

CERTAIN LEGAL ASPECTS OF AIRBNB IN THAILAND^{*}

Alisa Pandey

Master of Laws Program in Business Laws (English Program)

Faculty of Law, Thammasat University

Email address: alisapandey5512716@gmail.com

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Abstract

This article examines the problems on the Airbnb online business platform in Thailand, which is becoming a major problem in Thailand. It is because Thailand is one of the best tourist destinations. Hence, the country does not have the law supporting Airbnb.

Because of this problem, this article applies a comparative study to examine how other countries i.e. the United Kingdom and the United States of America, has been dealing with Airbnb. In order to find a recommendation for Thailand.

From the comparative study, the article proposes that, Airbnb in Thailand should be recognized and regulated to facilitate the country's tourism and economy and ensure the safety of the people involved in the Airbnb services. In the meanwhile, the government should consider amending Section 4 of the Hotel Act B.E. 2547 (2004) by redefining the definition of the hotel in the current Hotel Act.

Keywords: Airbnb, Sharing Economy, Illegal, Thailand, Hotel Act

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1. Introduction

Airbnb is an online platform to help the world to move forward into technology. Nowadays, there are a lot of people who are traveling all the time on a business trip or a family trip. Everyone needs a good and safe place to stay. Good place does not mean all the expensive hotels but also guesthouses where Airbnb has started.¹ Airbnb is an easy and affordable place where people can book a place to stay and it depends on the visitors that in which particular area they want to stay and today, Airbnb has over 6,000,000 listings in 81,000 cities and 191 countries including Thailand². Now people may see that Airbnb is growing extremely fast in our society and with little help of them we can grow our country economically as well. In the meanwhile, Thailand has invested a lot in the hotel, residence, guesthouse businesses and giving service to foreigners with excellent accommodations but as we know these days the businesses are down everywhere, Airbnb could be an excellent opportunity to grab and promote our tourism section in Thailand.³ However, the fact that Airbnb business in Thailand is still not approved by the Government, people still list properties through Airbnb listing, it is because, people believe that, they should be allowed to make more income from their properties. Therefore, the sharing economy concept has been embraced by the entrepreneurs as delivering new forms of opportunity for local and national economies.

¹ Erika Rawes and Kailla Coomes, 'What is Airbnb?' (*Digital Trends*, 13 September 2019) <<https://www.digitaltrends.com/home/what-is-airbnb/>> accessed 1 March 2019

² Craig Smith, '105 Airbnb Statistics and Facts (2019) | By the Numbers' (*DMR*, 6 September 2019) <<https://expandedramblings.com/index.php/airbnb-statistics/>> accessed 6 September 2019

³ Parichart Bootvong and Than Dendoung, 'Review Article: The Review of Legal Issues Related to the Impacts of Online Vacation Rental Platforms (OVRPS) on Vacation Condominium Rentals and the Hotel Industry in Thailand' (*Journal of Architectural/ Planning Research and Studies*, 2018) 15(1) 1-16 <<https://www.tci-thaijo.org/index.php/jars/article/view/154189>> accessed 3 April 2018

2. Characteristics of Airbnb

Airbnb is still a very young business concept. The short-term rental home for vacation means there are no strict rules and regulations. However, there are a lot of common qualities that set Airbnb most successful from the rest online business operators. The first and most important key is location, location is everything⁴ that a person would look for on their vacation and recently San Diego and Miami were ranked the top most productive Airbnb cities, it is because of the location and affordable price as well. Next, Airbnb focus on the experience, Airbnb claims that travelers are not interested in just seeing museums or famous cathedral but also having a truly amazing experience like a local.

