

20 December 2016

Short-Term Rental or AirBnB: Where does Malaysia Stand?

In a news article published in *The Star Online* ('Airbnb considered legal', 28 August 2016), the government, via the Ministry of Urban Wellbeing, Housing and Local Government ("Ministry"), is said to have endorsed home-sharing service Airbnb, "as long as there is no foul play".

The concept and business model of Airbnb provides for an easily accessible online platform, whereby proprietors may list their strata-titled or landed properties on the Airbnb website for the purpose of offering short-term rental without the execution of a formal and lengthy tenancy agreement. Airbnb offers great flexibility for both owner/host and customer/guest, and caters to the needs of customers/guests from a broad range of the spectrum in terms of convenience, cost and choices.

As a result of such short-term rental business, there have been several complaints in recent times, particularly from proprietors of strata-titled properties, as to the risks posed when neighbouring proprietors engage in such short-term rental business. Issues such as safety and security measures, proper licensing and operational procedures, and public liability insurance have been raised, which need to be resolved in order to regulate this short-term rental business.

A circular issued by the Commissioner of Buildings, Kuala Lumpur on 18 November 2015 (COBKL 2015/16) seeks to address the issue of strata-titled properties being utilised as a homestay or accommodation for tourists, and the proposal by the Ministry to introduce control mechanisms 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 to provide additional by-laws to regulate such form of rental, including a provision that proprietors of such strata-titled property shall not be allowed to utilise their properties for the purpose of providing a homestay or accommodation for tourists without the prior consent of the management corporation; alternatively, such by-laws may expressly prohibit short-term rental business entirely. The proposed amendments to the by-laws shall be made in accordance with ss 32 and 70 of the Strata Management Act 2013.

At this present time, and unlike the hotel industry in Malaysia, there are currently no laws or regulations in place to regulate this type of short-term rental business. At the same time, there are no laws or regulations expressly prohibiting proprietors from engaging in the short-term rental business. An example of a jurisdiction with existing laws governing the business of Airbnb would be Paris, France where homeowners are prohibited from renting out their properties for more than 120 days a year. Authorities have conducted raids in Paris to ensure that Airbnb hosts are not in breach of the laws and regulations currently in place.

Another example would be the city of Berlin in Germany, where homeowners are not allowed to rent out their units without first obtaining a city permit. Moving forward, it would be interesting to see how the Malaysian government regulates short-term rental businesses such as Airbnb.

Tatyana Aspen Abdul Rahman

This e-Law Alert is brought to you by the Corporate Department. If you have any queries, please do not hesitate to contact the Corporate Department team:

Tay Weng Hwee
Partner
DID: +603 2170 5900
Fax: +603 2161 3933
Email: tw@lh-ag.com

Ong Eu Jin
Partner
DID: +603 2170 5801
Fax: +603 2161 3933
Email: oej@lh-ag.com

Megat Hizaini Hassan
Partner
DID: +603 2170 5863
Fax: +603 2161 3933
Email: mh@lh-ag.com

Angeline Cheong May May
Partner
DID: +603 2170 5853
Fax: +603 2161 3933
Email: cmm@lh-ag.com

Ooi Bee Hong
Partner
DID: +603 2170 5805
Fax: +603 2161 3933
Email: obh@lh-ag.com

Aaron Gerard Sankar
Partner
DID: +603 2170 5811
Fax: +603 2161 3933
Email: ags@lh-ag.com

Aniza Osman
Partner
DID: +607 278 3833
Fax: +607 278 2833
Email: ao@lh-ag.com

Chia Loong Thye
Partner
Tel: +604 370 1122
Fax: +604 370 5678
Email: clt@lh-ag.com

Tan Gek Im
Partner
Tel: +604 370 1122
Fax: +604 370 5678
Email: tgi@lh-ag.com



Published by the Corporate Department

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