

# Navigating the New Wave of Short-Term Rental Accommodation Regulation in Malaysia

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## ABSTRACT

Short-term rental accommodation (STRA) is generally understood as the letting of any dwelling premises for holiday or business purposes for a short period of time. It has surged in popularity among travelers, with the emergence of online service platforms such as Airbnb, booking.com, HomeAway, TripAdvisor and others serving as marketplaces in connecting people looking to let their properties with travelers or tourists seeking short-term accommodation. However, its widespread adoption has raised legal concerns and brought about unprecedented implications affecting various aspects or sections of the community which may have not been properly thought of in its infancy. The laws on short-term renting in Malaysia are scattered and each state has its own ways for regulating the STRA. Applying the library-based approach, this article seeks to analyse the relevant laws and policies, decided cases, newspaper reports, and journal articles to determine the legal and planning issues surrounding the STRA. A reference is also made to the practise in the State of Penang and Selangor. Finally, this article proposed for uniform legal framework to regulate STRA in line with the latest decision Federal Court case *Innab Salil & Ors v Verve Suites Mont' Kiara Management Corp [2020] 10 CLJ 285*.

**Keywords:** Short-term rental accommodation, stratified properties, short-term letting, regulate

## INTRODUCTION

Short-term letting or short-term rental is defined as 'sharing room or house service' to others with a determined price (Asiah, 2020). Meanwhile Cromarty and Barton defined 'short-term letting' as the conduct of letting a home for a period ranging from a single night to a maximum of 90 nights in a calendar year as a means of additional income. Often touted as a gamechanger in the tourism industry, short-term rental accommodation (hereinafter referred to as "STRA") has become a prevalent and a viable option among travelers for its unique offerings. Its concept best-suited the needs and demands of travelers who are seeking for short-term accommodation, either during a business trip or primarily for vacation purposes. It affords travelers the flexibility in choosing from a diverse range of accommodation, ranging from a room, a unit of a condominium or apartment, or landed residential properties. In terms of pricing, STRA generally offers the benefit of inexpensive rates as compared to hotels, thus making it a more attractive alternative especially among price-sensitive vacationers/tourists (Chang & Razak, 2020). Tourists want the ability to choose from a diverse range of accommodation options in addition to the more conventional forms of short-term accommodation, and at a competitive price point (The Edge Malaysia, 2023). Advancement and development of technology have facilitated the widespread adoption and growth of STRAs in Malaysia as all transactions relating thereafter can be done conveniently online, with service platforms such as Airbnb,

HomeAway, Flipkey, iBilik among others serving as marketplaces connecting people seeking to let their properties with travelers/tourists who are seeking for short-term accommodation (Abdullah, 2022).

In spite of its apparent benefits, the widespread adoption of STRA model in Malaysia has been increasingly scrutinised and criticised by both registered hoteliers for its unfair advantage of minimal regulation compared to hotels and by the community affected by its operation, citing STRA as a cause for nuisance and disruptive to the communal living in the residential neighbourhood (Mukherjee, 2023). Furthermore, the current legal position surrounding the operation of STRA in Malaysia is ambiguous; provisions governing matters relating to STRA are scattered, in particular, legislations relating to strata buildings, local government, and to a certain extent, land and planning development laws are all relevant and applicable in governing the various aspects of STRA in Malaysia. It is possible that with legal provisions relating to the various aspects of STRA in Malaysia being scattered, some operators operate or conduct STRA activities with no knowledge or regard to the various legal provisions applicable to its operation, which undoubtedly contributed to concerns raised by the registered hoteliers and the community affected by its operation. Furthermore, the issue of enforcement may also arise.

Adopting the library-based approach, this paper involves analysis of the various relevant sources including statutory legislations, decided cases, as well as newspaper reports and journal articles to determine the legal issues surrounding STRA in the Malaysian context as well as practices adopted towards resolving its issues. Reference will also be made to Penang and Selangor on their approach and stand towards the operation of STRA in the state. Penang stands as the first state in Malaysia to have passed and implemented a specific guideline relating to the operation of STRA in the state, known as the Guidelines for Operating Private Lodgings in Stratified Properties in Penang (*Garis Panduan Pengoperasian Tempat Inap Persendirian di Skim Hartanah Berstrata di Pulau Pinang*) which essentially aims to limit the operation of STRA in specific zones and areas. Prior to the aforesaid, the Penang government has been consistent and proactive in its stand towards limiting STRA operations especially in residential properties primarily due to complaints from the community in residential properties stemming from the inconsiderate and misbehaving tourists (The Straits Times, June 2023).

