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In recent times, there has been a rising trend of tourists using Airbnb and other homestay type accommodations as opposed to more traditional short-term accommodation options like hotels and service apartments while vacationing abroad. It is no surprise then that many property owners in Singapore are eager to get into the game and tap on this trend.

In Singapore, however, the use of private residential properties to provide short-term accommodation (i.e., for less than three months) remains illegal.

While the government of Singapore, an innovation-driven and entrepreneurial engine, is actively considering ways to regulate the home sharing market, interested parties should adopt a wait-and-see approach and operate with prudence, within the confines of the law.

In this article we explore (1) the law applicable to short-term homestays, (2) proposals to regulate short-term letting, and (3) whether tenancy agreements with creative termination clauses can withstand legal scrutiny.

## The law

In Singapore, the Planning Act (Cap. 232) (the Act) prohibits the use of private residential properties for providing short-term accommodation for a period of less than three consecutive months in return for the payment of rent or other consideration. It is noteworthy to mention that the Act's provisions work this way:

- section 12(1) of the Act prohibits the carrying out of any development without planning permission;
- section 3(3)(ca) of the Act defines "development" to include any use of a building constructed as a dwelling-house for a purpose specified in the Fourth Schedule;
- the Fourth Schedule lists the use of any dwelling-house for the purposes of providing short-term accommodation of less than three consecutive months; and
- section 12(4) makes a breach of section 12(1) an offence.

Therefore, the Act makes the use of any dwelling-house for purposes of providing short-term accommodation without planning permission an offence; and to avoid committing an offence under the Act, homeowners planning to do short-term letting of less than three months must obtain planning permission from the Urban Redevelopment Authority of Singapore (URA).

Offenders are liable to be fined up to S\$200,000 and repeat offenders may also be imprisoned for a term not exceeding one year, in addition to the S\$200,000 fine. Those who persist in renting out their property even after conviction may be subject to a further fine of S\$10,000 at the maximum for every day or part of a day during which the offence continues.

URA is empowered under the Act to serve information notices on suspected offenders and enforcement notices on offenders, and enter upon the property in question if it has reason to believe that there has been a breach of the Act.

Two persons were recently charged on 5 December 2017 for allegedly failing to obtain URA's permission to rent out four units at D'Leedon, a condominium along Farrer Road, for a term shorter than the minimum stay duration under the Act. This will be the first prosecution of its kind under the Act.

## The future of short-term letting of private properties

Despite its present illegality, it is not all doom and gloom for interested parties, being home sharing platforms, tourists, homeowners and developers with units to let. To begin with, the lowering of the minimum stay duration from six months to three months with effect from 30 June 2017 is a step forward.

Minister of National Development, Lawrence Wong, has stated that he is hopeful that there is room for short-term letting of private homes in Singapore, provided that there are proper safeguards and controls in place. URA's chief concern is that short-term letting goes against the preservation of the residential character of a private housing estate. Some homeowners have admitted to being ill at ease with the presence of transient occupants, usually tourists, in their private housing estates, citing reasons of security and the maintenance and upkeep of facilities being compromised.

As the frontrunner in the home sharing scene not just locally but worldwide, Airbnb (which has its Asia-Pacific headquarters located in Singapore) is certainly invested in the future of short-term home sharing in Singapore and has directly engaged URA in discussions on establishing a policy framework and setting regulatory parameters for short-term home sharing locally. Some of Airbnb's proposals to ameliorate URA's and other dissenters' sentiments include:

- capping the number of nights a property may be rented out for annually,
- only renting out spare rooms in homeowners' primary residences,
- performing background checks on short-term tenants, and
- sharing rental commissions with the development's Management Corporation Strata Title (the MCST) by channelling a percentage of the profits made from the short-term letting into the MCST's management fund for the benefit of all residents in the community.

At URA's end, URA has been examining the option of creating a new use category for private residences that could allow homeowners of such properties to engage in short-term rentals of less than three months in duration. An upcoming public consultation to scope out the general public's views on the array of proposed measures in relation to this new use category is set to occur in the near future.

## Practical implications for tenancy agreements with creative termination clauses

Some "hosts" appear to have attempted to circumvent the required minimum three month stay duration by inserting a diplomatic clause into tenancy agreements that allows a tenant to pre-terminate at any time a tenancy of three or more months at short notice without penalty. This means that, notwithstanding a stipulated lease term of three months and upwards for instance, the actual lease term may potentially span only a few days or weeks and would end after the tenant serves a pre-termination notice without the tenant having to compensate the landlord. These tenancy agreements do not require a minimum stay of three months before pre-termination can take place.

Our view is that this practice is neither a water-tight nor fool-proof way to get around the prohibition against short-term letting. It is possible that URA may see through these attempts and consider them an obvious effort to flout the minimum stay period. As such, any tenancy agreement which allows a tenant to pre-terminate before the three months without compensating the landlord for the pre-termination would arguably run the risk of being in breach of the Act.

## Conclusion

The sharing economy has taken off globally and the government of Singapore is fully cognisant that this is not a passing fad. The legalisation of short-term home sharing in Singapore is therefore positively on the cards. Until then, interested parties should adopt a wait-and-see approach and operate with prudence, within the confines of the law.

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Dentons Rodyk acknowledges and thanks associate Amanda Tai for her contribution to the article.

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