

บทความปริทัศน์: การทบทวนประเด็นทางกฎหมายกรณีผลกระทบของ ฐานข้อมูลการจองห้องพักออนไลน์ต่อคอนโดมิเนียมตากอากาศและธุรกิจ โรงแรมในประเทศไทย

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

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Abstract

This article reviews the impact of Online Vacation Rental Platforms (OVRPs) on vacation condominium rentals and the hotel industry in Thailand and discusses the legal implications of the OVRP use. The literature reviews are providing explanations of Thailand's laws involving OVRPs and exploring current connections between hotels, vacation condominiums and online rental platforms, using case studies and examples. We find that OVRPs provide short-term rentals in most vacation condominiums at popular tourist destinations in Thailand. According to the Thai Civil and Commercial Code, B.E. 2551, the owners of such properties have the right to lease their property, but rentals of less than 30 days constitute an infringement of the Hotel Act, B.E. 2547. Case studies from other countries suggest that OVRPs may have positive as well as negative impacts on the hotel industry, and may also generate indirect benefits for other industries such as tourism and real estate development. Increasingly, vacation condominiums in Thailand are attracting individual investors, many of them foreigners, for the short-term rental market via OVRPs. This development not only undermines the Hotel Act, B.E. 2547 but also poses various risks for hosts, guests, co-owners and potential condominium buyers – risks which are not currently addressed by applicable Thai law. Areas identified as requiring further research regarding the impacts and legal implications of OVRPs in Thailand include: (i) balance of positive and negative impacts of OVRPs on Thai economy and society; (ii) impacts of OVRPs on the vacation condominium market in Thailand; and (iii) merits of amending the legal issues to cover the OVRPs rentals.

Keywords

Online Vacation Rental Platforms (OVRPs)

Less than 30 Days Rental

Thai Civil and Commercial Code, B.E. 2551

Hotel Act, B.E. 2547

Real Estate Investment

Hotel Industry

บทคัดย่อ

บทความนี้ ศึกษาบทบาทการใช้ฐานข้อมูลการจองห้องพักแบบออนไลน์ (OVRPs) สำหรับการพักในคอนโดมิเนียมตากอากาศระยะสั้น (กรณีต่ำกว่า 30 วัน) การให้เช่าในลักษณะนี้อาจมีผลกระทบต่อการบังคับใช้กฎหมายในหลายประเด็น ดังนั้นผู้เขียนจึงได้เรียบเรียงและอธิบายถึงวิธีการให้เช่าแบบ OVRPs โดยนำกรณีการให้เช่าในลักษณะนี้มาตีความตามบทบัญญัติของกฎหมายที่เกี่ยวข้อง เช่น ประมวลกฎหมายแพ่งและพาณิชย์ และพระราชบัญญัติโรงแรม พ.ศ. ๒๕๕๗ นอกจากนี้ยังได้บทบาทกรณีศึกษาในต่างประเทศร่วมด้วย การศึกษาในครั้งนี้พบว่า การจองห้องพักผ่านระบบสารสนเทศออนไลน์ (OVRPs) เป็นที่นิยมในกลุ่มนักท่องเที่ยวชาวไทยและต่างประเทศจำนวนมาก อันมีส่วนกระตุ้นให้ธุรกิจการท่องเที่ยวขยายตัวเพิ่มขึ้น แต่ในขณะเดียวกันก็ส่งผลกระทบในทางลบต่อธุรกิจโรงแรมได้ เนื่องจาก การกระทำได้กล่าว นอกจากจะขัดกับบทบัญญัติของพระราชบัญญัติโรงแรม พ.ศ. ๒๕๕๗ แล้วดังที่ได้กล่าวมาแล้ว ทั้งในแง่ของการบริหารจัดการธุรกิจที่ควรดำเนินตามข้อบังคับใน พระราชบัญญัติโรงแรม พ.ศ. ๒๕๕๗ และในแง่ของการแสวงหาผลกำไร ในท้ายสุด บทความนี้ได้เสนอแนวทางศึกษาเพิ่มเติมเกี่ยวกับผลกระทบของ OVRP ในประเทศไทย โดยแบ่งการวิเคราะห์เป็นหัวข้อดังต่อไปนี้ (i) ความสมดุลระหว่างผลกระทบในเชิงบวกและลบของการปล่อยเช่าผ่าน OVRPs ต่อเศรษฐกิจและสังคมไทย (ii) ผลกระทบของ OVRPs ต่อตลาดของคอนโดมิเนียมประเภทตากอากาศ (vacation condominium market) ในประเทศไทย และ (iii) ข้อเสนอแนะในการแก้ไขกฎหมายต่อไปเพื่อให้ครอบคลุมถึงการปล่อยเช่าผ่าน OVRPs