## LITERATURE REVIEW

### Legal position of short-term rental accommodation

Short-term rental accommodations have sprout like mushrooms since its introduction in Malaysia. Legitimate concerns have been made as to the legality of STRA. Harbans Singh (2019) discussed how the operation of short-term rental is often perceived as illegal due to its commercial nature akin to the operation of a hotel primarily for commercial gains. This may also be attributed to the fact that there is yet a single uniform federal legislation enacted as a response to the rise of STRA-related activities in Malaysia, thus leading to ambiguity as to its legal position. Therefore, study shows that introducing a comprehensive law and consistent implementation contributes to the effective management of the STRA. Practices in other jurisdiction is examined in order to design the best legal framework to govern STRA (Aisyah Chua Abdullah et. al., 2024; Ndaguba, E. et. al., 2022). It is also found out that many European cities are prioritizing the regulation of short-term rental and find it challenging to determine how effective those rules are and under what conditions they work best.

Although the Malaysian Ministry of Tourism Art and Culture has tacitly endorsed Airbnb, one of the platforms providing STRA-related services, in 2013 through the 'Visit Malaysia 2014' campaign, one should be cautious before concluding that such endorsement tantamount to legitimising the position and adoption of STRA concept in the Malaysian context. In 2016, the Ministry of Urban Wellbeing, Housing and Local Government issued a statement clarifying the status of Airbnb to be "legal as long as there is no foul play" on the basis that the transactions occurred on said platform made between the host and the renters are deemed as "private agreements" between the two or more individuals (Meikeng, Aug 2016). Thus, from the contract law perspective, the validity of a short-term rental arrangement is rule-bound to the normal

contractual principles and can therefore be considered valid and legally enforceable so long as it possesses the basic elements of a contract. Furthermore, as STRA arrangements are deemed as “private agreements” between two or more individuals, the Ministry reiterated that it has no jurisdiction or authority over such arrangements. However, reliance on this statement alone should not be viewed as a validation of STRA as a legitimate conduct or activity similar to other forms of short-term accommodations that have been widely adopted nor does it dispel the ambiguity surrounding its legal position in Malaysia.

There are various relevant existing laws that relate to STRA as discussed by Aisyah Chua Abdullah et. al. (2021) including Land Law and Town Planning laws. This is because STRA and its operation relates to aspects of conditions of land use governed under the National Land Code 1965 (“NLC”). It also relates to the usage of specific types of properties to carry out commercial activities for STRA provided under the Town and Country Planning Act 1976 (TCPA) and the Local Government Act 1976 respectively. Harbans Singh (2019) also observed the relevance of TCPA in the governance of STRA-related activities as far as the use of properties or buildings are concerned which is dependent on the type of development approved by the local planning authorities. With regards to the nature of tenancy under the STRA model, it is observed that tenancy under the STRA model does not conform with provisions relating to tenancy under the NLC as its brief and temporary nature of stay does not give rise to a true relationship of landlord and tenant within the meaning of tenancy provided in the NLC. This matter was made abundantly clear in the case of *Innab Salil & Ors v Verve Suites Mont’ Kiara Management Corp [2020] 10 CLJ 285* where the federal court held that the tenancy under STRA was more fitting within the category of licence rather than tenancy within the meaning provided under the NLC since the tenant do not have the exclusive possession of the rented accommodation and the brief nature of the rental does not constitute a relationship of a landlord and tenant as opposed to tenancy within the meaning provided under the NLC and it did not amount in law to ‘dealings’ within Section 70(5) of the Strata Management Act 2013 (“SMA 2013”).

Furthermore, as majority of these provisions predate the introduction of STRA in Malaysia, it can be observed that these provisions may not be comprehensive in governing all aspects of STRA as certain matters relating thereof may not have been covered by these provisions as illustrated in the preceding paragraph, leaving certain aspects of STRA to remain vague.