The most listed Airbnb in Thailand would be Phuket, Bangkok, and Chiang Mai respectively.⁵ However, Thailand does not have any specific law for Airbnb and it comes with a huge problem because some group of people prefers Airbnb and when it is not legal then it cannot be safe and that means it does affect to our country's economy. Also, Thai's government has just announced on 13th May, 2018, that Airbnb is an illegal business in Thailand according to Hotel Act B.E. 2547.⁶

⁴ Airbnb, 'Spaces and Places' (Airbnb, 27 June 2014)<<https://blog.airbnb.com/spaces-places-guests-want-know-location/>> accessed 24 June 2014

⁵ Suchat Sritama, 'Thai Airbnb hosts serve 1.2M' *Bangkok Post* (Bangkok, 17 February 2018) <<https://www.bangkokpost.com/business/1413510/thai-airbnb-hosts-serve-1-2m>> accessed 17 February 2018

⁶ Post Reporters, 'Airbnb bookings illegal, court declares' *Bangkok Post* (Bangkok, 18 May 2018) <<https://www.bangkokpost.com/thailand/general/1467442/airbnb-bookings-illegal-court-declares>> accessed 18 May 2018

2.1 Sharing Economy

Sharing economy is a concept of shared economic society⁷ which was first mentioned since 1978 in the academic article "Community Structure and Collaborative Consumption" by Marcus Felson and Joe Spaeth, to generate revenue that comes from the exchange of consumption of goods or services with the economic value from unused resources between individuals and groups through digital platforms. The keys factor that makes sharing economy concept more accepted are;

1. weak economic conditions after the global financial crisis in 2008, which is a period of high unemployment and people would do something to earn more.

2. access to information on social networking and increased cloud that gives access to qualitative and quantitative information about factors that influence demand and better consumer behavior.

The business can use technology and digital data to match between users and service providers. The service provider can allocate time to share that product or service. While consumers can choose and access such products or services without having to waste money to buy as owners, such as cars, homes, bicycles or home appliances, etc. Examples of popular businesses in a shared economy are growing. As leaps and bounds include Airbnb and Uber.

2.1.1 Advantages of Sharing Economy

The major advantages of this concept are:⁸

1. reduce costs instead of buying assets or renting assets from the lessor in the same way and

⁷ Arun Sundararajan *The Sharing Economy: The End of Employment and the Rise of Crowd-Based Capitalism* (Massachusetts, The MIT Press 2016)

⁸ Hannah Neuburger, 'The ever-growing sharing economy: Pros and Cons' (EU-Startups, 25 February 2019) <<https://www.eu-startups.com/2019/02/the-ever-growing-sharing-economy-pros-and-cons/>> accessed 12 February 2019

2. pushing for changes in consumer behavior in regard to value and better resource allocation Especially in the case of having to decide to buy products that can be shared or high-priced products by Ernst & Young's research in 2015, evaluating the value of products that can be shared, such as vehicles, drilling equipment, lawnmowers, accounting for 20-30% of the total cost of the household and from the Harvard Business Review survey⁹ found that most customers are willing to share resources if they can save at least 25% of that asset price.

Besides, economic benefits in addition to saving money It also encourages consumers to use their remaining income to invest in further expansion.

2.1.2 Disadvantages of Sharing Economy

The first disadvantage of this concept is that it creates a temporary consumption culture. The consumers will choose to buy products and services that focus on convenience and price rather than considering the relationship between consumers and business groups because most will use that product or service also, this concept also affects the standards and the labor market.

Besides, these changes also add to the challenges of traditional businesses, especially in mature markets. The Oxford Martin School research unit assessed the impact of sharing economies that accounted for 0.25% of GDP¹⁰, although the proportion of the impact on the economy is still not very high. But can have a significant impact on some industries, for example, since the end of 2015, competition in the tourism and service industries has

⁹ Alexandra Samuel, 'What customers want from the collaborative economy'(Harvard Business Review, 8 October 2015) <<https://hbr.org/2015/10/what-customers-want-from-the-collaborative-economy>> accessed 8 October 2015

¹⁰ Credit Suisse, 'The sharing economy' (Investment Strategy & Research, Global Investor 2.15, November 2015)<https://www.oxfordmartin.ox.ac.uk/downloads/GI_215_e_GesamtPDF_01_high.pdf> accessed 15 November 2015

become fiercer when Airbnb businesses provide millions of rooms Which is more than a room at a hotel chain InterContinental and Hilton Worldwide, which are open for service at the same time or Uber's business service and passenger car business, causing the numbers of new taxis in the UK to drop by 97% in the first 4 months of 2016¹¹

3. Difference between Booking.com, Agoda, and Airbnb

Airbnb platform is more like a short rental houses based, whereas booking.com and Agoda platform are mostly used by hotels. There is some difference between Airbnb, booking.com, and Agoda.¹² One of the best examples is the guest's expectations. It is because Airbnb is more like stay at home accommodation, so they are aware that they are going to stay in someone's house, their expectation will be accordingly. While booking.com and Agoda are hotels which can be a high expectation from the guests. A place at the hotel standards 24 hours check-in, hospitality of the hotel, on time breakfast.