คำสำคัญ

ฐานข้อมูลการจองห้องพักออนไลน์

การให้เช่าต่ำกว่า 30 วัน

ประมวลกฎหมายแพ่งและพาณิชย์ พ.ศ. ๒๕๕๑

พระราชบัญญัติโรงแรม พ.ศ. ๒๕๕๗

การลงทุนทางอสังหาริมทรัพย์

ธุรกิจโรงแรม

1. Introduction

The past decade has witnessed significant growth in use of Online Vacation Rental Platforms (OVRPs) worldwide. This article first provides some background on the emergence of online platform technology and the increasing use of OVRPs by suppliers of vacation accommodation in global level and in Thailand. It then examines the legal environment within which hotels, vacation condominiums and OVRPs currently operate in Thailand. Although letting of condominiums for periods of 30 days or less constitutes an infringement of the Hotel Act, B.E. 2547 and Thai law imposes strict penalties for violations, the regulatory environment governing vacation rentals of condominium units is currently quite lax, especially in major Thai vacation destinations such as Pattaya, Hua-Hin, and Phuket, which have listings on the main online rental platforms. This poses risks for all stakeholders – hosts and their guests, co-owners of condominium buildings and potential condominium buyers.

The next chapter reviews the literature on the impacts of OVRPs on hotels and condominiums and draws together findings of case studies from other countries in order to make conclusions regarding the existing relations between OVRPs, vacation condominiums and the hotel industry. By advancing understanding of the unique characteristics of the sharing economy created by OVRPs, and the full range of their impacts, both positive and negative, the study reveals the potential gains that use of online platform technology in the vacation condominium market could generate for local governments, real estate developers and small businesses operating in the tourism sector.

Finally, the article analyzes the policy implications for Thailand and suggests three areas for further research. There is still no agreement on the regulations that should govern the use of OVRPs and the question of whether OVRPs are appropriate for particular residential property types like vacation

condominiums is still hotly debated in Thailand. From a legal perspective, it can be argued that the OVRPs permit vacation condominium owners to engage in abusive rental practices while bypassing regulations and taxes. On the other hand, from an economic and social perspective, Thailand may be benefiting from the increasing use of OVRPs in the vacation condominium market. If this is so, then changes in the law may be required so that this new development is appropriately regulated.

2. Online Vacation Rental Platforms (OVRPs)

2.1 Business Opportunities Created by Online Platform Technology

Online-platform technology has created new capacities and opportunities for startup companies to engage in direct marketing. This development has enabled retail suppliers to display their products closer and closer to their customers every year (Chesbrough, 2006). Some studies explore the benefits obtained by increasing exposure of customers to information about the online product's quality. Reading online reviews can reduce consumers' sensitivity to price because they gain confidence in the accuracy of the property's listed price (Lynch Jr & Ariely, 2000; Vermeulen & Seegers, 2009).

The market created by an online platform technology has come to be known as a "Sharing Economy," a technical term which refers to a peer-to-peer exchange of products and services. There are many successful online vacation platforms all over the world and many applications support services like online reservations, comparison shopping for rental products (hotel, motel, apartment, or bed & breakfast) and access to additional travel services available through the internet (car rentals, sight-seeing tours) (Schaal, 2011).

In the vacation rental market, owners 'share' their personal property by offering it for short-term rental through the OVRPs (Belk, 2014; Cansoy & Schor, 2016; Fang, Ye, & Law, 2016). The sharing economy created by OVRPs allows private property

owners to become part of the larger-scale economy. Many private property owners recognize that the business opportunities created by online marketing can enable them to profit from their unused assets and also encourage tourism and produce associated economic benefits for a city (Kaplan & Nadler, 2015). The goal of this movement is to put owners' under-utilized properties to good use and make them profitable through the on-line platform.

2.2 Growing Value of the OVRP Sharing Economy

In 2016, the estimated market value of the OVRPs was approximately \$14 billion, or around one-fifth of the \$100 billion value of the global vacation rental industry (Skift, 2016). The growing value of the OVRP sharing economy has had a tremendous positive impact on the vacation-condominium rental industry. This trend is driven by the straightforwardness of the transactions which is made possible by the internet and is growing exponentially every year as the coordinating capacity of the coding algorithms increases (Horton & Zeckhauser, 2016).

While one might expect the relationship between OVRPs and hotels to be one of competition and conflict, there is mounting evidence that OVRPs are not simply competing with hotel businesses but are also opening up new business opportunities in the vacation rental industry. The nature of OVRPs means that the listings are scattered around each city or geographic location which might result in greater dispersion of tourist expenditures in the various neighborhoods (Porges, 2013). History suggests that hotel businesses remain open-minded about incoming change and are more than willing to adjust themselves to new market environments.