### **Implications of short-term rental accommodation**

The bulk of the discussion in relation to STRA is focused on the lack of a specific law that governs the operation of short-term rental and its consequences. The rise of short-term renting activities in largely residential areas consequent to the absence of a specific law regulating the same has inadvertently affected the tranquility and privacy in the neighbourhood (Rehan & Muniandy, 2019). There have been rising concerns among homeowners on the compromised safety and public nuisance consequent to the rise of short-term rental of dwelling properties activities (Abdul Aziz. et.al., 2024). The operation of STRA has brought about increased in foot traffic in residential premises, jeopardising the tranquility and privacy in the neighbourhood, especially in stratified properties. In the context of stratified properties, there has been concern that the operation of STRA has contributed to the deterioration of common facilities or amenities by unconcerned and unruly guests (Harbans Singh, 2019). Apart from that, the presence of short-term rentals can significantly alter the social fabric and dynamics of a neighbourhood (Che Mahadi, J. et. al., 2024). High turnover rates of transient visitors limit opportunities for residents to form enduring relationships with their neighbours.

Daud, et. al. (2022) highlighted the various approaches taken by different local governments in individual states of Malaysia and how the local governments utilise existing laws that are relevant in regulating the operation of short-term rental, depending on the types of properties involved. For instance, in high rise buildings or also known as stratified properties, the relevant legislation that can be resorted to in regulating the activity of short-term rental is the Strata Management Act 2013 which was formulated and enacted to govern and preserve the utility of stratified properties besides serving as guidelines for the maintenance and management of strata properties (Wong & Chung, 2024). By extension, the said statute also empowers

management corporations or joint management bodies to enact by-laws or house rules in a particular development property. In 2015, the Commissioner of Building Kuala Lumpur has issued a circular 2015/2016 which enabled management corporations of stratified buildings to curb the prevailing issues of the use of buildings in and around Kuala Lumpur for short term rental. This was further supplemented by detailed guidelines on the procedures for management corporations or joint management bodies in effecting any changes to their by-laws.

The decision of the federal court in the case of *Innab Salil & Ors v. Verve Suites Mont' Kiara Management Corporation [2020] 10 CLJ 285*, had clarified the position of the law on this matter. In brief, the Plaintiff which is the management corporation for the strata property named Verve Suites had enacted a by-law known as House Rule 3 in accordance with the guidelines set out by the Commissioner of Building with the aim to prohibit the conduct of short-term rentals within the property. The proposed House Rule 3 was passed by majority vote in the Extra Ordinary Meeting held by the Plaintiff. The plaintiff asserted that the house rules is for the purposes of regulating, controlling, managing and administering the use and enjoyment of Verve Suites' residential units and common property, and for matters relating to the safety, security and use of the individual units and to protect the common property. The more targeted purpose was to prohibit entirely all forms of short-term rental activities involving Verve Suites' residential premises *i.e.*, when units would be advertised to tourists and holidaymakers seeking short term accommodation *via* internet platforms, booking websites and other related mediums. The said house rule became a contentious matter between defiant parcel owners and the management corporation and was deliberated in court wherein it was held that the house rules enacted by the management corporation of Verve Suites to restrict the use of parcel units for commercial activities, which include for short-term rental was valid and enforceable by virtue of section 70(2) of the Strata Management Act 2013. The basis upon which the court reached its decision was that the Strata Management Act 2013 is a social legislation to facilitate the affairs of the strata living for the good of the community or owners of the strata title. Thus, the welfare of the entire strata community as a whole shall prevail over the commercial needs of few owners of parcel who operated the short-term rental.

Ibrahim and Hussain (2021) highlighted that despite the available measures and the existing legislations in regulating the conduct of short-term stays, the laws are still incomprehensive in regulating stratified properties. The current relevant legislations should be viewed as temporary measures for local governments and to an extent, management corporations or joint management bodies on the issue of short-term rentals in residential properties. It can be said to be a knee-jerk response towards the sudden introduction and rapidly widespread acceptance of STRA activities and a host of issues it brought along with that are affecting community living and urban dynamics as a whole.

