



**Asia-Pacific  
Economic Cooperation**

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## **An Overview of Regulation Making in the Digital Age**

Submitted by: Genaxis



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Practices - Regulatory Reform the  
Digital Age  
Port Moresby, Papua New Guinea  
12-13 August 2013**

# An Overview of Regulation Making in the Digital Age

*Sharing of Experience for Short Term Rental Regulation Review In Malaysia*

By  
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12<sup>th</sup> August 2018



# The Landscape of Today's Challenges to Traditional Regulation

Business Challenges

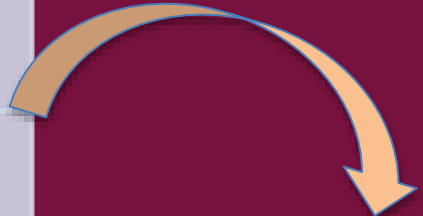
The Pacing Problem  
Disruptive Business Model

Technological Challenges

Data, digital privacy and security  
AI – based Challenges



Regulators

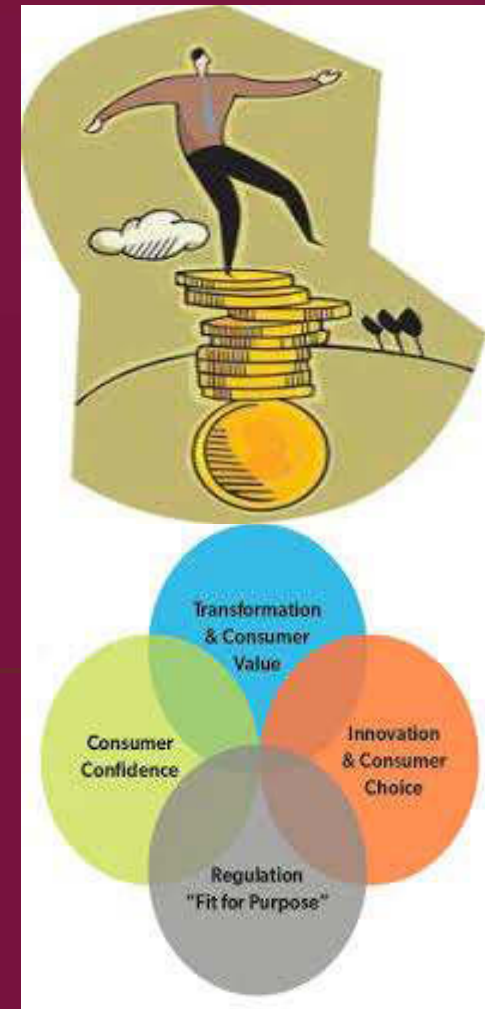


Expectation on Regulations

**“Forward-looking” and “light-touch”**

# BUSINESS CHALLENGES: The Pacing Problem

- Lengthy **policy cycle** anywhere from 5 to 10 years. A startup can develop into a company with global market reach in a matter of months.
  - Example:
    - Airbnb - 21,000 arrivals in 2009 to 80 million in 2016. Meanwhile, cities and states are still trying to figure out how, and if, they can regulate short-term rental markets.
    - Ride-hailing services uber, Lyft, are facing similar hyper-growth with market size reported as USD 1.5 billion in 2017, with fleet size of over 100,000 in the same year. The number of members is forecast to grow at over 20% between 2018 and 2024. Regulators are struggling to adapt.
    - “fintech” are expected to attract more than \$46 billion in investment by 2020.
  - Regulators are challenged by the **existing patchwork of regulations**. Many national regulatory systems are complex and fragmented, with various responsible agencies exercising overlapping authority. The trade friction resulting from the redundancies and patchworks of regulation lies at the very heart of today’s trade agenda.
- Coordinating with regulators across borders is another known challenge with or without emerging technologies.



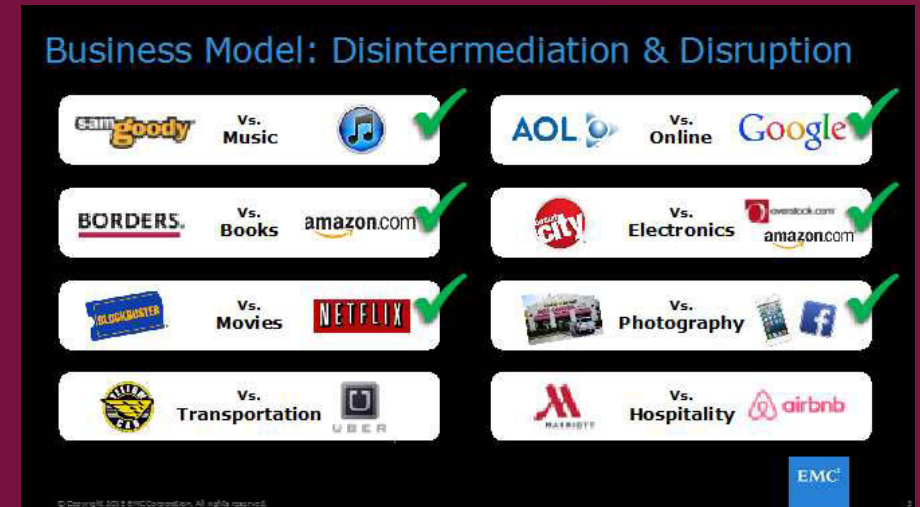
# BUSINESS CHALLENGES: Disruptive Business Model

1 Products and services evolve, they can shift from one regulatory category to another.

- Example: ride - hailing company delivers food, it can fall under the jurisdiction of health regulators and if the business is expanded into helicopter service, it will fall under aviation regulators. If it uses autonomous vehicles for passengers, it may come under the jurisdiction of telecommunications regulators.

