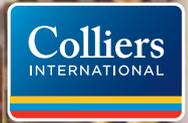


16 September 2016



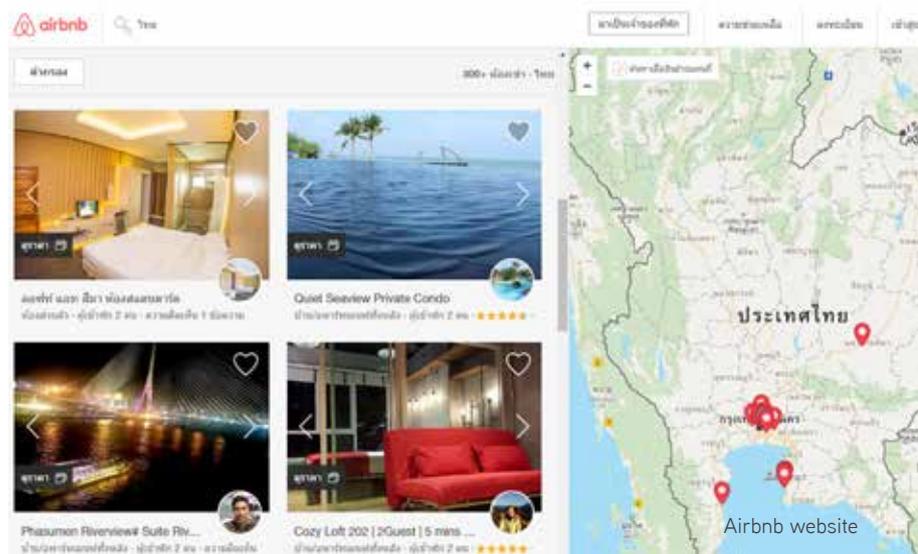
# Airbnb in Thailand and around the world: Accommodating the disrupter of accommodation

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Airbnb-type services are not going away. Hotels, property owners and governments need to find a way to work with this potential threat rather than trying to shut it down. The best option may be to allow the business to exist within defined, regulated parameters and enforce compliance by passing the burden onto the websites as much as possible.

## Introduction

Critics accuse Airbnb and similar services of undermining Thailand's hotel industry and having a negative impact on the housing market and residential quality. The recent crack-down on the short-term rental market in Phuket shows that concerns have been elevated to the legal – and, possibly, political – level. But current Thai law is inadequate to deal with the challenge and a better approach would be to bring in legislation that defines clearly the space that Airbnb can operate in, while protecting the rights of hotel owners and operators as well as residents.



## Legal issues in Thailand

In July 2016, the Phuket Provincial Land Office sent a notice to all 234 registered condominium projects in Phuket, which collectively comprise more than 26,000 units. The notice said that daily renting by condominium owners was a violation of the Hotel Act 2004, as well as causing a public nuisance, affecting tourist safety and possibly leading to loss of life and property. The penalty for the violation, which is a criminal offence, is up to one year in jail or a THB 20,000 fine.

While we are not lawyers, and are therefore not qualified to comment on the questions surrounding the legality of short-term rentals in Thailand, from a layman's perspective it is clear that current laws do not directly address some of the issues raised by the emergence of Airbnb. As such, there is some uncertainty as to whether the position of the authorities would be supported by the courts.

The Hotel Act requires properties offering commercial accommodation on a less than monthly basis to have a hotel license. However, Ministerial Regulation 2008 that governs hotel operations specifically excludes properties for temporary accommodation from being considered hotels if (a) they have four rooms or less,

(b) they can accommodate no more than 20 people, (c) they create additional income, (d) they promote tourism or local culture and (e) the authorities have been notified. This exemption is designed to exempt guest houses and homestays from the requirements of the Hotel Act, and can be viewed as generally supportive of Airbnb-style short-term rentals.

The official attempt to close down the Phuket short-term rental market indicates a different school of thought. As the Phuket controversy focused on the daily renting of condominium properties, the assumption was that the such rentals constituted a breach of the Hotel Act.