Also, Airbnb must have a host who owns or take care of the property or accommodation, in some country, the owner needs to stay with the guests at the property too. However, Agoda and booking.com do not need to have the owner to stay at the property at all.

While Airbnb has two-way reviews where the owner can leave reviews for the guests too. Even though this feature is very useful for keeping the guests responsible for their actions, booking.com does not have this feature. So, these are the reasons why Airbnb, booking.com, and Airbnb are the difference. However, the purpose of my study in this thesis will not apply to

¹¹ Nicholas Megaw, 'Uber expansion leaves taxi industry in urgent need of a lift' *Financial Times* <<https://www.ft.com/content/c4ded228-1910-11e6-bb7d-ee563a5a1cc1>> accessed 16 May 2016

¹² Michael Rozenblit, 'Airbnb vs booking.com for Guests & Hosts: The Pros and Cons,' (The World Was Here first, 20 June 2019) <<https://www.theworldwasherefirst.com/airbnb-vs-booking-com/>> accessed 30 May 2019

booking.com and Agoda since their main purpose of business is with the hotel, not a house accommodation.

4. Types of Contracts Related to Airbnb

Airbnb has several of legal relationships involved. (i.e. host with Airbnb, Airbnb with guest, host with guest) However, the main focus is the contract between the owner and the guest. It is because when a person uses Airbnb, there's already a contract made via Airbnb.com (right after the registration on the website) between them, no matter if he or she is the guest or the owner.

Airbnb is not an owner or operator of the properties. To access certain features of the Airbnb website and its tools, and to book an accommodation or create a rental listing, the person must register to create an account and become a member. To do that, the person must agree to its Terms of Service. This is the contract which people are signing with Airbnb.

Once the registration has been made as a member of the Airbnb website and the guest have chosen the particular accommodation then the guest must sign a separate contract with the owner (if any). At that time, guest will be paying for the use of service of Airbnb because Airbnb has provided the service of room or house hunting for a short period of time. So, the rent which has been paid is for the accommodation which is in addition to the Airbnb fees. However, the rental money will be paid to Airbnb once the guest has chosen the accommodation and that money will be transferred to the owner or the owner from Airbnb only after the guest has checked out of the accommodation.

Besides, hosts can ask guests to sign a contract because some hosts required guests to sign contracts or rental agreements prior to check-in, however, the owner must disclose the actual contract terms before the booking and include the contract terms when messaging the guests¹³.

¹³ Airbnb, 'Terms of Service' (*Airbnb*) <<https://www.airbnb.co.in/terms>> accessed 21 January 2019

5. The Legal status of Airbnb under Thai Law

According to the Hotel Act in Thailand, Section 4, Hotel means “an accommodation established for business purposes of providing temporary accommodation service for travelers or any other person in exchange for compensation.” This law does not include the meaning of the treehouse hotel, guesthouses, tent houses.

Airbnb is the largest business platform online to create a listing or renting a house or rooms for a short period of time through a computer or smartphone which is convenient and easy for tourists all around the world. In the past years, there are around 4 million Airbnb in 191 countries with 160 million of the guests. In the past few years, there are many users of Airbnb because the price and the location are the keys where we can find cheap rooms and near tourist attractions. In the view of tourists, it should be considered a good thing because we have a cheap room in a good location also convenience but not for the neighbors.