2 The fast evolving business models make it difficult to assign liability for consumer protection.

- Example: if a self-driving car crashes, who is liable—the software developer, automobile owner, or the occupant.
- Volvo Cars, expects liability to shift from the driver to the manufacturer.
  - “Carmakers should take liability for any system in the car. “So, we have declared that if there is a malfunction to the [driving] system when operating autonomously, we would take the product liability.” Anders Karrberg, vice president of government affairs at Volvo Car Corp in a statement made to the U.S. House Energy and Commerce Committee’s Digital Commerce and Consumer Protection subcommittee.



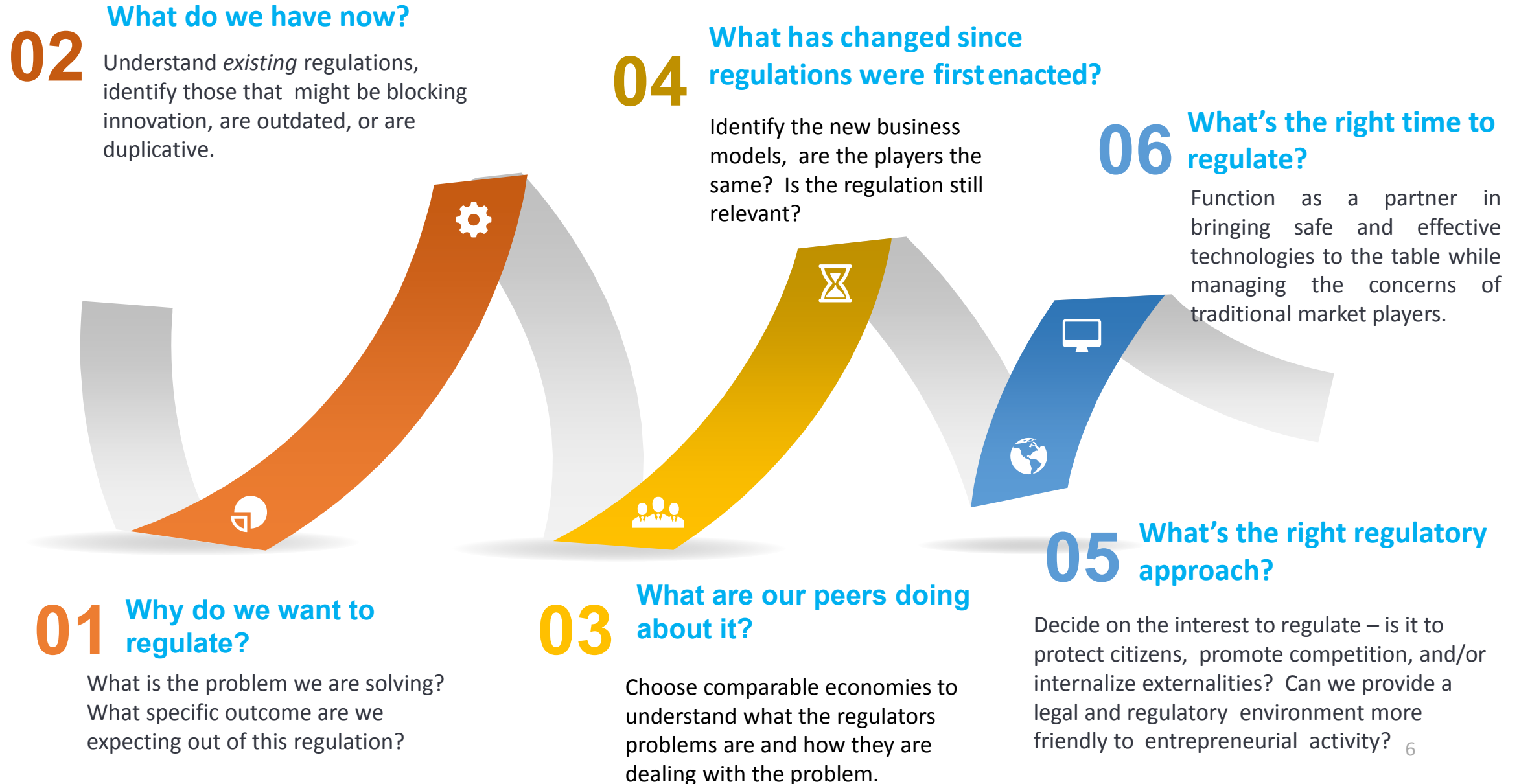
3 Properties that make technology appealing can allow scam artists and hackers to take advantage of the industry’s overall lack of maturity.

