (Hickney & Cookney, 2016). Moving forward, it is interesting to see how the Malaysian government regulates short-term rental businesses such as Airbnb. As Malaysian is a developing country any concept of sharing economy is good for the people provided that the government plays a proactive monitoring role.

iii. Number of related Tenants in a Property

Some jurisdictions also regulate the number of tenants allowable in a property. In Singapore, the Planning (Amendment) Act which was passed in February, 2017 allows only a maximum of 6 persons in a property. The Act limits the number of unrelated tenants in private housings to six, a decrease of two from the previous law which was 8. Singapore law has clearly defined any apartments that are rented to more than six unrelated tenants shall fall under the meaning of dormitories thus would be subject to URA's approval. The idea for limiting the number of tenants or occupants present at one time is to minimize issue of overcrowding which may disrupt the use of common facilities such as lift and parking etc. Nevertheless, the number of occupants depends on the types of properties.

The practice in some countries shows that short-term letting or rentals is mushrooming and blooming beyond the normal cottage industry. This has led to the concern of the regulators whether the service should be made legal or otherwise. At present, there are two trends. For jurisdictions that opt to regulate the service, the factor is mainly the increase number of complaints coming especially from the neighbours and the surrounding areas. Nevertheless, lately the concern does not only revolve around the interference of the privacy of the neighbouring residents but the concern of the competition with the traditional hotel industry thus affecting their income. As such, the governments have decided to enact laws to regulate short-term letting across the nation. The initiatives include the introduction of new statutes, determining penalty for breach of the planning laws, strata or condominium laws or tortious act etc. In some countries, the penalty for non-compliance of those rules can be substantial. The city of Miami Beach, Florida, United States was recorded among the earliest states to prohibit short-term letting without permission of the authority. The first offence can be fined starting from \$20,000 (Kartch, 2017).

3. STRATA TITLES LAW AND SHORT-TERM LETTING PRACTICES

The management of high-rise buildings in Malaysia which is also known as strata, stratified, flat, apartment or condominium is subject to a specific law known as Strata Management Act 2013. This law was introduced in 2015 to replace the earlier strata titles law which was introduced in 1985. The Strata Management Act provides a self-regulated administration for strata properties. The owners are required to establish a corporation known as Management Corporation which gives them the right to determine the dos and the don'ts in the running of the buildings through its by-laws. Under the law, the owner only own their unit known as parcel and any common areas are regarded as common property where all owners have access and right to it. As such, any act of letting to anyone who is not a co-owner will disrupt the original arrangement of rights and duties in strata scheme. Nevertheless, such act shall not defeat the spirit of hospitality of the owners. He has all the right to invite friends or relative to stay in his unit provided that no disruption or nuisance caused to the neighbours.

At present, there is no specific provision in the SMA 2013 deals with the short-term letting of strata properties. Since the management is a self-regulated management with clear guidance from the Act, the management of high-rise properties has more freedom to determine what kind of provision needed to regulate short-term letting in their strata schemes. The law allows for the owner of strata scheme to regulate their properties through the provision of the by-laws. The proposed amendments to the by-laws shall be made in accordance with Ss. 32 and 70 of the Strata Management Act 2013. A Management corporation may by special resolution, make additional provisions for its by-laws or make amendment to the existing provisions of the by-laws to regulate the use and enjoyment of stratified properties as well as oversee the administration and management of the said properties (Section 70(2) of the SMA). Section 73 of the SMA provides that any additional or amendment of the by-laws shall bind the Management Corporation as all others who are related to the strata properties including the occupier, the charge, lessee or tenant. The law requires any additional by-laws to be filed with the Commissioner of Building (COB) within 30 days after the passing of the resolution (Section 70(6) of the SMA).

In strata management when there is no specific law dealing with legalization of short-term letting, the option lies in the power and discretion of the strata management such as the Joint Management Body (JMB) or the Management Corporation (MC). The existing provisions for JMB or the MC allow the strata management bodies to regulate their own schemes. This can be done through having specific by-laws providing for or against the short-term letting or allowing with restrictions. Section 58 (g) gives the power to the Management Corporation to make additional by laws in the First Annual Meeting. The monitoring is possible with proper procedures involve. The option to allow or prohibit must be done with proper studies and consultation especially with the owners and tenants in the scheme.