It is certainly true that very few condominium buildings have hotel licenses. However, the fact that there are a handful with licenses indicates that hotel licensing is not an impossibility for a condominium. Applying for a license retrospectively once the condominium is up and running is extremely hard because it would require the co-owners to agree on a change of use and then for significant modifications to the building, which may not be physically possible or economically feasible. According to a recent study by BHMAAsia, the main areas where condominiums tend to fall short as hotels are in the provision of car parking and of lifts. However, if the use and building requirements are built in from the start, condominiums could in theory obtain hotel licenses.

But even if it doesn't have a hotel license, is it "possible for a co-owner to rent out his or her unit on a short-term basis providing it has no more than four rooms? Many would argue (as the Phuket authorities appear to think) that the answer is no on the basis that the entire condominium building has more than four rooms. Again, if that is the case, it is not clear where liability would lie: is it the co-owner or the juristic person – or even the management committee? Alternatively, can an individual condominium with no more than four rooms be said to be exempt from the licensing requirement altogether? In that case, would an owner with multiple units totalling more than four rooms in the same condominium lose his eligibility for the exemption?

Clarity is also lacking on the rights and duties of housing estate and condominium committees in regard to co-owners who rent out their properties on a short-term basis. Some co-owners unhappy with the constant traffic of short-stay tourists have threatened to sue their management committees. But what powers does the management committee have to stop the practice, other than issuing rules and writing letters of complaint? If proof of short-term rental activity could be obtained (which in itself is a challenge), can access for guests be denied or fines imposed on the errant co-owner?



Such issues could keep the legal profession busy for years. But without any real precedents in the Thai courts, it is hard to comment with certainty on the current legal position of individual house and condominium owners or of the other stakeholders.

Despite these uncertainties, the Phuket authorities' claims do have some merit. To qualify for the Hotel Act waiver, landlords would need to have registered with the authorities and, presumably, show evidence of paying household tax on the rental income. It is safe to assume that not many have done this. Furthermore, foreign landlords may also need to show official permits allowing them to undertake such activity, which would be extremely hard to come by.





## The Airbnb controversy

The ability of web-based peer-to-peer platforms to shake up or “disrupt” traditional businesses is a key ingredient in the modern, sharing economy. While detractors claim that ride-sharing apps such as Uber create unfair competition to taxi operators, the arguments against Airbnb go much deeper: Airbnb is accused not only of undermining traditional hotel operators, but also of worsening both the housing crisis in big cities and the quality of life of residents.

### Impact on hotels

The most common complaint against Airbnb is that it competes unfairly with hotels because the host properties are lightly (if at all) regulated and don't need to meet the same standards of fire, health and safety as licensed hotels and often don't pay taxes.

However, the impact is not consistent across the hotel market. Luxury hotels, where branding and the visitor experience are of paramount importance, have so far proved largely immune to competition from the ad hoc market. The impact on the 2- to 3- star segment, where price competition is key, is more apparent. Airbnb counters this argument by claiming that its services increase the overall size of the pie more than taking a slice from incumbents.

### Impact on the housing market

In some markets, the big disruption attributed to Airbnb isn't so much on the hotel industry, but more on the stock of affordable housing, especially in big cities like New York City and San Francisco where the stock of long-term rental housing is already in short supply. Access to higher short-term rents through platforms such as Airbnb, it is argued, encourage landlords to shun the long-term rental market in favour of short-term tourists, depleting the housing stock further. To make matters worse, some tenants of rent-controlled flats in these cities have been sub-letting their properties through Airbnb, effectively profiting from a government subsidy.

The exacerbation of the housing shortage is seen as putting more upward pressure on rents and thus creating more problems for ordinary middle-class families. Airbnb, on the other, argues that the housing shortage in cities is caused by overly restrictive land development policies, rather than supply and demand in the rental market. Furthermore, it argues that middle-class households are the main beneficiaries of access to short-term rentals as they are able to earn some extra income which enables them to make end and helps them pay those exorbitant rents in the first place.