### **Significance of the decision in *Innab Salil & Ors v. Verve Suites Mont' Kiara Management Corp [2020] 10 CLJ 285***

The aforementioned case of *Innab Salil & Ors v Verve Suites Mont' Kiara Management Corp Corp [2020] 10 CLJ 285* is an important case to the discussion of short-term rental accommodations ("STRA") and has set a precedent on how issues relating to STRA is to be dealt with, particularly from the perspective of stratified properties and strata community living. As briefly discussed earlier, the case concerned on the validity of the house rules which was passed and enacted by the management corporation of Verve Suites to curtail the use of parcel units for commercial purposes, inclusive of for short-term stays. Among the issues that were deliberated were whether the house rules may override and supersede the express conditions of land use on the title pursuant to section 120 of the National Land Code ("NLC"); and whether the implementation of the house rules is *ultra vires* section 70(5) of the Strata Management Act 2013 ("SMA 2013"). For the first issue, to reconcile the contradiction between the provisions of section 70(2) SMA upon which the house rules were enacted and section 120 NLC, the federal court held that both provisions must be read harmoniously, indicating that grant of powers or rights by one particular provision in law, in this case the NLC, does not preclude the possibility that those rights may be restricted by other provisions of the law. For the second issue, despite commercial purposes were permissible use of the land set by the State



Authority, the federal court held that such use of the land can still be regulated by by-laws passed in accordance with section 70 of the SMA, therefore it not being ultra vires section 70(5) of the same.

The ratio for the federal court's decision and its interpretation of the relevant provisions is that the SMA is a social legislation, wherefore it provides and governs matters pertaining to strata living and all other matters related thereto. The management corporation therefore derives its powers to make laws for the safety and security measures and the interest of the strata community, and this interest shall prevail over the individual commercial interest. In other words, where there are two different interpretations which contravene each other, it is said that the interpretation that is favourable of the interest of the whole community that shall prevail interest of the select few. This is a crucial point to note as it illustrates the importance of construction and interpretations when confronted with conflicting statutory provisions in order to attain the intended objectives of the provisions. In this case, although the individual owner is entitled within his right to be able to deal with his parcel, his conduct is still subjected to the conditions and/or regulations imposed pursuant to the provisions of the SMA intended to preserve and safeguard the welfare and quality of the entire strata living.

The decision in the aforementioned case was echoed in the case of *Marc Service Residence Management Corporation v Wawasan Raya Sdn Bhd & 202 Ors [2020] MLJU 833* where the high court had granted an injunction against the defendants, restraining them from allowing the use of their parcel unit in a service apartment for short-term letting by outsiders. The high court was of the view that the commercial activity conducted on the defendant's premise will be detrimental to the privacy, safety, tranquility and the welfare of the strata community as a whole. These aforementioned cases indicate that the current approach taken in addressing the issue of short-term rental is very restrictive in nature.

De Rozario (2021) notes the significance of the decision in the case of *Innab Salil & Ors v Verve Suites Mont' Kiara Management Corp* to the development of the canons of construction and interpretation in reconciling between an empowering provision and a provision with restrictive and regulatory tendencies, although also commented how such approach may be detrimental and a hindrance towards technological advancements which is occurring at a rapid rate. Short-term renting has made significant impact to the nation's economy and legal reforms is therefore necessary in order to strike a balance between the economic benefits of short-term rental accommodations and public concerns of the amenity impacts of widespread short-term stays; as well as to provide clarity on the position of short-term rental in Malaysia.

## METHODOLOGY

This study employs the doctrinal analysis method to analyse the laws and policies relevant in regulating short-term rental accommodations. This library-based method involves analysis of primary and secondary sources, including the Strata Management Act 2013 and its subsidiary legislation, the Strata Management (Maintenance and Management) Regulations 2015 ("SMR 2015"), National Land Code 1965, Town and Country Planning Act 1976, Local Government Act 1976 and by-law enacted under this act, case laws as well as journal articles and newspaper reports relevant to the subject topic discussion. Guidelines for Operating Private Lodgings in Stratified Properties in Penang (*Garis Panduan Pengoperasian Tempat Inap Persendirian di Skim Hartanah Berstrata di Pulau Pinang*) and Hotel (Selayang Municipal Council) by-Laws 2013 is also referred to and analysed.