In Australia, issue on legality of short-term letting for strata properties arose in *Watergate v Balcombe* [2016] VSC 384. In this case, two strata owners, Salter and Balcombe had regularly let their apartments using Airbnb listing websites. There were complaints from other unit owners so the Owners Corporation Watergate brought the matter to Victorian Civil and Administrative

Tribunal (VCAT). It was argued that Rule 34 of their By-Laws did not permit short-term letting, which refers to any tenancy agreement for less than 30 days. Balcombe claimed that the Watergate Owners Corporation did not have the power to adopt Rule 34 under the Victorian Strata Legislation which was upheld by VCAT. Watergate Owner's Corporation appealed to the Supreme Court of Victoria where Justice Riordan upheld VCAT's decision that the Owners Corporation did not have the authority to ban short-term holiday lets. *Watergate v Balcombe*'s decision is only apply in Victoria and the position varies from state to state.

For example, the situation in New South Wales is different from Victoria especially after the amendment to the Strata Management Act 2015 (NSW) (Amendment 2016). For example, the NSW Fair Trading had declared any by-laws restricting Airbnb or other short-stay letting in residential-only apartment blocks are invalid (Strata Living Handbook, 2016). In Victoria, it is also provided that any sub-letting of property must be done with the approval of the landlord. For example, in *Swan v Uecker* [2016] VSC 313, the court held that the landlord was entitled to terminate the lease if the tenant breaches any of the sub-lease clauses for allowing Airbnb guests to stay in the premises without the landlord's written permission.

Airbnb is originated from San Francisco, United State of America. Nevertheless, the reaction towards Airbnb services is mix and the law does not seem loose or encouraging. Airbnb was reported to impose strict rules for hosts, where registration with the authorities is made compulsory. It also provides that any advertisement of Airbnb involving any unregistered property is illegal and can be fined USD1000 per day for each listing. There are supports for and against Airbnb in its headquarters state.

4. POLICY ON SHORT-TERM LETTING IN MALAYSIA

Matters pertaining to short-term letting are not specifically determined or assigned to any particular authority in Malaysia. There are a few authorities which can be connected o short-term letting.

i. Ministry of Urban Well Being, Housing and Local Government

The Minister to Urban Wellbeing, Housing and Local Government was reported to have said:

“Due to the nature of travellers drawn to cheap prices and the personal agreement made between the host and the traveller, Airbnb is considered legal. This is as long as no foul play or fraud is involved or intended, such as in cases of Internet scams.”
(Thestar, 2016)

While local authorities in the world are either promoting or restricting short-term letting by providing a clear regulation in its management, the Malaysian government is slow and adopts 'a wait and see' approach on the practices and leave it to the discretion of the local authority as well as the respective ministries to deal with any arising issues. The bottom line to the current state of affairs in Malaysia is that, short-term letting or Airbnb like services is permissible if it does not breach any legal or policy of the jurisdiction and if there is no complaint from any person having *locus standi* to do so, be it in stratified properties or other landed properties. The City Council of Kuala Lumpur (DBKL) has taken a proactive initiative by requiring all short-term letting operators

to register through its e-license services (elesen, DBKL). Failure to register the operation is an offence (Metro News, 2018)

In Malaysia, it is observed that each of the Municipal Council has different policies with regard to short-term letting. For example, there is no such clear guideline or restriction for the Petaling Jaya City Council while in Penang Municipal Authority, although there is no clear law prohibiting for the running of short-term letting but actions are made based on complaints by neighbours. The authority also has taken action based on general provisions available under the Town and Country Planning Act 1976 as well as the Municipal Council of Penang Island (Trades, Businesses and Industries) By-Laws 1991 (Ng & Rao, 2018) The laws clearly state that when a property is for residential purpose and if rental involved thus, it is against the laws.

A circular issued by the Commissioner of Buildings, Kuala Lumpur on 18 November 2015 (COBKL 2015/16) addresses the issue of strata-titled properties being offered as a home stay or short-term accommodation for tourists, and the proposal by the Ministry to introduce a control mechanism to regulate such activities within strata-titled properties. Essentially, the Circular states that the by-laws of a management corporation for a strata-titled property (as provided under the Third Schedule of the Strata Management Act 2013) may be amended in providing additional by-laws to regulate such form of rental, including a provision that proprietors must get consent from the authority if they wish to do so. In addition, the global trend relating to Airbnb has also indirectly developed a general guideline to be followed in any country in which Airbnb has been adopted.