Example:

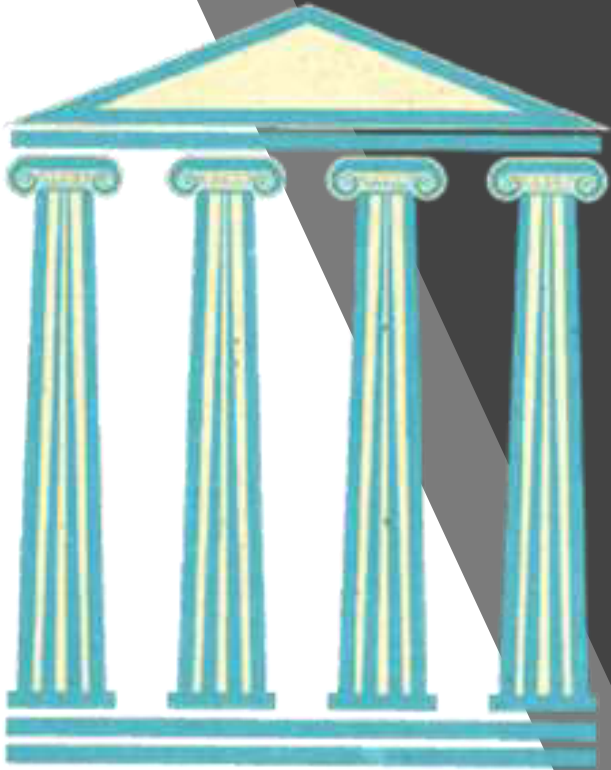
- In June 2016, the Decentralized Autonomous Organization - a project using the Ethereum blockchain-based platform—was drained of \$55 million when an attacker exploited a flaw in the code.



# 6 THINKING STEPS IN APPROACHING REGULATORY ISSUES RELATING TO EMERGING TECHNOLOGIES



# Recommended Principles to Adopt when Regulating Emerging Technologies



- 1. Adaptive regulation.** Shift from “regulate and forget” to a responsive, iterative approach.
- 2. Regulatory sandboxes.** Prototype and test new approaches by creating sandboxes and accelerators.
- 3. Outcome-based regulation.** Focus on results and performance rather than form.
- 4. Risk-weighted regulation.** Move from one-size-fits-all regulation to a data-driven, segmented approach.
- 5. Collaborative regulation.** Align regulation nationally and internationally by engaging a broader set of players across the ecosystem.



# SHARING ECONOMY PLATFORM

*An Experience On Short Term Rental/ Accommodation –  
A case study to design the fit for regulatory ecosystem for  
sharing economy platform*

# SHARING ECONOMY PLATFORM

## SHARING PLATFORMS ACT AS ONLINE INTERMEDIARIES

- platform allows “**users**” (**purchasers of services**) to **connect and transact with “providers” (sellers of services)**. Example: DogVacay, allows dog sitters to connect with dog owners through an online web portal. The Dog Vacay platform itself does not provide dog sitting services or employ dog sitters.
- Sharing platforms exercise control over transactions by directing the **form and content of listings**, issuing **minimum quality standards for providers**, providing an **electronic payment system**, and charging a **transaction fee** for each exchange.

## SHARING PLATFORMS ARE MARKETS FOR PEER-TO-PEER SERVICES

- allows providers to **profit from underused personal assets**, or to **market their skills** on a freelance basis, boat rentals to electrical repair.
- Unlike ecommerce platforms for sales of goods, exchanges of services generally **require users and providers to interact in person**.
- Contracting with strangers online involves many risks, and therefore **much higher transaction costs** than similar exchanges with larger businesses.

# THE PROBLEM STATEMENT

#1

## UNEVEN PLAYING FIELD



The technological convergence of platform operators have created an **uneven playing field** that **threatens** the position of traditional hotels in the market.

#2

## PUBLIC NUISANCE



Homes rented for short-term stays have drawn objections from some homeowners, citing **safety concerns** and that it is a **public nuisance**.

#1

# UNEVEN PLAYING FIELD



**Uneven playing field**







## Hoteliers

- Require license and permits to operate
- Not allowed to operate in residential zone
- Need to pay income tax
- Commercial rates for utility bills
- Need to undergo inspections under Fire & Safety Regulations to get permit to operate

## Home Sharing Operator

- No license or permit required to operate
- No restrictions to operate in residential or commercial zone
- No income tax
- Residential rates for utility bills
- No inspection for Fire & Safety Regulations