## DISCUSSION

### Relevant provisions governing various aspects of STRA in Malaysia

#### National Land Code 1965 and Town and Country Planning 1976

There are several aspects which the owner of strata parcel needs to consider before operating the STRA including category of land use and its condition governed under the National Land Code ("NLC") and

zoning under the Town and Country Planning Act 1976 (“TCPA”) respectively. It is settled law that a proprietor of land is permitted to use his/her land only in accordance with the category and conditions of land use as set by the State Authority by virtue of section 52(1)(b) of the NLC. According to section 52(1)(a) of the NLC, all alienated lands are divided into three categories of land use, which are: “agriculture”, “building”, and “industry”. Based on these categories of land use, the State Authority may impose conditions of land use expressly and impliedly according to the category of land assigned to the alienated land. For instance, for a land alienated under the category of building, the State Authority is empowered to determine the conditions upon which the land may be utilised based on the category of land use assigned, such as for commercial building or residential building, etc. Additional conditions are impliedly imposed based on the category of land use pursuant to provisions of the NLC, i.e. section 115 for agriculture; section 116 for building; and section 117 for industry. These conditions are crucial in determining the type of activities that can be carried out on the land. Non-compliance of the conditions of land use imposed on the particular land would entitle the State Authority to forfeit the land pursuant to section 127 of the NLC. In the context of STRA, the conduct of STRA activities must therefore align with the category of land use and conditions attached therein on the land that cater appropriately to the characteristics of STRA operations, i.e. building and commercial. Nonetheless, proprietors are entitled to apply to the State Authority to vary the conditions of land use by virtue of section 124 of the NLC, subject to the discretion of the State Authority in approving such application.

Apart from the conditions of land use attached to the land, matters relating to development plans are also imperative and relevant to the operation of STRA in Malaysia. Development plan as provided in section 2(1) of the TCPA refers to local plan or structure plan for a particular area. These plans which are formulated pursuant to Chapter III of the TCPA serve as a framework outlining a detailed land-use plan and comprehensive explanations on permissible development and land use according to zones and class-of-use assigned to the area. Therefore, the type of development activity that can be proposed and carried out by the landowner of the developer must conform with the planning and zoning set out in the gazetted development plans. Development plans play a vital role in setting the parameters for activities that can be conducted according to zones. If a particular area has been zoned primarily for residential use, all development within the particular zone must then cater towards residential needs in conformity with the provisions in the local plan in respect of residential zones.

The word “Development” under the TCPA refers to two categories of activity: (1) the conduct of building, engineering, mining, industrial or other similar operations within the land; or (2) the making of any material change in the use of any buildings or land. While the former is often understood to refer mainly to construction-related activities in a particular land or area; the latter is concerned with activities conducted on a premise. Section 2(3) of the TCPA provides for the circumstances which constitutes material change in the use of building, which among others include any use of building or part thereof contrary or inconsistent with the provision of the development plan, or the use of a building originally constructed as a dwelling-house for other purposes. It is enshrined in section 19 of the TCPA that any person (other than the local authority) must obtain a planning permission before they could commence with any form of development unless such development is exempted from such requirement. In the context of the operation of STRA, it can be interpreted as a development within the latter category as it entails a deviation in the initial use of the building or premise, wherein the operation of STRA involves the use of premises primarily designed for dwelling use for commercial purpose in a commercial manner. Although, an argument can be raised as to whether the conduct of STRA in residential premises does constitute material change in the use of the building which necessitates the procurement of planning permission since its activity involves the usage of the premise for dwelling use, which is still in line with initial use of a dwelling premise. This thus leaves room for determination. However, it will not be an issue if the STRA is operated within a premise or property located within commercial zones where full-scale commercial activities are permissible; for instance, service apartments, small office home office (SoHo), etc which are primarily located in commercial areas. Regardless, the aspect of property usage governed principally under the TCPA will factor into the permissibility of the operation of STRA.

## **Strata Management Act 2013 and Strata (Maintenance and Management) Regulations 2015**

It is observed that the conduct of short-term rental is more prevalent in stratified properties, be it residential or commercial units. As regards to the governance of strata properties in Malaysia, matters relating to STRA are also subjected to the provisions of the Strata Management Act 2013 (“SMA 2013”) and the Strata Management (Maintenance and Management) Regulations 2015 (“SMR 2015”) as these provisions principally govern all matters relating to the management and preservation of strata properties. The SMR 2015 prescribes a series of by-laws which are in effect, mutual covenants to be performed by parcel owners, to be implemented and used to regulate and preserve stratified properties (Daud, et. al., 2022).