A careful examination of the marketing strategy of OVRPs shows that they cultivate favorable images supplied by OVRP hosts. The majority of the promotional phrases and pictures on the websites describe customers' positive experiences meeting new people (the hosts). Some scholars have argued

that OVRPs market the commercial value of relationships and experiences in the same way as hotels market their amenities and services, and thus behave as a direct competitor (Choi, Jung, Ryu, Do Kim & Yoon, 2015). But unlike a hotel, the nature of the services that OVRPs provide cannot guarantee the user's experience. In an OVRP rental, the only relationship that exists between host and guest is the one created by their sharing of the life style, taste, and belongings of the property owner. All in all, the OVRP rental is different from the hotel-room rental.

2.3 OVRPs in Thailand

Currently, there are multiple types of vacation rental properties on the OVRP lists for travelers and tourists in Thailand, such as condominiums, farm stays, private homes, beach villas, or cottages. The majority of OVRP listings in Thailand tourist destinations offer the customers only the private room or the entire place (see Tables 1, 2 and 3). According to Thai law, in most instances such rentals constitute an infringement of the Hotel Act, B.E. 2547 because they are short-term rentals of less than 30 days. However, for reasons explained in the following section, the relevant provisions of the Hotel Act, B.E. 2547 are rarely enforced, and use of OVRPs for short-term letting of vacation condominiums in Thailand is expanding rapidly.

According to Airbnb's website, the most popular tourist destinations in Thailand are Pattaya, Hua-Hin, and Phuket. These locations are also the most popular places for property developers because of the high demand for condominium units in the real estate market. The customers are retirees, foreign and domestic investors, and families who aim at an investment. Condominiums in these three locations are perfect for short-term rental because there are a lot of tourists in the area.

In Thailand, the Airbnb company boasts the most listings among OVRPs; the estimated number of listed hosts was well over 10,000 in 2014 (AIRDNA,

2014). Combining the listings from various years for additional platforms like Homeaway Family, VRBO, and Housetrip produces combined total of around 8000 listings (HomeAway, 2014; Housetrip, 2009; VRBO, 1995). The less popular websites like 9flat and Wimdu are estimated to have a combined total of around 600-800 listings (9flats, 2011; Wimdu, 2011). However, the overlap of these data cannot be identified due to the nature of OVRP (Lehr, 2015).

Table 1. Best Airbnb Rentals in Pattaya.

Rank	Name of the listing	Room type	Number of room	Type
1	Beachfront condo Pattaya Naklua	Entire Place	1	Vacation Condo
2	Sea view cozy 1BD CentricPattaya.	Entire Place	1	Vacation Condo
3	Beachfront on the 40th floor	Entire Place	1	Vacation Condo
4	View Talay Villa	Entire Place	3	Villa
5	Good and cheap condo	Entire Place	1	Vacation Condo
6	Appartement moderne neuf à Pattaya	Entire Place	1	Vacation Condo
7	Penthouse with great view	Entire Place	2	Vacation Condo
8	Amazing pool & Beachfront location.	Entire Place	1	Vacation Condo
9	High Floor, Stunning Beach View Room!	Entire Place	1	Vacation Condo
10	Pattaya best site 1bedroom, seaview, tile floor	Entire Place	1	Vacation Condo

Source: www.airbnb.com

Table 2. Best Airbnb Rentals in Phuket.

Rank	Name of the listing	Room type	Number of room	Type
1	Phuket Bed & Breakfast Home-Stay	Private room	1	B&B
2	IKONIC Ocean View Room - Karon Beach	Private room	1	Vacation Condo
3	New Luxury Apartment in Phuket Town	Entire Place	1	Vacation Condo
4	Новая квартира в сердце о.Пхукет	Entire Place	1	Vacation Condo
5	Новое кондо в центре острова	Entire Place	1	Vacation Condo
6	Kata Hill View Villa Pool&Chef-K2	Entire Place	3	Villa
7	Kata Hill View Villa Pool & Chef-K3	Entire Place	3	Villa
8	Апартаменты в новом кондоминиуме	Entire Place	1	Vacation Condo
9	Penthouse with private rooftop pool / Sky 2	Entire Place	1	Vacation Condo
10	Phuket Bed & Breakfast Home-Stay	Private room	1	B&B

Source: www.airbnb.com

Table 3. Best Airbnb Rentals in Hua-Hin.

Rank	Name of the listing	Room type	Number of room	Type
1	Baan San Ngam beachfront condo & huge lagoon pool	Entire Place	1	Vacation Condo
2	Cool House w Roof Terrace near Sea	Entire Place	6	Villa
3	New Big Studio with stunning View in City Center	Entire Place	1	Vacation Condo
4	Cool Home w Garden near Sea	Entire Place	2	Villa
5	Beach Studio seaside, high standard	Entire Place	1	Vacation Condo
6	Cozy Room. Super Host and Reviews!	Entire Place	1	Vacation Condo
7	Cozy Apartment City Center Hua Hin	Entire Place	1	Vacation Condo
8	Cozy Rustic Coast Mood	Entire Place	1	Vacation Condo
9	Baan Peang Ploen by Sansiri	Entire Place	1	Vacation Condo
10	Huahin My Resort 2-Bedrm Luxury Apt	Entire Place	2	Vacation Condo