# Uneven playing field comparison between platform operators vs hotels

Items	Commercial	Domestic Consumer
 <small>TENAGA NASIONAL</small>	<b>43.5 sen/kWH</b>	<b>21.8 sen/kWH</b>
	<b>RM345/mth</b> Sport Bundle (6 channels)	<b>RM90.95/mth</b> Sport Bundle (over 53 channels)
	<b>RM399/mth</b> Unifi 100Mbps	<b>RM329/mth</b> Unifi 100Mbps
	<b>RM2.07/m<sup>3</sup></b> 0 - 35m <sup>3</sup>	<b>RM0.57/m<sup>3</sup></b> 0 - 20m <sup>3</sup>
<b>Taxation</b>	<b>Commercial</b>	<b>Domestic Consumer</b>
 Tourism tax	<b>RM20/room/night</b> Five Star	<b>None</b>
 <small>Ministry of Tourism, Arts and Culture Malaysia</small>	<b>Pre-approval required</b>	<b>No approval, licences needed</b>



## Public Nuisance

**Safety and Security**

**Damage and Losses**

**Disregard rules**

### Externalities

- Concerns on the **security of properties** and homes
  - Concerns on **safety of families** especially if it is ran by **commercial operator(s)** with 50 to more than 100 parcels
  - **Inadequate fire protection** installation in units
- 
- **Theft and damages** to common facilities
  - **Wear and tear** of the common facilities resulting in the decrease of the parcel value
- 
- Visitors/guest causing **noise and disturbance**
  - **Traffic congestions** – guest organising large **parties/gatherings**.
  - Disregarding housing rules and guidelines



Our objective is to address the growing **CONcerns** on the growth of short-term accommodation by the **public** and **traditional hotel operators** while at the same time **not stopping** the **economic growth** that sharing economy technologies bring.

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# KEY QUESTIONS

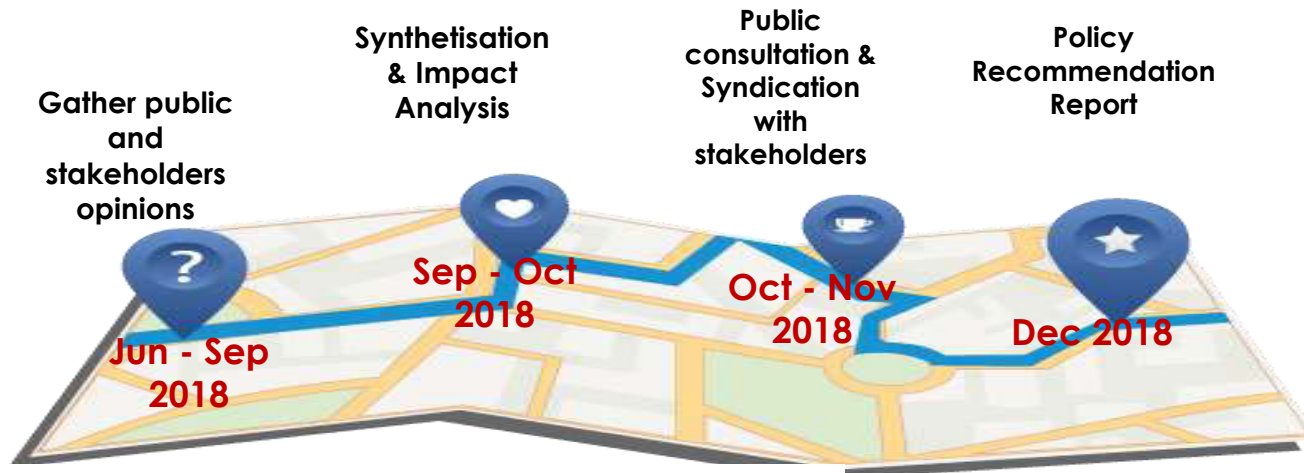
**Q1: DO WE REGULATE?**

**Q2: HOW AND WHEN DO WE REGULATE?**

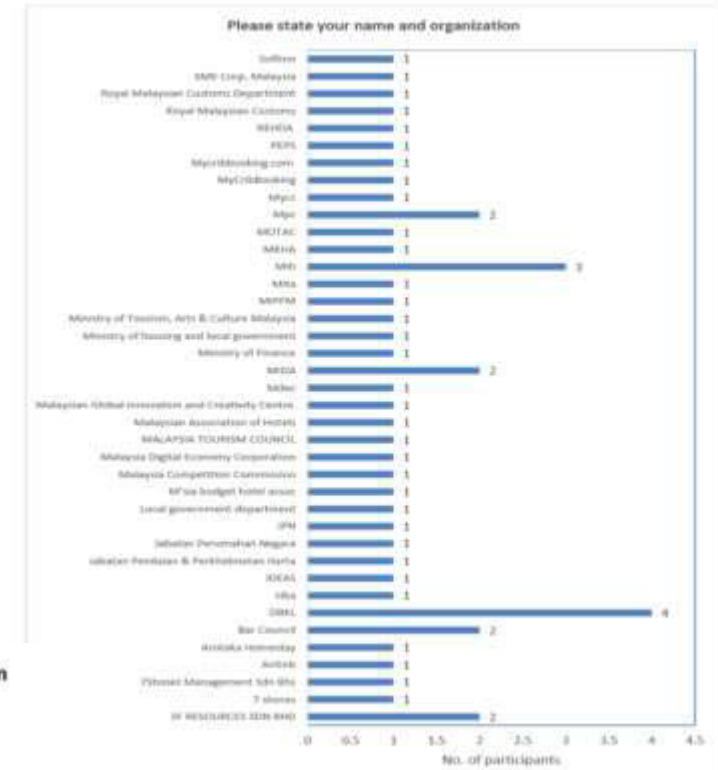
- to address uneven playing field
- to address public nuisance