Scrutinising these provisions will reveal that these provisions are restrictive as to the extent of the usage of parcel units (Harbans Singh, 2019). Regulation 8(9) of the Third Schedule to the SMR 2015 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. Based on this provision alone, it can be interpreted that a parcel unit within a building approved for abode use cannot then be used for STRA since the primary objective of the latter involves commercial usage of the parcel or it will constitute a material change of use of property. Meanwhile, Regulation 10 of the same provides for the general prohibition against causing nuisance while Regulation 8(8) specifically provides for prohibition as to the use of a parcel in such a manner that causes “nuisance or danger” to other proprietors or their families. As the usage of parcels within a strata property for STRA have the inevitable effect of attracting increased foot-traffic of guests in the strata property and thus contribute to the erosion of tranquility and safety among the strata community in general, this provision may be relevant in mitigating these effects. As such, parcel owners in a strata property intending to avail their parcel units for short-term letting should bear in mind these covenants on their responsibilities as parcel owners towards the maintenance of the welfare of the strata community in general and the preservation of its common amenities as non-compliance of these regulations may expose them to legal sanctions.

On the other hand, sections 32(3) and 70(2) of the SMA 2013 empowers joint management bodies and management corporations to make additional by-laws to ensure the safety and welfare of the strata property are safeguarded, by way of passing special resolution to curb or limit activities or usage of parcels contrary to the terms of used set and approved by the local authority. Although matters pertaining to town and local governance are within the powers of the respective municipal or district councils, it would be impractical for these bodies to manage all strata properties within its jurisdiction, especially in a densely-populated conurbation such as Klang Valley where strata properties are aplenty. Hence, these provisions delegate the powers to the management bodies or corporations of the respective strata properties to enact by-laws or house rules to regulate and maintain its strata properties. An example of this is when the Commissioner of Buildings of Kuala Lumpur (COBKL) issued a circular in 2015 which essentially enabled stratified properties management companies to amend their respective legislations to control or limit short-term rentals in their property. This was further supplemented by a guideline which detailed the procedures to be adopted by the management companies to amend its by-laws.

It can be observed that these provisions lean more towards restricting or limiting STRA activities within stratified properties. However, there are certain procedural requirements that are to be complied with towards effecting these restrictions, i.e. passing of by-laws or house rules by way of special resolutions, etc.

## **Local Government Act 1976**

Another statutory legislation applicable (in Peninsular Malaysia) in regards to matters pertaining to STRA is the Local Government Act 1976 (“LGA 1976”). The LGA 1976 contains provisions among others which empowers the local governments to issue any permit or license for the conduct of any trade or business within its jurisdiction. STRA activities may be subjected to licensing requirements under the LGA 1976 similar to other conduct of trade and/or business due to its commercial nature. This meant that all forms of STRA operations fall under the purview of the local authority, where the local authority shall act as the enforcement body in ensuring that all STRA operations within its jurisdiction are conducted in compliance

with the terms of the license, in addition to other requirements relating to licensing under section 107 of the LGA 1976. In addition to power of the local authority to revoke license granted pursuant to section 107 LGA 1976, the local authority is also empowered to impose punishment in the form of fine or imprisonment for failure of the STRA operators to comply with the licensing terms or for not having a valid license to operate STRA in their premise or non-compliance with the provisions relating to licensing or permit in the LGA 1976. In the granting of licenses or permits for the purpose of operating STRA, regard should be given to the planning aspects and land use conditions. As such, local authority will generally rely on the local plans to determine whether STRA activities are suitable and permissible to be conducted at the particular premise in a particular zone before a license or permit can be granted. This also indicate the relevance of planning aspects and land use condition as regard to the permissibility STRA in a particular zone or area. Local authorities therefore play a vital role with regards to the regulation of STRA.

As regards to enforcement on STRA operations, the LGA 1976 also provides power for the local authority to specifically deal with instances of nuisance in public or private premises. The relevant provisions from which the local government may derive its powers in dealing with matters pertaining to short-term stays are sections 78 through 81. Section 78 of the LGA 1976 provides that any person who permits their house to be overcrowded in the sense that it would be injurious or dangerous to the health of the inhabitants shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to a term not exceeding six months or both and to a further fine not exceeding one hundred ringgit for each day during which the offence persists after conviction. Section 79 on the other hand provides for conditions of a house deemed to be “overcrowded”. These provisions are relevant to the conduct of short-term renting as it is susceptible to instances of overcrowding of premises where there may be instances where large volume of guests comprising of a couple of families or groups letting the same space that could not physically accommodate the volume of the guests, thus causing overcapacity or overcrowding in the premise and may be detrimental to the safety and welfare of the guests.