ii. Ministry of Tourism

It is reported by the Malaysian Association of Hotel Owners (MAHO) that there are 3,126 accommodation providers registered with the ministry, which promise incomes to the government (themalaysianreserve.com) while there are 6,452 unregistered accommodation providers registered with Agoda.com and 11,698 accommodation providers on Airbnb as of April 2017. The figures are alarming and increasing. Despite having various plans to promote tourism in Malaysia, there is no clear law on legality of short-term letting. As such, check on short-term letting requires study of various related laws and policies. An analysis to a few provisions in the Tourism Industry Act 1992 (Act 482) show that there are provisions available to define and guide on the need for registration of any premises rents out as accommodation for tourists. Nevertheless, the law only covers property that falls under the definition of "accommodation premises" as provided under Section 2 of the Act as:

"“Accommodation premises” means any building, including hostels, hotels, inns, boarding-houses, rest houses and lodging houses, held out by the proprietor, owner or manager, either wholly or partly, as offering lodging or sleeping accommodation to tourists for hire or any other form of reward, whether or not food or drink is also offered; "

The above definition clearly excludes residential premises which are used for hospitality services such as Airbnb etc. Furthermore, the decision to impose tourism tax for accommodation may disrupt the current arrangement for cheaper accommodation but Airbnb listing service is an exception since the law only targets those providing rooms for rent with more than 10 rooms.

iii. *Ministry of Natural Resources and Environment Malaysia*

The Department of Environment under the Ministry of Natural Resources and Environment (2012) has issued a circular specifying the Guidelines for Siting and Zoning for Industrial and Residential Areas. Among others it provides that the properties designated as "residential" must be used as a place of abode. In this respect, it is advisable for those who want to commercialise his house or strata unit to get a specific permission or license, if any from any related authority.

5. LEGAL RESTRICTIONS FOR SHORT-TERM RENTALS AS PRACTICED IN SOME JURISDICTIONS

By defining the characteristic or nature of short term letting amounts to regulating the practices. In some countries or cities, the laws and regulations that govern the market for short-term letting is developing or changing. Most of the enforcement done based on complaint by the neighbours. Obviously, laws to protect and assure rights and interests of neighbours are vital in reconciliation with the rights of hosts and guests. Worldwide, there are efforts either state based or by the legislators who are working to ease the regulations as well as balancing the rights of public and private to practice sharing economy via short-term rental.

The practice in some countries shows that short-term letting or rentals is mushrooming and blooming beyond the normal cottage industry. This has led to the concern of the regulators whether the service should be legalised or otherwise. At present, there are two trends. For jurisdictions that opt to regulate the service, the factor is mainly the increase number of complaints coming especially from the neighbours and the surrounding areas. Nevertheless, lately the concern does not only revolve around the interference of the privacy of the neighbouring residents but the concern of the competition with the traditional hotel industry thus affecting their income. As such, the governments have decided to enact laws to regulate short-term letting across the nation. The initiatives include the introduction of new statutes, determining penalty for breach of the planning laws, strata or condominium laws or tortuous act etc. In some countries, the penalty for non-compliance of those rules can be substantial. The city of Miami Beach, Florida, United States was recorded among the earliest states to prohibit short-term letting without permission of the authority. The first offence can be fined starting from \$20,000 (Kartch, 2017). There are several legal status of short-term lettings, namely:

i. *Prohibition of Short-Term Letting*

Some countries or cities choose to totally prohibit short-term letting. For example, in San Diego United States, short-term letting is prohibited in all zones. Nevertheless, changes have been called for with strong political support. (Weisberg, L., 2018).

ii. *Limits to the Number of Rental Properties*

In some cities, short-term letting are subjected to zoning system. Some big cities or tourist areas tend to have stricter rules. Among others, it limits the number of short-term lettings in any named zone. For example, in some parts of the cities in New Orleans United States, the authority bans short-term rentals in the French Quarter. They ease the practice of Airbnb and the city enforcement officers cooperated with the Airbnb provider to keep track on any violations and complaints. The smart partnership helps in cutting costs of enforcement.

iii. Regulating Short-Term Letting

In promoting the peace and harmony of the residents and neighborhood and at the same time promoting hotel industry, some cities in the United States introduced "Multiple Dwelling Laws". In New York, the Multiple Dwelling Laws has a provision, which only allows letting of not more than 30 days any breach of the rules shall be fined up to \$2,500 a day and this is among the strictest law on short-term letting (Article 1). Some jurisdictions have provisions with regards to renting out rooms or entire house. They even introduce a code known as House in Multiple Occupation status. There are many justifications for the regulation of short-term letting such as controlling the influx of immigrant, illegal activities, human trafficking, minimizing nuisance, illegal parking and overcrowded. On the other hand, a proper monitoring of short-term letting can minimize problems of taking advantage by the landlord over the tenants, or monopoly.