Source: www.airbnb.com

3. Thai Law Governing Provision of Vacation Accommodation

3.1 Laws Governing Provision of Accommodation by Hotels and Condominiums

In Thailand, the commercial provision of accommodation is governed by the Thai Civil and Commercial Code, B.E. 2551, the Hotel Act, B.E. 2547 and the Condominium Act, B.E. 2522. The Civil and Commercial Code, B.E. 2551 grants the owners of private property (including condominiums) the right to lease their assets without restriction. However, Section 4 of the Hotel Act, B.E. 2547, defines a hotel as a place of business established for the purpose of providing temporary accommodation for travelers or any other person for compensation. The act also specifies that if a property owner rents out space for periods of less than 30 days, the rental activity is considered a hotel business, and is required to operate under other provisions of the Hotel Act, B.E. 2547. Such rental activity needs a hotel license for its operation and the granting of a license is strictly controlled by government entities. If owners decide to lease their condominiums for less than 30 days without a hotel license, it is a violation of the Hotel Act, B.E. 2547. On the other hand, Section 4 of the Hotel Act, B.E. 2547 also states that places which are rented out on a monthly basis (30 days or more) are not classified as a hotel.

3.2 Requirements for Obtaining a Hotel License

According to Thai law, the construction and management of condominium buildings are controlled by the Condominium Act, B.E. 2522, while the construction and management of hotel buildings are controlled by the Building Control Act, B.E. 2522 and the Entertainment Place Act, B.E. 2509. Hence, if a property owner wishes to apply for a hotel license under the Hotel Act, B.E. 2547, he or she must comply with all legal requirements of the Building Control Act, B.E. 2522 and the Entertainment Place Act, B.E.

2509. These Acts impose various inflexible restrictions which make it difficult to qualify for a hotel license. Moreover, the procedures for obtaining a hotel license are problematic and flawed, due to the complexity of the numerous requirements specified by the laws (Akomsoonthorn, 2008).

Besides finding it difficult to comply with the provisions of the above-mentioned Acts, most OVRP hosts would probably not be qualified for a hotel license for the following reasons. First, the applicant who is planning to submit the application for a hotel license is required to have an acceptable qualification which complies with Section 16 of the Hotel Act, B.E. 2547. Second, if the hotel operators are foreigners, they are subject to strict legal limitations on establishment and operation of their businesses in Thailand. In particular, in the hotel business, foreign operators are not authorized to have a license without prior consent from the Foreign Business Administrative Bureau, Ministry of Commerce (Akomsoonthorn, 2008). Third, the hotel managers and hotel operators are both required to meet certain criteria to be qualified for the grant of a hotel license. Section 30 of the Hotel Act, B.E. 2547 specifies that a hotel manager whose responsibility is to manage the hotel has to be appointed by the hotel operator and present his or her professional degree and experience in the field of hotel management.

3.3 Requirements for Operating a Hotel

The Hotel Act, B.E. 2547 sets out certain requirements that must be met to operate a hotel. These include assumption of liability by the hotel operator, obligation to maintain occupancy records, and safety guarantees for the guests.

The Thai Civil and Commercial Code, B.E. 2551, section 537 states on an agreement named a 'hire of property contract.' It describes the meaning of a hire of property contract as a "contract whereby a person, called the letter (lessor), agrees to let another person, called the hirer (lessee), have the use or

benefit of a property for a limited period of time and the hirer agrees to pay rent therefore" (Thai Civil and Commercial Code, B.E. 2551). Whether we check into a hotel or rent a condominium unit, we are obligated to enter into a hire of property contract and written evidence signed by both parties is required for its enforcement, as stated in Section 538 of the Thai Civil and Commercial Code, B.E. 2551. However, a hire of property contract which is classified as a hotel business operation is controlled by special regulations. For example, when a guest agrees to stay in a hotel, he might bring his personal property, and leave his belongings in the hotel room or hotel area during his stay. The hotel is liable for any loss or damage to such property under a 'deposit contract.' The liability of an innkeeper (hotel operator) under the deposit contract is higher than that of the ordinary person. These particular rules for landlords are found in Sections 674 to 679 of the Thai Civil and Commercial Code, B.E. 2551. The proprietor of an inn, hotel or other such place is liable for any loss or damage to the property which the traveler or guest lodging with him may have brought. On the other hand, an owner or landlord in a hire of property agreement which applies to condominium rentals is not required to enter into a deposit contract and is not liable for any loss or damage to the property of the lessee.

Any natural person or juristic person who wants to run a hotel business is obligated to appoint a hotel manager to manage the operations of the hotel. Section 35 of the Hotel Act, B.E. 2547 requires the hotel manager to record information relating to the guests such as the number of guests in each room and the personal details of each guest. This information has to be filled in on the guest registration card immediately upon the first arrival. The hotel manager has to keep these records for at least one year. Section 36 requires the hotel manager to send a copy of the daily registrations every week to the Registrar appointed by the Ministry of the Interior.