Section 80 of the Act empowers the local authority to take necessary steps to abate or curb all forms of nuisances of a public nature within the local authority area on public or private premises. However, unlike the provisions of SMA 2013 and SMR 2015, sections 80 and 81 of the LGA 1976 does not specifically include situations concerning conducts normally associated with short-term rental that may be deemed as nuisance.

### **Short-term rental regulations in Penang**

Penang stands as one of the states in Malaysia that has proactively addressed the issue pertaining to short-term rental accommodations in its jurisdictions. Among the driving factors that can be attributed to prompting the state government to implement its own regulations relating to short-term rental accommodations is due to the rising concerns of unruly and misbehaving tourists that contributed to disturbances to the local residents (Mukherjee, 2023). As Penang is known for being a prominent tourist hotspot in South East Asia, it is undeniable that STRA offered through platforms such as *Airbnb*, *booking.com* etc would thrive due to the influx of tourists into the state. As such, some homeowners would exploit the flexibility of the short-term rental accommodation model and offer their homes to let to the tourists. Apart from the aforementioned, mounting pressures from the hotel industry may also be cited as the driving factor that prompted the Penang government to implement regulations to govern short-term rental accommodations in the state. Affected by “over-development”, the island state has a surplus of vacant units that can easily cater to the booming and steady influx of domestic and foreign tourists and with the advent of platforms such as *Airbnb*, *booking.com* etc, homeowners are able to generate return on their investment by letting their units to tourists (Scourfield, Aug 2023). This way, STRA may be disruptive to the business operations of conventional accommodation industry such as hotels as more tourists turn to short-term rental accommodations outside of the conventional options.

On 1<sup>st</sup> April 2023, the Penang government had issued a guideline on the operation of short-term rental in Penang. The guideline, known as Guideline for Operating Private Lodgings in Stratified Properties in Penang



(*Garis Panduan Pengoperasian Tempat Inap Persendirian di Skim Hartanah Berstrata di Pulau Pinang*) [“the guideline”] which were enacted pursuant to sections 32(3) and 70(2) of SMA 2013 (Item 2.2 of the guideline) became the default guiding reference especially for management corporations to regulate short-term renting activities within its properties.

Essentially, the guidelines have the effect of banning all forms of STRA at residential units on the island side of the state. However, this restriction is not applicable to six types of commercial properties as provided in Item 4.12 of the guideline, which include serviced apartments, small office home offices (SoHo), small office flexible offices (SoFo), small office virtual offices (SoVo), office suites and duplex offices, which largely fall within the category of commercial properties. Nonetheless, those intend to avail their properties for short-term rental in this category of commercial properties are required by Item 5.1.6 of the guidelines to obtain the approval of their respective joint management bodies or management corporations by garnering a majority support of 75% from the other residents of the building at the annual general meeting or extraordinary general meeting. Additionally, short-term rental operators are required by Item 5.1.2 to have their operations registered with the Companies Commission of Malaysia, and by virtue of Item 5.1.6, with the municipal council through their management corporations or joint management bodies. Furthermore, unit owners operating STRA are required to pay registration fees of up to RM250.00, annual fees ranging from RM250.00 to RM500.00, and one-time safety deposit ranging from RM1,000.00 to RM3,000.00 per unit as stipulated in Item 6 of the guideline. Also, the guideline has also clarified the period for which a unit can be rented out, which is capped at 180 days per year and can only be let for a limited 3 days a week (Item 5.3 of the guidelines). Other requirements or conditions that have been outlined in the guidelines include safety aspect, hygiene, and communal aspects.

With this guideline, the Penang government has shed much-needed clarity on matters pertaining to the operation of short-term rental accommodations, such as the definitive period for which a premise or unit may be let out, its legal position and the overall manner upon which the STRA is operated. Furthermore, by having a clear and proper mechanism that governs and monitors the operations of short-term rental accommodations, it mitigates the concern of neighbouring residents of the conduct of the short-term guests as operators now have clearly-defined obligations to ensure that their guests conduct themselves in a manner that is best for the neighbouring community. Prior to the guideline, short-term letting is often treated as private arrangement between the premise owners and the guests. Due to this treatment or perception, short-term rental accommodations operators are not compelled or imposed to consider the effects of their arrangement on other neighbouring residents since they are legally not privy to their arrangements. As operators are now required to have their operations registered with the municipal council as well as the Companies Commission of Malaysia, they are therefore obligated to follow the guideline that has been implemented by the state government in ensuring the tranquility and welfare of the other neighbouring residents are preserved.