# Q1: DO WE NEED TO REGULATE..

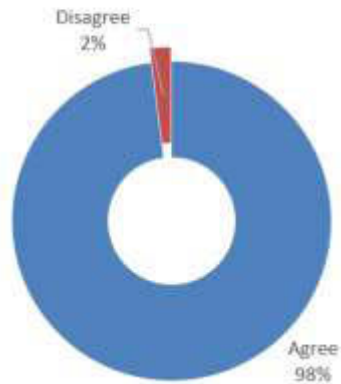


Q1: Please state your name and organization

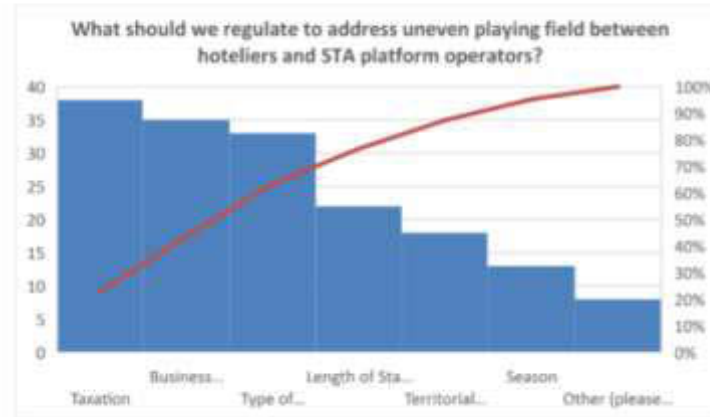


Q2: Should we regulate the Short-Term Accommodation (STA) in Malaysia?

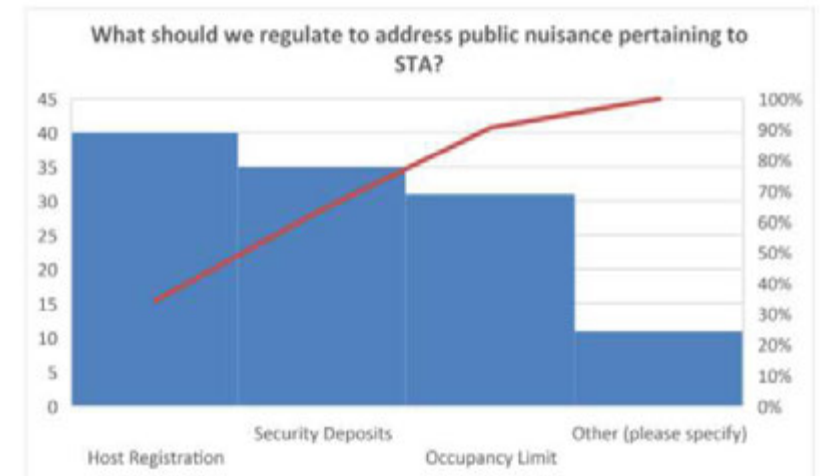
Should we regulate the Short Term Accommodation (STA) in Malaysia?



Q3: What should we regulate to address uneven playing field between hoteliers and STA platform operators?



Q4: What should we regulate to address public nuisance pertaining to STA?



## WHAT ARE THE OPTIONS?



## Regulatory spectrum

Status Quo	Self Regulation	Quasi-Regulation	Direct Government Regulation
Allowing businesses to operate as usual	Generally characterised by industry-formulated rules and codes of conduct, with industry solely responsible for enforcement	Arrangements where government influences businesses to comply, but <b>which do not form part of explicit government regulation</b>	Comprises primary and subordinate legislation. It is the most commonly used form of regulation
E.g. Government to allow STA operators to operate freely.	E.g. <b>Platform operators</b> to develop and impose regulations on itself.	E.g. Codes of practice, Advisory notes, Voluntarily Registration, Guidelines and Rules of conduct, issued by either non-government or government bodies.	E.g. Permit or licenses, Mandatory registration or house rules

# REGULATORY ACTIONS TAKEN IN ASIA PACIFIC COUNTRIES

	Regulation on STA has been implemented
	Current law prohibits STA
	No prohibition on STA
	Legislation under draft stages