Under Sections 4, 35, 36 and 38 of the Hotel Act, B.E. 2547 a hotel operator must provide safety arrangements for hotel guests. Section 38 of the Hotel Act, B.E. 2547 specifically obliges the hotel manager to manage a hotel operation so as not to let anyone hide or mingle in the hotel area in a manner that could be believed to cause unrest in the country or cause a criminal offense in the hotel. The hotel manager has to notify the local administrative staff or local police immediately when there is a reasonable belief that there may be or have been someone hidden or mislabeled or committing a crime in a hotel. In contrast, in a usual hire of property contract which applies to condominium rentals, lessors are not bound by any such rules protecting the safety of their lessees. These requirements demonstrate that staying in a hotel provides protections for the safety of the guests, whereas staying in a private property does not provide such protections.

3.4 Enforcement and Punishment of Violations

Currently, there are some popular online platforms in Thailand which owners can use to lease their properties, such as Airbnb, Agoda, and Booking. The goal of platforms such as Agoda and Booking is to assist the mainstream hospitality industry (such as hotels and resorts) to connect with their customers. However, the Airbnb platform is designed for owners to rent out their homes partially or entirely to customers as a substitute for more expensive hotels. For this reason, Airbnb's customers are most likely to rent these properties for less than 30 days, even though the long-term rental is available as an option on the platform so the local housing laws and regulations are technically satisfied (Airbnb, 2008). Because of the difficulties and costs involved in obtaining a hotel license, many small start-up hotels in Thailand operate their business illegally by listing their properties on OVRPs. After Airbnb and other similar OVRPs became popular in the condominium market in Thailand, the government was faced with

a number of illegal short-term rentals arising in popular destinations like Pattaya, Hua Hin or Phuket. Although Thai law identifies strict penalties for violations of the Hotel Act, B.E. 2547, many property owners evade its requirements and enforcement has proven difficult. As yet, the Thai government has no answer as to how best to regulate the emerging OVRP market.

Section 59 of the Hotel Act, B.E. 2547 stipulates that whoever operates a hotel without a license is in violation of Section 15 and shall be liable to imprisonment for a term not exceeding one year, or a fine of up to twenty thousand baht, or both. Furthermore, another fine of not more than 10,000 baht may be imposed at any time a violation is found. Nevertheless, enforcement of Section 59 is controversial. Some competent government officers are accused of the wrongful exercise of duties by not exercising any of their functions (Thansettaki, 2016). Conversely, although Section 45 of the Hotel Act, B.E. 2547 states that competent officers can enter into a hotel to check for a hotel license, guest registration, characteristics of the hotel, rooms, vacancies, and so forth in order to control compliance with the Hotel Act, B.E. 2547, it is very problematic to put Section 45 into practice in a condominium building since entering into a condominium building requires many processes due to their safety controls. Catching any illegal rental activities in a condominium building is difficult.

Under Section 31 of the Condominium Act, B.E. 2522, a condominium requires establishing a 'juristic' condominium 'which shall act as if the co-owners were a single composite individual for purposes such as managing the common property and also operating condominium management' (Condominium Act, B.E. 2522). According to Section 17/1 of the Condominium Act, B.E. 2522, commercial trading is not allowed in a condominium building except in the commercial area specified. Thus, co-owners of the condominium are not allowed to lease their rooms in the same way as hotel businesses.

Section 65 of the Condominium Act, B.E. 2522 states that violations according to Section 17/1 lead to a fine of not more than 50,000 baht and a further punishment with a daily fine of not more than 5,000 baht throughout the period of violation or non compliance with the Act's provisions. In practice, it is very challenging for a juristic condominium to detect an illegal rent in a condominium since the lease agreement always arises online. The majority of complaints about illegal rent are from Thai Hotel Association on behalf of legal hotel operators or from co-owners of the property.

3.5 Problems Arising from Illegal Rentals

New York City is one of the first cities to have raised major concerns regarding unregulated use of OVRPs like Airbnb. These include tax issues, safety issues, lack of building and environment controls, and unfair competition in the hotel industry.

1. Many cities expect hotel operators letting out holiday accommodation to pay a hotel or tourist tax. Without business registration, the government is not able to collect a hotel business tax.

2. Safety is an issue for both hosts and guests in non-regulated rentals. Some Airbnb travelers claim that they were sexually abused by their host while some Airbnb hosts also claim they have experienced involvement with drugs, thefts, and smuggling (Hammer, 2016).

3. Building and environmental controls that apply to hotel structures do not apply to condominiums.

4. Illegal leases provide access to the market for short-term accommodation in direct competition with hotels, but with lower operating costs (no expenses for applying for a hotel license, no or very little provision of services, no employees). Therefore, they can offer lower prices than hotels.