However, there is no specific law or involved authority who support the status of such businesses in many countries. Especially in Asian countries, which results in Airbnb being seen as a grey business or illegal business. The only way to legalize Airbnb in Thailand is that we should amend the law of the Hotel Act and support this online platform.¹⁴ However, some laws involved in this business are the Hotel Act, the Immigration Act, the Condominium Act, the Civil and Commercial Code, the Public Health Act and the Town Planning Act.¹⁵

6. Legal status of Airbnb under the United Kingdom Law and the United States of America Law

¹⁴ Hotel Act B.E. 2547 (2004)

¹⁵ Immigration Act B.E. 2522 (1979)

6.1 Legal status of Airbnb in United Kingdom

'The United Kingdom Visit Britain and Visit England' have joined as a partner with Airbnb to promote local tourism of the United Kingdom to let people come and visit so the government can boost their local economy and income. The reason behind why they have partnered with Airbnb is to promote marketing product such as local experiences, tour program lead by the local experts and other activities, therefore, Airbnb can also generate income from those activities. The target of this campaign is mainly for the young population of the Great Britain, as the government wants to boost young people to travel domestically. So, this new partnership which has established in 2019, will be the reason for the increasing own fresh revenue for local business, the government and Airbnb itself. Also, will help the United Kingdom gain the number of tourists and promote their locality.¹⁶

6.2 Legal status of Airbnb in New York

It is a no surprise that the New York City is one of the most USA' biggest tourist spot and New York alone has over 16,000 Airbnb listing on the website.¹⁷ However, the strictest Airbnb regulations are found in New York and San Francisco and Santa Monica. It is because New York law allows only permanent resident to rent out the property in which the landlord or the owner of the property must be staying or present during the stay of the guests, where the stay should not exceed 30 days.¹⁸

Here are the laws and regulations of New York City that should be in consideration before listing on Airbnb platform.

¹⁶ Tracey Edginton, 'Tourists to UK forecast to spend record level in 2018' (*Visit Britain*) <<https://www.visitbritain.org/tourists-uk-forecast-spend-record-level-2018>> accessed 3 June 2019

¹⁷ Jon Fingas, 'Airbnb agrees to share data for over 17,000 NYC listings' (*engadget*, 26 May 2019) <<https://www.engadget.com/2019/05/26/airbnb-nyc-listing-data-sharing-agreement/>> accessed 26 May 2019

¹⁸ Airbnb, 'Traveling help: New York' <<https://www.airbnb.com/help/article/868/new-york—ny>> accessed 27 March 2018

1. Business License: must obtain a special permit or a license before investing in Airbnb rental properties under the law of City's new business portal¹⁹ and the New York Administrative Code or called ADC

2. Rental Control: If the property is under rent control, the first thing to consider is that the 'The New York Rent Guidelines Board's website',²⁰ to see if the investment property is subject to rent stabilization or rent control and to ensure that there is no violation to any regulations.

6.3 Legal status of Airbnb in San Francisco

As mentioned above, San Francisco is one of the strictest for Airbnb business same as New York, where the owner or the landlord must stay or present with the guests during their stays²¹. However, city of San Francisco short-term rental law claims that the duration of the rental must not exceed 90 days and the property must register with the city council before accepting guest on Airbnb platform. However, San Francisco is one of the most profitable Airbnb cities at the start of 2018. Yet, still due to the new Airbnb laws and regulations, it is because short-term investments for Airbnb is strict now and the city might face some more difficulty in putting the property online. To avoid falling into the illegal part of the laws, the investors need to keep an eye on the updated existing laws and regulations in Airbnb in San Francisco.

Here are the laws that should be considering before listing Airbnb platform.

1. Permanent Residents Only: This rule applies in order to register the property on the listing, the owner must live there in the property and

¹⁹ NYC Business, 'What's required to do business in New York City?' (*NYC Business*)

<<https://www1.nyc.gov/nycbusiness/startabusiness/>> accessed 3 June 2019

²⁰ *ibid.*

²¹ Airbnb, 'San Francisco's Registration Process: Frequently Asked Questions' (*Airbnb*)

<<https://www.airbnb.com/help/article/1849/san-franciscos-registration-process-frequently-asked-questions#Who%20needs%20to%20register>> accessed 20 April 2017

United States of America particularly San Francisco for at least 275 days per year. Also, it is necessary to provide the full documents in proof that the address of the property will be registered as the primary residence. And if this cannot be proved then the owner would not be eligible to take part in Airbnb San Francisco.