## Impact on the quality of life

Transient residents can be more disruptive than long-term residents. Residents in many popular Airbnb communities have lodged complaints against neighbours whose Airbnb guests hold noisy parties and disrupt the tranquil environment. In the US, some cities with strong conference or tourist markets have taken the problem very seriously. Austin, Texas – a popular city for conferences – has imposed noise and occupancy limits on properties, effectively banning stag and hen parties from short-term accommodation. In Miami Beach, complaints of noise and too many transients in the neighbourhood has led authorities to impose \$20,000 fines on violators of the prohibition on short-term rentals.

## Positive impacts

Apart from disputing the claims of its critics, Airbnb and its supporters have argued strongly that Airbnb-style services are a good thing for both ordinary people and the economy overall.

First, it is often argued that Airbnb boosts economic activity in general. Supportive studies have been undertaken, for instance, in New York City where it was concluded that the economic benefit amounted to some \$632 million with 4,600 jobs created. A similar study in Barcelona argued that the platform had added \$175 million to economic activity and created 4,300 jobs.

Second, the argument that Airbnb helps the less wealthy members of society is supported by the Barcelona study which showed that 75% of hosts were from low- and lower-middle-income families.

Third, hotel industry complaints of unfair competition are often countered by the “bigger pie” argument. As already noted, price competition is most likely to impact lower grade hotels, but there is some truth in the argument that Airbnb brings in new products in new areas (see below) and therefore is not necessarily a direct competitor. It also allows for peak period flexibility, as was evident most recently in Rio de Janeiro where some 66,000 guests were accommodated by Airbnb hosts during the Olympics, thus mitigating a severe shortage of hotel accommodation in the market. Similar effects can be seen in other markets in peak demand periods, such as Songkran, Christmas and New Year in Thailand. Apart from providing supply flexibility at peak times, Airbnb can be a constraint on the peak pricing power of the hotel sector.

Finally, there is evidence to support the argument that Airbnb deepens a city’s tourism potential by opening up new areas to visitors. Tourists often say that the Airbnb experience helps them to live more like a local while visiting a new place. Typically, Airbnb stays are longer than in hotels and guests tend to spend more in the immediate area than in traditional tourist spots. In New York City, where hotels tend to be concentrated in Manhattan, some 82% of Airbnb listings are outside Manhattan. Airbnb claims that in many cities over 70% of its stock lies outside the main hotel districts.



Airbnb copyright



Airbnb copyright



## Responses to Airbnb

Governments around the world have devised a wide range of responses to control Airbnb. The spectrum runs from generally supportive measures that aim to bring Airbnb into the regulatory and taxation system to measures whose rationale appears to be the total eradication of Airbnb from the market. Most authorities sit somewhere in the middle, but with a bias to offering some protection to market incumbents.

Most places already have laws that require owners or operators of commercial accommodation to be licensed. Often, this requirement is waived for long-term rentals, which may be defined as at least one month as in Thailand or can be as high as six months, as in Paris and Miami. This waiver provides space for the private rented sector while protecting hotels.

As the market for short-term rentals has grown, policy responses have become more sophisticated. Pressure to allow property owners to benefit from a limited amount of short-term renting has led to various attempts to open up the market without undermining the hotel sector. Some cities now allow hosts to rent out their properties on a short-term basis for a maximum period per year (90 days in London and San Francisco; two months in Amsterdam). Often, this permission will be given to a primary residence only (e.g. London, San Francisco, France) and usually it is subject to a registration process and the payment of tourist or occupancy taxes.

Some jurisdictions require short-term rentals to meet more stringent qualifications. For instance, in Santa Monica, short-term rentals are only allowed for hosted properties (where the host is also in occupation), while in Berlin not more than 50% of the apartment area can be rented short term. Amsterdam allows no more than four people to rent a property on a short-term basis, while Chicago has imposed particularly complex new rules ([see appendix 2](#)).