As a consequence, New York has made property rental for less than 30 days illegal (The New York State Senate, 2010).

In Thailand, illegal rentals may cause more problems than the illegal lessor anticipated, particularly in a vacation condominium. As mentioned above, Sections 35, 36, 37 and 38 of the Thai Hotel Act, B.E. 2547 require a hotel manager to do a guest report on the first arrival and also report other relevant information to ensure the safety in a hotel. In contrast, a vacation condominium is a private place where the lessor is never required to report such information. If a criminal offense occurs, the condominium lessor is not able to manage or control such situation because he is not at the site as a hotel manager. Furthermore, the illegal lessors are likely to have no experience concerning hotel management. In many situations, these lessors are not able to deal properly when some difficult situation arises.

On the other hand, an illegal lessee may cause some damages to lessor's properties and common properties. Besides, the lessee will not have full assurance that the lessor will not enter into the property during the stay. In 2015, a 19 year old Airbnb traveler claimed that his Airbnb host locked him in his room and sexually abused him. The young American Airbnb guest claimed the assault happened during his stay with an Airbnb host in Spain. His mother also stated that she was unable to help her son due to an Airbnb employee refusing either to reveal the address of the host's apartment or to call the police (Lieber, 2015).

Finally, real estate development projects like vacation condominiums are not well-adapted to short-term rentals in competition with hotels, due to the legal limitations on the use of private property and the complaints of long-term condominium residents if short-term renters cause disturbances of damage common property. Mr. Akeapat Namnapon, the juristic person manager of vacation condominium in Hua-Hin, made a complaint to the local government because over 10 percent of 300 units rented a room through OVRP agents (Matichon, 2016). Many condominiums in Thailand respond to these activities

by putting up a sign in front of the building to intimidate OVRP clients and customers.



Figure 1. Typical Signage in front of Condominium Building
(Picture credits: Kaew Ekkaphop)

4. Case Studies on the Impacts of OVRPs on the Hotel and Vacation-Condominium Industries

4.1 Case Studies on the Impacts of OVRPs on the Hotel Industry

A hotel project has a very high initial investment cost. Typically, the majority of this cost is comprised of land cost, construction cost, licensing fee, management fee, branding fee and start-up marketing cost. According to Jones Lang Lasalle's 2016 Hotel Investment Outlook report, the capitalization rate in the hotel market in Asia remains strong (between 2.0-2.5 points), despite the potential disruption of alternative accommodation from OVRPs. In the global market, the hotel industry estimates only about 10 percent of total room bookings belong to the home rental sites and alternative accommodations (Lasalle, 2016).

The presence of OVRPs does undoubtedly challenge the traditional market for tourism accommodation, where people are renting rooms from the formal establishments such as hotels or resorts.

This is because the OVRPs attract people to seek accommodation in traditional B&Bs, hostels or private residences rather than hotels. This type of challenge is certainly not new for hoteliers. For example, Black (1986, cited in Guttenlag, 2015) explains that eighteenth-century travelers on their tours through Europe occasionally searched for accommodation from people's homes. He concludes, however, that this was not at the expense of the hotels in the larger cities and towns.

Today, the hotel industry shows strength and confidence in its ability to adapt to alternative accommodation from OVRPs and willingness to work with the platforms and partner up to strengthen the hotel industry. For example, in 2016, AccorHotels announced their acquisition of Onefinestay, a London-based short-term vacation rental company for \$169 million dollars along with 2,600 luxury properties that Onefinestay manage (Scott, 2016). Many hotel brands are experimenting with new concepts and studying the potential use of OVRPs to respond to the challenge. Given the rate of newly-registered customers on OVRPs every day, coupled with the hotel industry's willingness to adapt, it is possible to see more and more partnerships in the future (Lehr, 2015).

There have not been any research studies on the direct impacts of OVRPs on the hotel industry in Thailand. However, according to a study of Airbnb by Hospitality Valuation Services (HVS) for New York City (the most popular OVRP destination), the value of both direct and indirect impacts of Airbnb on the hotel industry in New York from 2014 through 2018 is projected to be around \$2.1 billion, while the direct loss is estimated at \$450 million or 24 percent of total loss (HVS Consulting & Valuation Division of TS Worldwide, 2015). "The increases in Airbnb supply negatively impacts ADR Growth rate," said Mr. Mark Woodworth, the president of PKF Hospitality Research (Lehr, 2015). "This study not only confirms that Airbnb's operations in New York City have a negative impact on the hotel industry, but it also details the tremendous disruptive reach Airbnb has on the

broader city economy and our communities,” said Vijay Dandapani, Chairman, Hotel Association of New York City (Akan, 2015).