It could be seen that in the absence of proper law thus, prohibiting or discouraging short-term letting may not be appropriate and restrict the right of landowner to deal with his property. Thus, a win-win approach is to prepare guidelines for landowners to deal with their properties within the law. To cite an example, it was reported that a resident from Berlin, Germany had filed a suit against the State of Berlin. Earlier, the plaintiff had made several permit applications to the authority to rent out his entire home, and to no avail. On 8th September 2017, the Berlin Administrative Court ruled in his favour. He was allowed to rent out his house for up to 182 days per year. This decision sets a law for all Berlin residents that they are entitled to obtain permits for short term letting for up to 182 days a year.

iv. Imposition of Permit or License for Short-Term Letting

While some countries may impose a permit or license for short term letting business, Malaysia is still considering this issue. It has not approached as a national agenda but resolve city by city. Globally, in jurisdiction where license is a condition, the authority may ask for an assurance from the host that the premise is safe and comply with any safety and health requirement, which may include the placement of fire extinguisher, smoke detector, exit door etc. Nevertheless, the requirements depend on the applicable laws such as zoning laws or the relevant authorities such as the Ministry of Health. There is also a requirement that immediate neighbours must be informed of any activities (Fishman, 2018). Sometimes, the information is provided by the short term letting provider such as the Airbnb, Windu, VRBO, etc. relating to the application of license and if there is a need for permit.

v. Is Short Term Letting Subjected to Zoning Laws?

Any host for short term letting needs to identify whether their area areas are subject to zoning laws. If the property is not zoned for short-term letting thus the host can either check with the local authority of the status of short-term letting. Some hosts take the principle that no law means no prohibition thus it is legal. Without any legal provision, it is certainly a risky business. All it takes is only a complaint from a dissatisfied neighbour to trigger a case or perhaps a blast of news in social media then there will be action from the authority.

Another issue revolves around whether a particular unit or parcel is designated for residential use or commercial use. In the case of residential use, does renting out a unit for a night or less than 3 nights falls under the category of residential or commercial? Some definitions emphasise about properties that are used for profit or income generating. In some jurisdictions, common practice or culture of the people may also contribute to the need to regulate short-term letting. Residencies close to public transport station may be more familiar or expose to short-term letting activities. In fact, some landlords purposely bought a unit of property close to train station for a better prospect of property investment, which result in more understanding and cooperation among the fellow neighbours are expected.

vi. *Lease Restrictions on Sub Tenant or Renters*

It is generally understood that in landlord-tenant relationship, a tenant cannot do anything that may disrupt the rights of the landlord. Thus, if a tenant sub-let one of the rooms in his tenanted properties without the knowledge of the landlord, does it amount to a breach of landlord-tenant's deed? Short-term letting by a tenant or renters must comply with the lease or tenancy agreement or deed. Some leases or tenancy agreements contain provisions restricting or prohibiting short-term rentals and sublets unless with permission from the landlord. The agreement shall specify the effect of the breach such as forfeiture by the landlord without notice or compensation. This point can be considered to be part of agreement by the host for the provision to be legally effective.

vii. *Balancing Owner's Right and Rights of Neighbours*

From another perspective, short-term letting may create unhealthy environment in strata schemes. It is a common knowledge that residents in an apartment block have certain rights such as exclusive right of enjoyment thus may stop unit owner next to them for having unreasonable party or illegal activities. Similarly, a tenant has the right not to be thrown-out of their homes because a landlord realises he can make more money renting the place to tourists. Furthermore, short-term letting may affect the right of a young employee to purchase first home at a reasonable price. If the landlord feels that short-term letting is more profitable, the price of properties will be more competitive and hike the price of the properties unreasonably.

vii. *Any Issue With On-Line Booking?*

Internet booking seems to be a norm in tourism industries. Customers have option to make booking with secure payment or simple booking where fee charging is only done upon check-in. In short-term letting, internet has made the booking faster and easier there is not much issue on cheating or fraud. The challenge to service provider is to provide a sustainable system and maintain it while

the customer has no big query, instead welcome internet service as far as tourism and booking system is concerned.