At the eradication end of the spectrum, we find efforts to close down or at least to limit Airbnb's market with extreme prejudice. The New York City authorities, for instance, found its regulation prohibiting short-term rentals of less than 30 days insufficient. As a result, a proposal to ban the advertising of short stays is in the works. This is attracting a great deal of controversy as it would effectively shut down much of the services offered through Airbnb ([see appendix 2](#)). Berlin has also taken a strong line against the short-term rental market. There, the courts recently upheld a law passed in May 2016 banning short-term rentals that contravene regulations and making landlords who violate the law subject to a fine of €100,000.

While regulations have become increasingly sophisticated, the issue for many governments is one of enforcement. It is one thing to stipulate a minimum rental period, maximum availability or requirements to take out insurance, comply with building codes and pay tax, but how can these be enforced when much of the business is handled on an individual basis by private landlords through international web sites?

Given this difficulty, some governments have decided to put the burden for compliance on the platform as well as – or instead of – the provider. As a large corporate, it is thought that Airbnb is likely to take such legal challenges more seriously than an individual homeowner. This is the approach adopted by San Francisco ([see appendix 2](#)). In Barcelona, where the law requires all residences rented out to tourists to be registered with the authorities, Airbnb and its rival HomeAway were fined €30,000 in 2015 for violating this law. An amendment to the law in June 2016 would now allow that fine to be increased to €600,000.



## Recommendations

The sections of Thai society that are most concerned by the emergence of Airbnb are not homogenous. We have the hotel industry, which is worried that its business model is being undermined by a lightly regulated, ad hoc service that does not need to comply with the onerous regulations imposed on hotels. We have often middle-class residents, who are worried that the proliferation of transient tenants in their buildings and neighbourhoods has a negative impact on the quality of life, the value of their properties and, possibly, on personal safety. Finally, we have the government authorities who will partly reflect the concerns of the other two groups, but also worry about the potential damage caused by unlicensed businesses, tax leakage and possibly national security.

On the other side of the fence sit property owners and property developers who believe they have a right to maximise the value of their assets, and government supporters who favour the general growth in commerce and economic activity generated by the short-term rental business.

Other jurisdictions have struggled to find a solution that will satisfy all parties. However, we would recommend two courses of action as a good place to start.

First, new regulations that permit the short-term rental business within defined parameters would benefit all parties. Examples would include allowing homeowners to rent out their homes for a maximum number of days per year, subject to them obtaining a permit to do so, paying appropriate taxes and obtaining safety certification and insurance. The US and European example of allowing only the primary residence to be rented out may not make much sense in the Thai context. However, restrictions could be placed on the number of residences permitted for short-term rental, or higher taxes imposed on any rented properties that are not the owner's registered residence.

Second, to ensure compliance with the new regulations, as much of the burden of compliance as possible should be put on the operator of the platform. Without such a requirement, enforcement of the rules would be likely to fail.



## Appendix 1: Airbnb as a major brand

There are numerous web-based accommodation rental portals, both in Thailand and around the world. But Airbnb stands as the largest and most successful model and has focused the attention of hoteliers, regulators, homeowners and renters.

Airbnb claims to have some 2 million listings in 34,000 cities in 191 countries. The largest markets appear to be Paris, London and New York City – each which offer 50,000 listings.

Compare this with one of the largest international hotel groups, Starwood. Starwood has about 350,000 hotel keys around the world and was recently acquired by Marriott for \$12.9 billion. The latest valuation of Airbnb was around 2.5 times Starwood's – at around \$30 billion. Those numbers imply that Starwood's properties average a value of \$37,000 per key, while Airbnb's listings would be worth around \$15,000 each.

Of course, the business models are not directly comparable in many ways. Nevertheless, the numbers are startling and place Airbnb in the top rank of marketing portals for short-term rentals.