On the other hand, although the major cities in the US are experiencing negative impacts of OVRPs on the hotel industry, this is not necessarily the case for the major cities in Asia. Choi et al. (2015) found that Airbnb’s listings do not have a significant impact on either overall hotel revenue in Korea or on the hotel revenue in each Korean city. Only unemployment and currency exchange rates have a significant impact on hotel revenue. The Choi et al. study also shows that Airbnb’s listings have no effect on the revenues of upscale hotels and a small positive effect on revenues of midscale and economy hotels. The study concluded that the impacts are too small and meaningless to consider them in the economic sense (Choi et al., 2015). According to Akan (2015), there is definitely a correlation in financial impact between hotel and OVRPs in New York City, while Choi et al. (2015) argue that there is little or no impact of OVRPs in the economic sense in Korea.

It can be concluded that the use of OVRPs and their socio-economic impacts on hotel industries differ places by places. In New York City, OVRPs bring negative impacts and foresees tremendous disruption to hotels. On the other hands, the situations of OVRPs uses in Korea have cause little impact on Korean tourist economy. For Thailand, both negative and positive socio-economic impacts have not become important policy issues yet. This may be because there is not enough evidence to support the situations.

4.2 Case Studies on the Impacts of OVRPs on the Vacation Condominium Industry

An economic impact assessment (EIA) is a method that studies the interrelationships of different specific economic impacts and provides an estimate of the overall impact on the economy (Stynes, 1997). In the case of the OVRPs, the EIA involves an understanding of indirect impacts on businesses

providing other goods and services that are related to the accommodation of tourists and other short-term visitors through OVRPs. Indirect impacts also include secondary effects such as change in prices, quality, and quantity of the properties intended for other uses, or social and environmental change (Stynes, 1997).

The first indirect impact of OVRPs is to increase the use of condominiums and other alternatives instead of hotel room accommodation to absorb short-term growth in tourist traffic. Having more listings on OVRPs in a city can help alleviate the shortage of hotel accommodation in the market. For example, during the Olympics in Rio de Janeiro, Brazil, Airbnb hosts accommodated around 66,000 guests (Landy, 2016). Although Zervas, Proserpio, and Byers (2015) claim that Airbnb is the direct competitor of low-end hotels, Archer and Fletcher (1996) suggest that increasing the number of high-spending visitors can generate substantial impact on employment per visitor. Airbnb argues that the indirect benefit comes from the longer stays of tourists due to lower cost (Airbnb, 2014; Fang et al., 2016; HVS Consulting & Valuation Division of TS Worldwide, 2015). Consequently, the market size has suddenly expanded and created more employment opportunities in the tourism industry. Studies of both HVS Consulting & Valuation Division of TS Worldwide (2015) and Fang et al. (2016) offer conclusions similar to those of Airbnb (2014) regarding the indirect benefits that the sharing economy has on reducing unemployment by increasing market size.

A second indirect impact is to lower the perceived quality of residential and commercial properties in buildings where vacation condominium rentals are listed on OVRPs. In Thailand buyers prefer to buy the condominium for the quality, brand image, and design (Wonggotwarin & Kim, 2017). These basic qualities will support buyers’ confidence in the project and trust that the project will be delivered on time. The measurement of quality has been conceptualized as the degree of customer recognition and acceptance of the company’s product and service (Han & Hyun,

2017). Oliver (1980) developed the expectancy disconfirmation theory, claiming that when the quality of the product exceeds customer expectation, the customer behavioral loyalty is triggered (Oliver, 1980). It is very important for real estate development companies in Thailand to rely on customer loyalty to their products. The satisfaction of the customers with a product or service tends to create a good perception of the brand (Andreassen & Lindestad, 1988; Yang & Peterson, 2004). Therefore when the company presents its product as a private residence and then faces interruption from a short-term rental in OVRP, the customers' perception of the quality of the brand may decline.

Thirdly, indirect impacts on social environments are occurring within the associated communities and neighborhoods. The behavior of condominium residents shapes activity and bonds within the community (Li et al., 2005; McNeill, Kreuter & Subramanian, 2006). When a premium product such as a condominium attracts customers who are looking for their families to feel at home, any unwanted interruptions from OVRP guests in the community will have an impact on the social environment of the property. This issue can escalate into health and safety problems, which remain a top issue of OVRPs. In Thailand, the problem of safety is one of the biggest concerns because the victims may not be the owners of the property which have been leased out through OVRPs, but rather the co-owners in the condominium or their families.

4.3 Applicability of Case-Study Findings to Thailand

The extent to which conclusions reached from the case studies apply to Thailand is not clear. The impacts of OVRPs on the vacation condominium market and the hotel industry in Thailand is very intricate. Some experts suggest that Thailand's trend may follow that of other major cities. Others argue there is little correlation. Colliers International has argued that the impact of OVRP listings on Thailand's hotel market is similar to the trend for the

Amsterdam hotel market, which has growth rate at 400 percent. They also believe that the Airbnb market does not have an effect on the luxury hotel and resort market. Nonetheless, Airbnb listings represent a significant presence in the major tourist destination cities (Landy, 2016).