A point to note from the regulation passed by the Penang government is on the categories of properties that can be used to operate short-term rental accommodations. Item 4.12 of the guideline stipulates that only commercial properties within the island as enlisted therein can be used to operate short-term rental accommodations. This meant that operations of short-term rental accommodations in primarily residential properties are prohibited, thus homeowners in residential properties are precluded from partaking in the operation of STRA. This restriction is slightly lax for the mainland part of the state, Seberang Perai wherein properties that do cater for abode use such as apartments, townhouse and condominiums can also be used to operate short-term accommodations. It could be inferred from Penang’s approach in limiting the category of properties that can be utilised for operating short-term accommodations is to ensure consistency and adherence with the planning and zoning objectives that have been approved for a particular area, at least for the island part of the state where tourism is most concentrated and thus, higher influx of tourists. This will effectively ensure residential properties are properly safeguarded exclusively for private residence purposes, where no large-scale commercial activities aside from that has been approved for in the local plan can be conducted e.g. children’s nurseries and child care centres.

Although the guideline's primary emphasis is towards the operations of STRA in stratified properties, Jagdeep Singh Deo, the chairman of the Penang local government, town and country planning committee had nonetheless reiterated that operating short-term accommodations in landed properties is prohibited (Nambiar, 2023). Regardless, by enacting this guideline, Penang has managed to seemingly narrow the gap that has long existed in relation to the legal framework on regulating STRA in Malaysia.

### Short-term rental regulations in Selangor

The local authorities in the state of Selangor had taken an initiative to regulate the hotel businesses in the state through a by-laws specifically enacted and gazetted in 2013. For instance, by-law 2 of the Hotel (Selayang Municipal Council) by-Laws 2013 defined "hotel" as any premises where (a) persons who are harboured or lodged for rent or reward of any kind; (b) rooms furnished by the owner, lessee, principal tenant, occupier or manager of such premises for the domestic use of the persons so harboured or lodged; or (c) inclusive of hostel (except as defined under subparagraph (cc)) or motel, boarding house, inn or guest house. By virtue of this definition, it is safe to conclude that STRA falls under this by-law and therefore, is subject to the regulation pertaining to registrations, license, conditions and enforcement by the respective local authorities.

However, it seems that a potential conflict might arise because two different subsidiary laws—one enacted under the Local Government Act 1976 under the power conferred by sections 102 and 102A and another under the Strata Management Act 2013 (SMA 2013)—may be addressing the same issue with differing provisions. The by-law enacted by local authorities might permit certain activities that the house rules of a building, enacted under the SMA 2013, could prohibit.

According to the rule of legal interpretation, when two subsidiary laws are in conflict, courts often look to the hierarchy of laws, the specific intentions behind each law, and, in some cases, the principle of *lex specialis derogat legi generali* (specific laws override general ones). Additionally, the scope of authority conferred to each legislative body and the intended jurisdictional boundaries (e.g., municipal vs. strata community) are also considered.

## CONCLUSION

The issue of STRA is due to the absence of specific law which governs the matter. Thus, in solving all STRA related issues, the local authority has to refer to the scattered laws. This resulted in more confusion on the operator and also creates discomfort to the other residents living in the strata property. Apart from that, each state has a different view on the issue of STRA. Penang is serious in handling this issue by implementing Guideline for Operating Private Lodgings in Stratified Properties in Penang (Garis Panduan Pengoperasian Tempat Inap Persendirian di Skim Hartanah Berstrata di Pulau Pinang) ["the guideline"] which were enacted pursuant to sections 32(3) and 70(2) of SMA 2013 (Item 2.2 of the guideline) became the default guiding reference especially for management corporations to regulate short-term renting activities within its properties. Essentially, the guidelines have the effect of banning all forms of STRA at residential units on the island side of the state. The decision in the Federal Court case of *Innab Salil & Ors v. Verve Suites Mont' Kiara Management Corp [2020] 10 CLJ 285* has given a new wave to the STRA regulation in Malaysia. By virtue of this case, Management Corporation is allowed to enact by-laws to prohibit short-term rentals activities within the stratified building. However, the enacted by-laws should be in accordance with the provision under the SMA and law. In conclusion, there is a need to have one uniform law governing STRA in order to avoid further conflict between by-laws and house rules.

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