# REGULATING OPTION POINTS TO ADDRESS UNEVEN PLAYING FIELD

#	Pointers	Description	Impact analysis	Adopted/ Implemented in
1.	Territorial coverage	Allowing STA in <b>remote areas</b> (less business activity) vs <b>urban</b> (higher business activity)	Hotel economy landscape allowed to thrive	Japan
2.	Length of stay (LoS)	<ul style="list-style-type: none"> <li>• Maximum time of <b>360 days</b> (a year) for host using services of player in area with <u>fewer inns</u>, otherwise <u>the more hospitable area</u> has maximum time of <b>180 days</b> (9 months).</li> <li>• Furthermore, <b>minimum length</b> of stay should be more than a day.</li> <li>• Owners of <b>private residential</b> properties are prohibited from renting out their property for less than <b>3 months</b>, and for <b>public residential for less than 6 months</b></li> </ul>	Guests will spend more time at their destination when using a vacation rental, making them perfect for travelers wanting to take longer trips	Indonesia,  Singapore
3.	Taxation	Having recognised that hosts are small and medium business entrepreneurs, such business to be <b>taxed</b> .	Taxes used to improve local community facilities	Australia New Zealand

# REGULATING OPTION POINTS TO ADDRESS UNEVEN PLAYING FIELD

#	Pointers	Description	Impact analysis	Adopted/ Implemented in
4.	Business license	<b>i. Business license is not required</b> for those operating in tourist destination with <b>fewer inns</b> ; or <b>ii. Area with lots of inns will be required</b> to apply for a business license to operate.	Encourage business growth among local communities	Indonesia
5.	Service standards	In the area with <b>fewer inns</b> , host must have a <b>hotel service standard</b> . It is applied otherwise for areas with <b>lots of inns</b> .	Gradually increasing service standards in areas underserved	Indonesia, Japan
6.	Type of property	Local government to have the authority to <b>designate which type of properties</b> for STAs to operate on (i.e. prohibiting the convert of “officetels”, or studios in high-rise buildings designated for office and residence, into lodging)	Protect long-term rental supply and encouraging neighbourhood fit	Japan, Australia, South Korea
7.	Season	Local government to have the authority to <b>designate period for STAs</b> to operate (i.e. school holidays).	Tourism industry is supported year round	Japan

# REGULATING OPTION POINTS TO ADDRESS PUBLIC NUISANCE

#	Pointers	Description	Potential Impact	Location
1	Territorial Coverage	<p><b>Proposal:</b> Only <b>certain areas</b> are allowed for home sharing operators</p> <p><i>*5 points recommendation of short term accommodation, Ministry of Tourism, Indonesia.- July 2018</i></p>	<p>This is still a recommendation point. No further information of how its should tackle public nuisance.</p>	Indonesia
2	Type of Properties and localities	<p><b>Proposal:</b> Urban Redevelopment Authority of Singapore (URA) launched public consultation to propose regulatory framework for <b>private own properties</b>. Points considered include:</p> <ul style="list-style-type: none"> <li>• Obtain <b>80% of owners consent</b> for Strata Properties.</li> <li>• Non-Strata can apply and subject to URA's approval. Criteria include <b>type of residentials and character of the surroundings</b> community among others.</li> </ul> <p><i>*URA public consultation exercise on a proposed regulatory framework for the use of private residential properties as short-term accommodation. April 2018</i></p>	<ul style="list-style-type: none"> <li>• Private residential owners can operate short term rental. Allows regulation by Management committee will lesser government intervention. Lowering cost of implementation.</li> <li>• Criteria set for approvals for non-strata properties is intended to provide protection to community with less commercial character.</li> </ul>	Singapore

# REGULATING OPTION POINTS TO ADDRESS PUBLIC NUISANCE

#	Pointers	Description	Potential Impact	Location
3	LoS	<p><b>Proposal:</b></p> <ul style="list-style-type: none"> <li>• Maximum <b>360 days in areas with fewer inns</b></li> <li>• Maximum <b>180 days in areas with high number of inns</b></li> <li>• <b>Minimum of 2 nights</b> stay</li> </ul> <p><i>*5 points recommendation of short term accommodation, Ministry of Tourism, Indonesia. – July 2018</i></p>	<p>This is still a recommendation point. Leaning towards protecting hotel industry rather than solving public nuisance.</p>	Indonesia
		<p><b>Regulation:</b> Only Allow <b>maximum of 180 days</b> in a year to operate short term rentals.</p> <p><i>*Japan Minpaku Law. Jun 2018</i></p>	<p>Minpaku law is applicable to private home sharing. It is mostly in residential zones where hotels not allowed to operate. The limits may prevent too much disruption in local communities lifestyle.</p>	Japan
		<p><b>Proposal:</b> Annual rental capped at <b>90 days</b> per year for STA</p> <p><i>*URA public consultation exercise on a proposed regulatory framework for the use of private residential properties as short-term accommodation. April 2018</i></p>	<p>The limits will potentially prevent disruption to local communities such as:</p> <ul style="list-style-type: none"> <li>• Safety and security</li> <li>• Damages and erosion of amenities</li> </ul>	Singapore