2. Registration and taxes: Every Airbnb investor must register in the city to obtain a business registration certificate and short-term residential rental certificate in order to put the property on the Airbnb online platform. However, the owner is required to pay the tax which required a 14 percent transient occupancy tax (TOT) on a property reservation for less than 30 days

3. The 90 days rule: The 90 days rule means the limitation where the owner of the property is not present in the Airbnb property of a maximum 90 days a year then the said property cannot be rented out for more than 90 days

4. Liability Insurance: the owner is required to cover liability insurance with a minimum 500,000 dollars in coverage.

5. The hotel taxes must be paid: Airbnb investor in the San Francisco must and need to pay the hotel taxes as mentioned above the TOT tax 14 percent and it must be collected from the renters and paid to the city as well.

7. Conclusion and Recommendation

The United Kingdom and the United States have recognized the business of Airbnb in their countries. However, they also have put some restrictions over the business to make it fair and equal for the hotel business as well. They know the importance of the tech world, where you can easily book things online and it is easier for every age of the group. Since both countries have a lot of tourists each year and that is what generates revenue of the tourism and travel department. The government does not want to miss the chance or the opportunity to grow and make more income into the country by supporting their people to put their properties in use to

make more income because this way both people and the government will get to generate their revenue and also get more tourists in their country as well.

However, in Thailand, this kind of business is also very popular is being used by the tourists every day but letting the properties listed in Airbnb in Thailand means it is illegal and not yet recognized.²²

However, an online platform for accommodation like Airbnb is not yet recognized, just because the short-term rental is not legal in Thailand according to the law. Meanwhile, Airbnb plays an increasingly important part in Thailand's hospitality sector especially in Phuket, Koh Samui and Bangkok, it is because Airbnb offers affordable accommodation and it is very budget-friendly for the budget-travelers and it is also contributed in the growth of our country or Thailand's economies.²³

Recommendations

Nowadays, Airbnb is having a big impact on the tourism accommodation industry. However, there is still the question exist of why people tend to use or choose Airbnb rather than traditional hotel accommodation and what will be the impact of the traditional hotel business in the future. Airbnb represents a very actual topic and most popular tools in the tourism department, as the fact that younger users are the main customer that could lead to the future expansion of this Airbnb business because a lot of youngsters is starting to do a solo travel or so-called independent travel, meanwhile, Airbnb is not very popular or well known by the senior travelers because Airbnb required to use the technology but the senior could be the perfect Airbnb owner because usually seniors own a very traditional houses which is, by the way, is very appreciated by the

²² จักรี อุดุลนิรัตน์, ปัญหากฎหมายเกี่ยวกับการนำห้องชุดคอนโดมิเนียมให้เช่าระยะสั้น (ปีที่ 11 ฉบับที่ 2 วารสารนิติศาสตร์ มหาวิทยาลัยนเรศวร) (Chakri Adunnirat, 'Legal Problem Concerning Condominium Unites offering Short-Term Rental' (Naresuan University Law Journal, 2018) 11(2))

²³ n 10.

Airbnb users who wants to live as a local and experience the authentic of the place.

The positive impact or effect of Airbnb is that they have the power to bring more tourists or visitors to a destination based on the fact that they are going to stay at the Airbnb accommodation. That is why the economy of the country is higher and the government can generate so much income if they allow such online business type in Thailand.

Also, Airbnb is one of the most popular and successful sharing economy business, sharing economy is the economic model that anyone has to share it in the form of rental to create additional value of assets or the simplest terms where it is the use of the technology to facilitate the exchanged access of goods or services between two or more parties and this value exchange occurs through a shared platform or marketplace.

Therefore, Airbnb in Thailand should be recognized and regulated to facilitate the country's tourism and economy and ensure the safety of the people involved in the Airbnb services. In the meanwhile, the government should consider amending Section 4 of the Hotel Act B.E. 2547 (2004) by redefining the definition of the hotel because, in the current Hotel Act, hotel means an accommodation established for business purposes of providing temporary accommodation. However, the capsule hotel, treehouse hotel or the gambling hotel are not recognized as the hotel business because for operating a hotel business in Thailand, the operator needs to have the construction permit (these listed hotels are not constructed) therefore, these hotels cannot apply for the construction permit and eventually are not legally operated hotel business in Thailand.²⁴

²⁴ Tourism Development, 'Office of Tourism Development, Ministry of Tourism and Sports' (1979) Thai Home Stay Standard, 4 edn, Bangkok, Chulalongkorn University

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