A study recently completed by Colliers International of the Amsterdam hotel market clearly illustrates this trend. In 2015, there were some 736,000 overnight stays in the city through Airbnb, comprising some 9% of total market demand. In terms of revenues, those stays generated some €105 million through Airbnb, as against a total of €1.13 billion for the hotel market overall. While RevPar for Airbnb accommodation was significantly lower than in the hotel market (€70 for Airbnb v €115 for hotels), the differential in ADR was very small (€143 v €147) and the Airbnb growth rate has been stratospheric – reaching 400% year-on-year in January 2016. With almost 10% of the market, Airbnb is already one of the major brands in the Amsterdam market.

## Airbnb: Impacts and outlook for Amsterdam

### KEY METRICS AIRBNB VS. HOTELS 2015



### SNAPSHOT JANUARY 2016

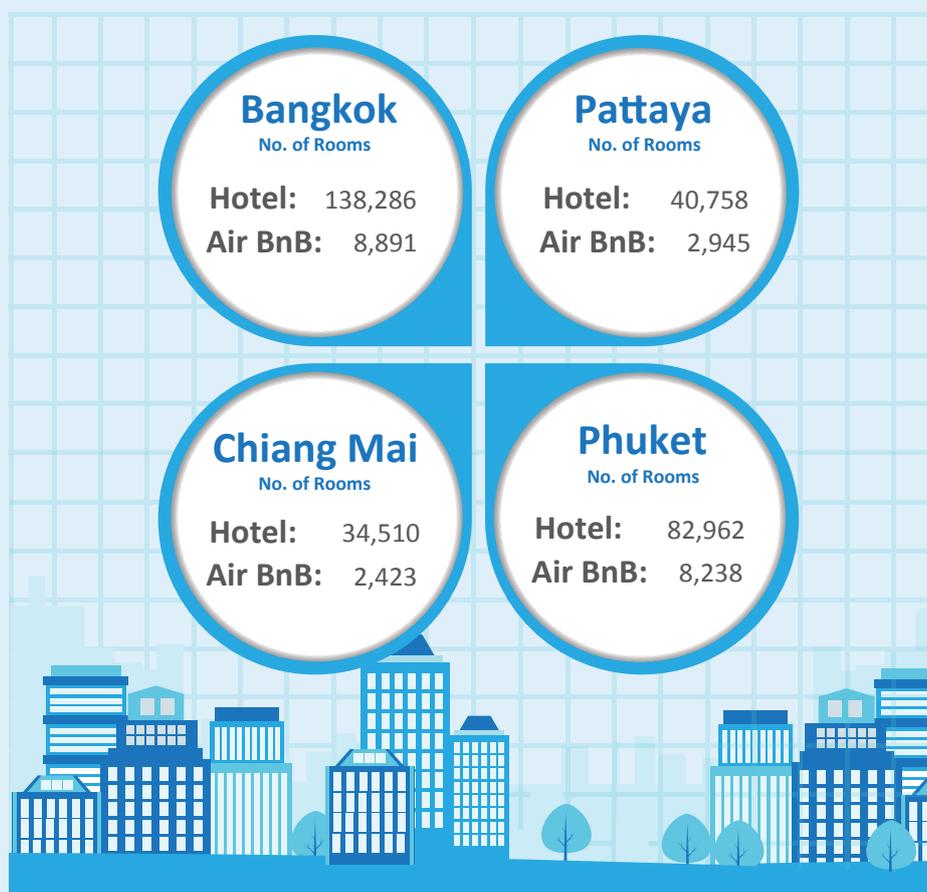
	Jan 2016	Y-o-Y Change
Supply	282,639	276.9%
Demand	107,418	473.9%
Revenues	€15.1m	483.1%
Occupancy	38.0%	52.3%
ADR	€140.43	1.6%
RevPAR	€53.37	54.7%

**474%** Y-o-Y Increase in Demand



## Comparison of the number of rooms in Thailand

Studies in other markets indicate a similar trend. In Thailand, for instance, according to data from airdna.co, Airbnb listings in the major tourist centres are becoming a significant factor in each market, as the following table illustrates.