The vacation condominium market in Thailand is seasonal, with high demand for festivals such as Songkran or New Year but low demand during other times of the year. Therefore, increasing the supply of short-term rental accommodation at low prices does not necessarily guarantee a higher rate of visitors or a better employment rate year-round. However, OVRPs and hosts are not waiting for experts to agree, but are striving to find better solutions to problems posed by this fast-growing business made possible by rapidly-advancing technology.

For the real estate development and investment community, vacation condominium rental is a major portion of Thailand property market. The OVRPs is one of many reasons for the increasing new development of vacation condominiums because they attract a lot of investors, both local and international, to operate property remotely. Currently, the operation of a short-term rental business on the condominium property is illegal, but the number of OVRP hosts is increasing rapidly. This shows that participants are willing to invest in the properties despite the legal risks. Internationally, the hotel industry has been the first to react to the disruption caused by OVRP technology. The case studies suggest it is adapting to the change rather than fighting against it. Hotels might lose some market share to OVRPs, but their confidence is clearly expressed by their actions.

5. Policy Issues regarding OVRPs in Thailand

5.1 Legality of OVRPs

In Thailand, both negative and positive socio-economic impacts of OVRPs on vacation condominiums and hotel industries haven't yet become an important policy issue. Instead, the policy debate currently

revolves around a legal question – that is, are OVRPs legal? This article has argued that renting out accommodation for a period of less than 30-days is a formal violation under the Thai Hotel Act, B.E. 2547 because such rentals constitute the use of private property for purposes similar to those of a hotel business without a hotel license. Moreover, this practice also evades controls imposed by the Thai Building Control Act, B.E. 2522, which applies to the construction of hotel buildings but does not apply to the construction of condominiums or other private structures used for accommodation. In addition, there are some other legal points of concern, namely: (i) respective liabilities of both parties under the hire of property contract used for an agreement on leasing a condominium versus the sole liability of an innkeeper under the deposit contract used for an agreement on leasing a hotel room, and (ii) existence of laws and regulations to ensure the health and safety of people who stay at the hotel versus lack of protections for the health and safety of guests using OVRPs.

5.2 Areas for Further Research

Since OVRPs are still at an early stage of development in Thailand, and their use in the vacation condominium market has not yet fully matured, this is a good moment for the academic community to pursue multiple investigations exploring the impacts of OVRPs on the Thailand tourist industry, economy and society, and the merits of various remedies for inadequacies in the current legal environment governing vacation condominium rentals in Thailand. Specific topics in need of further research include:

1. *Balance of positive and negative impacts of OVRPs on Thai economy and society*

The economic impact of OVRPs in Thailand is clearly different depending on the location of the listing area. To understand the direction of impact of OVRPs on Thailand's economy, it is necessary to identify the specific variables and stakeholders that

are influencing the development of OVRPs in different parts of the country, e.g., Bangkok, popular tourist destinations in the south and popular tourist destinations in the north. Investigators then need to assess whether, on balance, the increasing use of OVRPs is benefiting the Thai economy because of its contribution to growth in tourism and its complementarity to the formal hotel and resort industry, or whether OVRPs are harming the Thai economy by taking business away from the formal hotel and resort industry without contributing to overall economic growth.

2. *Impacts of OVRPs on the vacation-condominium market in Thailand*

Possible indirect impacts of short-term vacation rentals through OVRPs on all stakeholders in Thailand need to be identified and analyzed systematically. For example, hosts, clients, co-owners and potential buyers of condominium properties may all need protection without which they risk being exploited by the multi-billion-dollar OVRP business. This is because neither the platforms nor the hosts assume any liability for the safety of the guests or their property, the guests do not assume any liability for loss or damage to the host's property, and neither the hosts nor their guests assume any liability or take any responsibility for the use of common space. Initial observations from OVRP listings of vacation condominiums in Thailand suggest that a lot of these properties are operated or owned by foreigners. This may be because condominium is the only type of property in Thailand that allows the individual foreigner to own the title of the property, but before reaching a definite conclusion, all the stakeholders in the Thai real estate market first need to be identified and their interests and behaviors ascertained. Based on results of this investigation, a determination can be made as to whether or not additional safeguards are needed governing the participation of foreigners in the vacation condominium rental market in Thailand.

3. *Merits of amending the legal issues to cover the OVRPs rentals.*

If the analyses of impacts of OVRPs demonstrate net benefits of vacation condominium rentals in Thailand, the government may wish to consider introducing amendments to the legislation governing condominiums that would exempt such

rentals from the provisions of Sections 4, 15 and 59 of the Hotel Act, 2547. That would incorporate additional responsibilities for juristic condominiums requiring them to establish vacation rental policies and safeguards for co-owners and their guests. Development of specific proposals in this regard is a third area meriting academic attention.

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