# REGULATING OPTION POINTS TO ADDRESS PUBLIC NUISANCE

#	Pointers	Description	Potential Impact	Location
4	Registration	<p><b>Proposal:</b> Compulsory registration for each individual property with URA of Singapore</p> <p><i>*URA public consultation exercise on a proposed regulatory framework for the use of private residential properties as short-term accommodation. April 2018</i></p>	<p>Registration of operators should allow for better monitoring. Only one time registration is required to avoid higher cost or doing business.</p> <ul style="list-style-type: none"> <li>The objective still is to reduce community complaints by easily monitor and enforce regulations.</li> <li>Other impact is for easy tax collection –when it is applicable.</li> </ul>	Singapore
		<p><b>Regulations:</b> Compulsory to register and get approval from local authorities. Minpaku will be given <b>registration ID</b> which can be used later to register on online platform.</p> <p><i>*Japan Minpaku Law. Jun 2018</i></p>		Japan



## Countries that have not prohibited on Short-term Accommodation

Countries	Status Quo
Vietnam, Philippines	Allow business to operate as usual <b>without any intervention of regulations</b>

## Countries that prohibit Short-term Accommodation

Countries	Action Takens
Thailand	<b>Court declare illegal to operate short term</b> stays without license to run hotel business is illegal according to Hotels Act 2004. Only allows rental for 30 days and above is allowed without license.  <i>*Thailand Courts May 2018</i>
Myanmar	By-laws written in the country's 1947 Immigration Act that stipulate foreign visitors on a tourist visa <b>must stay in a hotel.</b>  <i>*Myanmar Immigration Act 1947</i>

## CHALLENGES FOR REGULATORS

- The existing rules tailored for two-party relationships cannot address the needs of three party relationships between platforms, providers, and users/hosts. Nor do existing models of intermediary liability provide workable solutions for structuring sharing platform liability.
  - Some had attempted to ban these platforms, others granted “experimental” licenses to certain platforms before issuing formal rules, and an increasing number of cities have passed legislation for short-term rentals.
  - Relevant local ordinances include residential zoning restrictions, health and fire codes, tourism taxes, and licensing and permitting regimes need to be reviewed based on utilization.
  - Some implemented affirmative duties for short-term rental hosts, such as ensuring adequate parking for guests, providing notice of short-term rentals to neighbors, or liability for nuisances caused by guests.

## OTHER ITEMS IN DISCUSSION WITH RELEVANT STAKEHOLDERS

1. Insurance – commercial or personal. Most personal insurance plans do not cover commercial activity, such as charging fares for rides.
2. Tax - whether a host may deduct the cost of repairs as a business expense for tax purposes.
3. Civil Rights – discrimination against gender, profile, disability
4. Public Performance and Social Host Liability for Short-Term Rentals

The distinction between public and private activity plays a significant role in many other areas of the law. For example, providing video rental services in a hotel room qualifies as a “public performance” under copyright infringement law. If a short-term rental host charges guests an extra fee for the use of her home theater and DVD collection, does this also count as a public performance?

# Building a Dynamic Regulatory Design Journey...

## Tiered Regulation for Providers

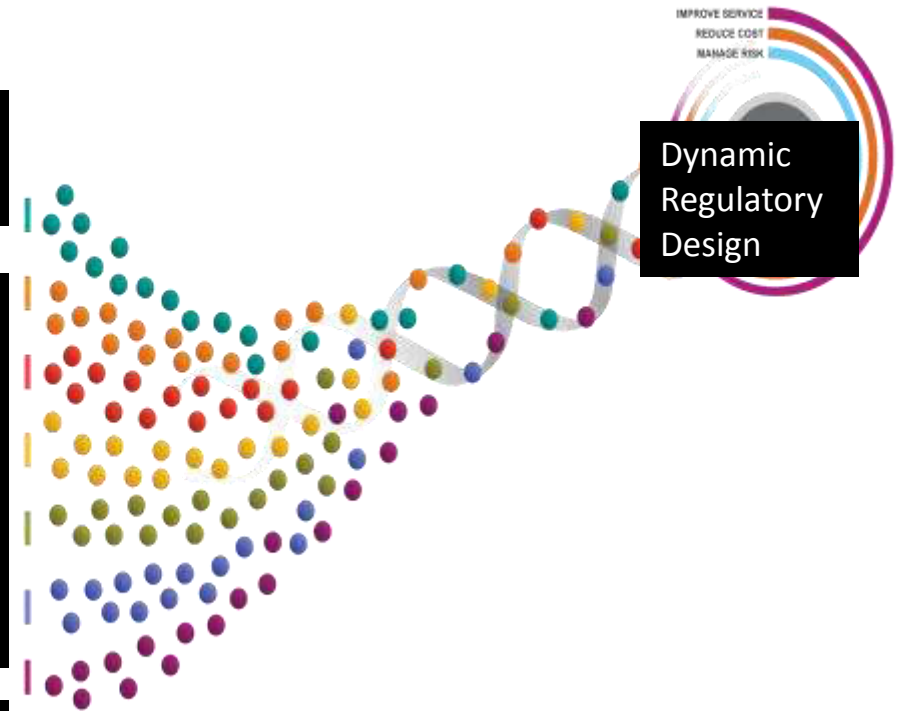
The higher the transaction the higher the control i.e taxes, inspections

## Limited Intermediary Liability for Platforms

- platforms exercise sufficient control over the relevant aspect of the transaction i.e background checks for providers and routine inspections for vehicles or rental property
- voluntary measures to police provider activity, rather than adopting formal notice-based system i.e platforms only become liable if they fail to take action after receiving a complaint from a user or provider.
- platforms inform hosts of the local requirements for compliance with the housing and tax code.