Source: Department of Tourism and Air DNA

## Comparison of the Average Daily Rate (ADR) in Thailand

Airbnb listings in Thailand are following other global trends as well: average room rates indicate that Airbnb is competing primarily at the low-end of the market, while Airbnb stays appear to be less seasonal than hotel stays with strong off-season growth.

Location	Bangkok (THB)	Pattaya (THB)	Chiang Mai (THB)	Phuket (THB)
Hotel	2,837	2,110	2,170	2,754
Airbnb	831	658	727	1,177

Source: Hotels Price Index (HPI), [www.Hotels.com](http://www.Hotels.com)



## Appendix 2: A tale of three cities

**Chicago** passed regulations in June 2016 that try to allow space for regulated Airbnb services while protecting the quality of life in residential neighbourhoods. The regulations allow limited short-term rentals – of only one unit per building if the building has no more than five units, with larger buildings capped at the lower of six units or 25% of the total units. In areas with mostly single-family homes, 25% of voters can petition to either outlaw or allow short-term rentals in primary residences in their area. The regulations also impose charges on short-term rentals, including a \$60 charge on each address, a \$10,000 license fee for platforms such as Airbnb and, most interestingly, a 4% tax on rentals, which is earmarked to go to aid the homeless in the city.

**San Francisco**, on the other hand, is generally seen as the most tech-friendly city in the States – and is the birthplace of Airbnb. Prior to February 2015, renting for less than 30 days was illegal, as in Thailand. New regulations since then allow permanent residents of San Francisco (i.e. people living in the city for 275 or more days a year) to rent out their primary homes for up to 90 days a year unhosted (i.e. without the owner also in residence) and without any limit if hosted (e.g. if the owner takes in a lodger to occupy one room). However, it requires the resident to obtain a short-term rental permit, comply with building codes, pay hotel taxes and take out \$500,000 of liability insurance. Interestingly, it is possible for Airbnb to pay the hotel taxes and take care of the liability insurance. To prevent profiteering on subsidised rents, the regulations prohibit tenants who are hosts from charging more in rent than they are paying their landlord.

In late 2015, Proposition F was put to the voters of San Francisco. The proposition called for short-term rentals to be limited to 75 days, whether hosted or not, and would allow neighbours to sue Airbnb if the rule was violated. In keeping with SF's tech-friendly reputation, the proposition was rejected by voters. However, it is worth noting that opponents (mainly Airbnb) raised \$8 million to fight against the proposition, whereas supporters (mainly the hotel industry) could muster only \$800,000 to support it.

Following the rejection of Proposition F, San Francisco has taken a different tack. Rather than go after landlords, the authorities are trying to pass the burden of compliance onto Airbnb and its peers. A new law that would impose fines of \$1,000 a day on Airbnb and similar operators for every unregistered host on their platforms has been approved, but not yet enacted. Airbnb is suing on the grounds that requiring it to verify that its hosts have the appropriate registrations would contravene established law that protects websites from the actions of their users as well as the First Amendment.



In contrast to this, **New York** is currently pushing a new law that would make the hosts, rather than the platform, liable for punishment. In June this year, the state government passed a law that would fine hosts who post listings that violate the state's prohibition on renting for less than 30 days. Fines ratchet up from \$1,000 for the first violation to \$7,500 for the third and any subsequent violation. The state governor has not yet signed the law, so it is not yet clear if it will come into effect. As the law is not aimed at Airbnb directly, but is essentially an advertising ban on illegal activities, it is more difficult for Airbnb to take action against it.

In New York, Airbnb has taken a novel approach with the authorities by stating that it would be willing to ensure payment of New York's 5.9% occupancy tax that its hosts have reportedly been lax in paying. However, the strong forces levelled against Airbnb are resisting this move on the grounds that allowing Airbnb to pay these taxes would amount to a tacit legitimisation of what they consider to be an illegal business.

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