viii. Taxation Issues For Short Term Letting

Other than income tax or general service tax, Malaysians are relatively new with tourism related tax. Nevertheless, some jurisdictions have already introduced short-term letting taxes as well as tourism taxes. Malaysia has taken the initiative but with strong opposition from some quarters of the public to impose tourism tax. Moreover, this tax, if imposed, is not applicable to any rental or hotels with less than 10 rooms. Indirectly, Airbnb listing type of properties is exempted from the tax. Thus, as to the write up of this article, issue relating to violating to the taxation law in Malaysia is none. Nonetheless, some local authorities or the Inland Revenue Department abroad has provision to allow for claim of rental expenses affecting properties for rent subject to certain criteria. Thus, to be safe, all short-term letting owners must keep records of all expenses and incomes throughout the year to avoid any future problems or queries.

ix. Insurance

Insurance is a very relevant issue especially for strata properties. Under the law, the management of strata properties has a duty to keep insured its scheme while the strata owner may on his own choice to insure the internal part of his properties. The question is if any incident caused by the guest of short-term letting services, does insurance cover it? The position in Malaysia shows there is lack of legal protection for both, guest, tenant and the landlord. Other jurisdiction such as Australia shows there is a lack of consistency over how insurers treat short-term lettings. Some insurance companies cover the short-term letting properties provided that the property owner informs their insurers before the sub-letting take place. To the worst, some insurers viewed that sub-letting may void the insurance agreement on the ground of carrying a business or asking the homeowner to pay an additional amount or buying new policy. If the policies are voided, parcel owners who sub-let will be exposed to a very high charge of compensation. It indicates that strata owners who opt to offer short-term letting services has to pay extra cost for their units either it is a package prepared by the MC or of his own choice.

6. CASE STUDY: AIRBNB'S LEGAL TROUBLES.

The information from the media seems to report more complaints concern the Airbnb. Nevertheless, not all information is negative about Airbnb. Amsterdam had become the first city to legalise "Airbnb-friendly law" (Tam, 2014). It was done in support to the policy on sharing economy policy (Razali, 2017). Under the law, residents are allowed to rent out their homes for up to two months of the year to up to four people at a time. However, the owner is subject to relevant taxes, including tourist tax. In early 2017, a bill was also passed in France legalising short-term rentals of primary residences. The UK government has also been supportive. For example, the local government announced reforms that would scrap rules preventing homeowners from renting their properties on sites such as Airbnb (Airbnb, 2017).

The Airbnb has taken the initiative to update its terms of service so that the guests are more aware of local laws, taxes and host's responsibilities. The Airbnb have begun collecting hotel tax for hosts, meaning prices paid by the renters are inclusive of the taxes. In addition, there is always possibility of risk of penalty imposed by the authorities especially in city or tourist area. The types of rules and expectation vary. In New York, sub-letting Airbnb either part or the whole of a property is often considered in breach of a tenancy agreement. The landlords have the right to evict long-standing tenants in order to rent rooms out on the site. Consequently, this may contribute to increase the price of properties etc.

Thus, the next issue concerns the legality of those chooses to stay in Airbnb type of service. The laws are generally being restrictive but no complete prohibition on short-term letting. Furthermore, if the law is suggesting for a total prohibition, yet, the penalty is more for the property owner or the service provider instead of the tenant. In other words, the laws is currently penalising the hosts. The possible hiccup is that what the remedies for the guests or tenant are? Can they sue the hosts? In Malaysia, section 24 of the Malaysian Contract denies the right for damages to any party involve in illegal contract. The parties are left with no remedy.

In relation to this and having concern with the development on short-term letting, the Airbnb introduced among others, a guest refund policy if there is any case of last minute cancellation from the host or if the property is misrepresented. The victims are required to inform Airbnb within 24 hours. In fact, it is advisable for the guests to take out travel insurance and to read carefully if there is any exemption clauses, exceptions etc. in their host websites or fliers.

The Airbnb website has taken a proactive approach in assisting their hosts to check the local laws on short-term renting such as the Airbnb. It has included in its websites a summary of the legal requirements in 50 different cities worldwide, with links for further information. Another effort is to call the local city council checking on the zoning policy. Airbnb also established a centre known as Short Term Rental Advocacy Center. For stratified property, the law imposes extra care where the host has to check with the strata management such as the Joint Management Body or the Management Corporation if there is any short-term rental policy.