## Duties to Third Parties

- A complaint hotline and dispute resolution procedure for third parties who seek to remove listings from the platform or report poor conduct.
- Affected third parties might include landlords who want to prevent tenants from posting listings in violation of a lease, or neighbors of hosts who seek a remedy against a guest for property damage.
- Providers to give notice of their activities to third parties. Maui requires that shortterm rental hosts provide notice to neighbors within 500 feet of the listed property.



...these interrelated initiatives can provide the DNA needed to build a **“Forward-looking”** and **“light-touch”** regulatory ecosystem in the digital era.

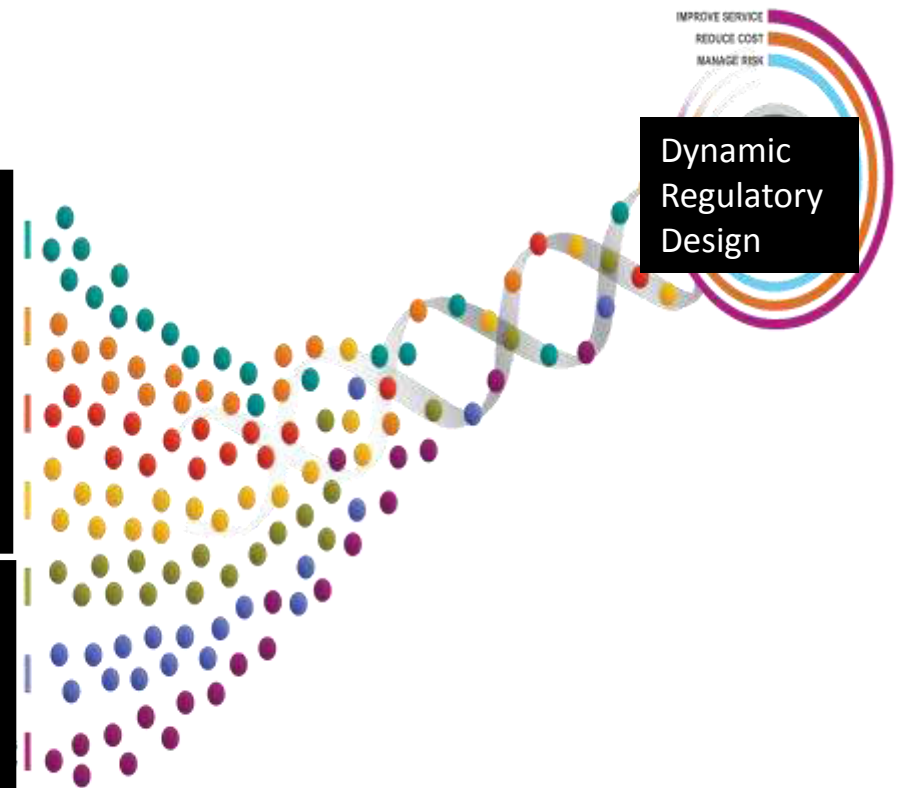
# Building a Dynamic Regulatory Design Journey...

## Reputation Systems: Regulators Should Encourage Responsible Private Ordering

- Both user and provider reputations can influence access on the platform—platforms may terminate or block providers with low scores, and providers may decline to accept requests from users with low scores.

## Promoting Competition: Regulators Should Ensure Provider Mobility and Protect Maverick Platforms

- States can require that airports award licenses for platforms to access drop off points on a nondiscriminatory basis. Regulators can also enact tiered legislation, creating tax breaks or other allowances for small platforms. Most importantly, regulators should ensure that providers can freely move between platforms.



...these interrelated initiatives can provide the DNA needed to build a **“Forward-looking”** and **“light-touch”** regulatory ecosystem in the digital era.

# We can no longer close Pandora's box.



- Many risks posed by the sharing economy are just as present in the market for **traditional service providers**. Regulators can also address these risks **without forcing platforms to conform to the same rules as traditional service providers**.
- Sharing platforms pose **new consumer protection issues**, regulators can confront these concerns without shutting down platforms
- Sharing platforms benefit consumers by **increasing the availability of service providers, lowering costs, and providing altogether new services**
- Sharing economy is here to stay. Regulators should not simply allow the sharing economy to grow in the shadow of the law. Allowing the sharing economy to **self-regulate would not adequately safeguard consumers**.
- **Responsible regulation** of sharing platforms is a necessity, **not a choice**. Regulatory authorities and legislators have already begun to experiment with balanced solutions, and the outcomes of these efforts will continue to inform future regulations.



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