7. RESOLUTION OF DISPUTES FOR SHORT TERM LETTING IN STRATIFIED PROPERTIES

Living in strata scheme means willing to share in many things. This includes sharing the common properties such as the use and maintenance of lift, the parking lots, the swimming pools, the roof, the staircases, the playing field, or even the golf course, if any. Hence, disputes or disagreement is expected. The Strata Management Act 2013 has a provision for the establishment of Strata Management Tribunal with the role to hear and determine any claims as provided under Part 1 of the Fourth Schedule of the SMA 2013 (Section 1). In order to qualify to complain, the complainant, such as the tenant, must qualify to the requirement in S. 107 - a complainant must prove that he is a person interested and with leave from the Tribunal. In this case, if the tenant is not happy with any of the services offered by the strata landlord, the law requires him to get the leave from the

Tribunal and in order to qualify for the leave he must be able to prove that he is a person having interest in the property thus his case falls under the jurisdiction of the Tribunal.

Certainly, in addition to the above, the landlord or the tenant who opts for providing short-term letting services must ensure there is black and white with regards to the rights and duties as well as liabilities of the parties via a clear contractual term which have to make known to the guests to minimize dispute. The host may get refer to lawyers for a proper legal advice, if they lack knowledge of the service.

8. LIMITATION ON STRATIFIED PROPERTY OWNERS

In the absence of any specific rules governing on short-term renting, any potential hosts or landlord may use their properties for short-term letting purpose. Their activities may be governed by deed, covenant or by-laws. The owners may choose to prohibit short-term rentals entirely, or subject them to restrictions.

An area of concern is that short-term renting and homestay services are generally unregulated in Malaysia. Nevertheless, the authorities in Penang have been penalising those who rent their properties based on complaints by the public. It was reported that in July 2016, the officials from four departments of the Penang Island City Council (MBPP) carried out a spot check on Birch Regency Condominium in Datuk Keramat, Penang. Four unit owners were fined RM250 each for operating a business without license. Does such action send a clear message to others of the status of short-term letting? Perhaps it tells us that such activities are legal as long as there is no complaint related to that activity. The uncertainty continues.

9. CONCLUSION AND RECOMMENDATION

The paper shows that there are two views on short term letting across the globe. Some jurisdictions welcome and facilitate the trend while others accept with restrictive policies and legislation. The changes in lifestyle and the need for extra income earning shall attract more house owners to opt for home sharing. In fact it is a lucrative tourism product, which shall generate income to individual or the government. In Malaysia, the trend is progressing but the policies are not clear. Legally, there is no specific law on short-term letting thus; guidelines need to be unearthed from the various laws and policies depending on the location and types of properties involved in the scheme. Specifically for strata schemes, the law on strata is silent thus, the by-laws for each strata scheme may be utilised to clearly provide for short-term letting. In general, the authorities will only act if there is specific complaint on the issue. It is recommended that the government should take positive steps towards regulating the short-term letting for a better management of the industries. Some recommendations are:

- a. There is a need for statewide rules and policies, which include the registration of the service, equip with code of conduct;

- b. It is vital for any homeowners or tenants who plan to engage in short-term letting to check their local laws relating to local authority or planning and state laws before getting involve in Airbnb kind of business. It was shown earlier that legal restrictions on short-term rentals are not uniform and can be confusing;
- c. The host as well as the guest of short term letting is advised to check on short-term rental websites to seek help to understand or comply with the laws;
- d. The Ministries having jurisdiction on short-term letting may collaborate and from time to time conduct specific training on the management of short-term letting to avoid any mishap that may tarnish the image of the country;
- e. The Management Corporation of any strata scheme should take positive action to promote short-term letting by enacting clear provisions in their By-Law while at the same time provide guidelines for monitoring purposes.

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ⁱ Airbnb stands for Airbed and Breakfast. It was co-founded by Joe Gebbia and Brian Chesky from San Francisco, US of America. They started their business with renting out their "two cash-strapped roommates". See, "Where did Airbnb get its name? - The Boston Globe"<https://www.bostonglobe.com/lifestyle/travel/2015/10/31/...did-airbnb.../story.html>. In Malaysia specifically, there are a few names available in the internet such as *mybilik*, *ibilik* etc.