

Public Consultation Document



GUIDELINE ON SHORT-TERM

RESIDENTIAL ACCOMMODATION (STRA)

FINAL DRAFT

9 October - 30 November 2019

Mandate

The draft Guideline on Short-Term Residential Accommodation is an initiative through the Technical Working Group (TWG) on Short-Term Accommodation, which is a sub-committee under the Working Group on Home Sharing Economy (WGHSE) chaired by the Secretary General of the Ministry of Housing and Local Government (KPKT) and co-chaired by the Champion of Tourism Productivity Nexus (TPN). The main role of this TWG is to develop a guideline and implementation strategy on short-term residential accommodation regulatory framework. The TWG members are as follows:

Co-chair: Local Government Department (JKT) and Ministry of Tourism, Arts and Culture (MOTAC)

Secretariat/Facilitator: Malaysia Productivity Corporation (MPC)

Members:

1. Ministry of Housing and local Government (KPKT)
2. Ministry of International Trade and Industry (MITI)
3. Ministry of Finance (MOF)
4. National Housing Department (JPN)
5. Attorney General's Chamber (AGC)
6. Malaysian Communications and Multimedia Commission (MCMC)
7. Department of Director General of Lands & Mines (JKPTG)
8. PLANMalaysia (JPBD)
9. Royal Malaysian Customs Department (RMCD)
10. Inland Revenue Board of Malaysia (LHDN)
11. Fire and Rescue Department of Malaysia (BOMBA)
12. Malaysia Digital Economy Corporation (MDeC)
13. Companies Commission of Malaysia (SSM)
14. Kuala Lumpur City Hall (DBKL)
15. Majlis Perbandaran Subang Jaya (MPSJ)
16. Majlis Bandaraya Petaling Jaya (MBPJ)

Contents

1. Introduction	4
2. Objectives of the Guideline	5
3. Government Consideration	6
4. Key Issues to be Addressed	7
5. Draft guideline	
a) Criteria of STRA	9
b) Licensing of Host/Agent	12
c) Licensing of STRA Platform	19
d) Night Cap (Maximum number of days per year)	22
e) Safety	25
f) Nuisance control	28
g) Applicable Taxes and fees	31



Introduction

- In Malaysia, the Short-term Residential Accommodation (STRA) which is an activity where home-owners operate short term rental and list their residential accommodation on digital platforms such as *Airbnb, Inc.*, *Agoda*, *HostAStay*, *MyCribBooking.com*, *etc.* has become a topic of debate and discussion in recent years. While STRA offers productivity growth and economic opportunities, it has also posed difficulty to regulators to fit STRA in existing regulatory frameworks.
- In July 2019, a research study has been conducted to better understand issues of short-term accommodation and the findings were presented at WGHSE meeting 2/2018. The meeting found that there is a valid reason to regulate STRA and the technical matters will be overseen by the Technical Working Group (TWG) lead by JKT and MOTAC.
- The draft of STRA guideline has been developed by MPC based on existing legal laws, benchmarking study, input from key stakeholders; policy makers, regulators and regulatees.
- MPC is now seeking public feedback and comments on the draft STRA guideline before finalising by December 2019.

Objectives of the Guideline

- It helps policy makers and regulators to respond to issues relating to short-term accommodation in residential area (home sharing economy);
- It provides a general regulatory framework and does not include exhaustive details and local condition. It may require changes or introduction of new regulations by respective ministries and regulators. However, this is subject to the decision of each ministries and regulator to adapt and/or adopt accordingly; and
- It is intended to operate an integrated regulatory framework, where each component of federal, states and local authorities regulatory requirements can be harmonized.

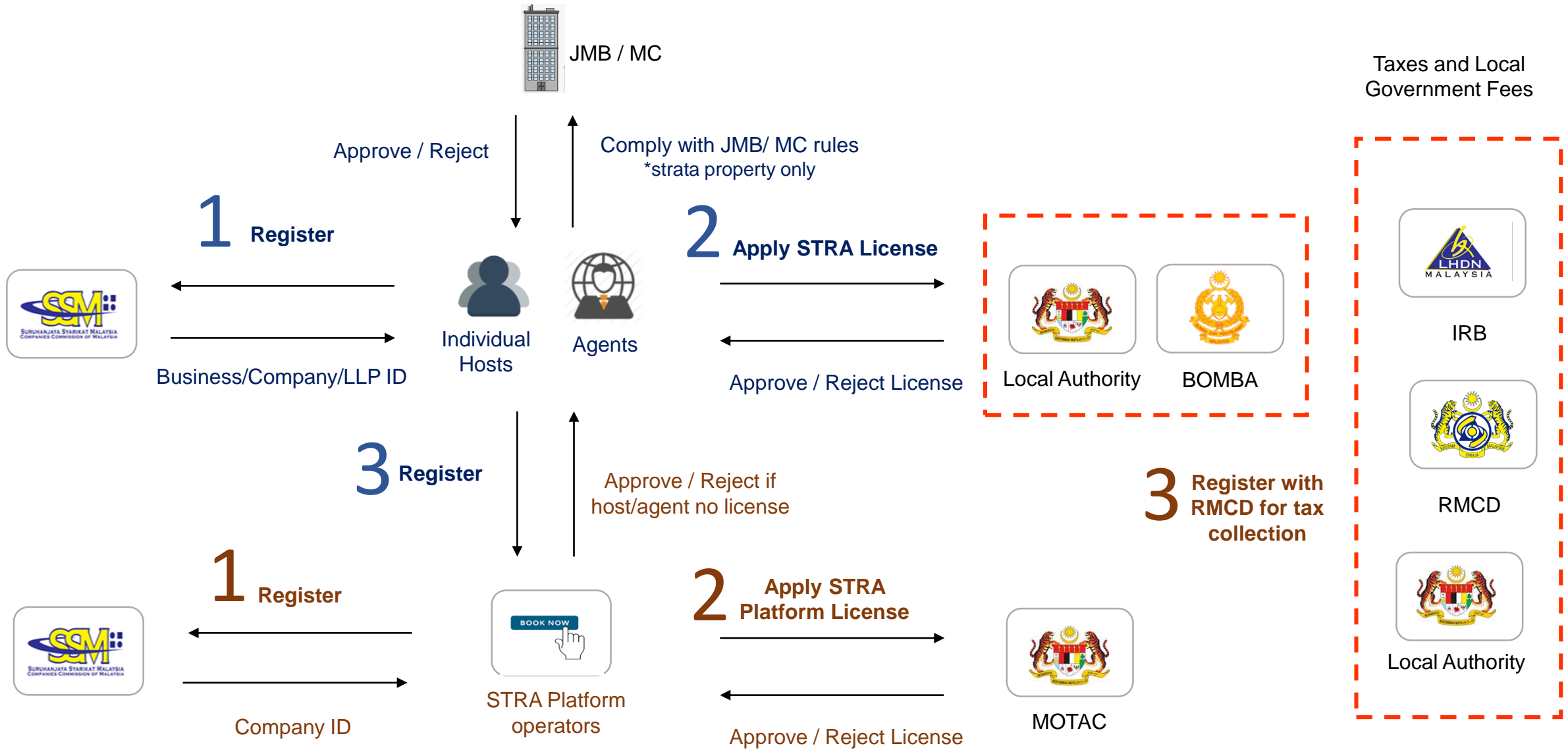
Government Considerations

- to increase income and share the benefits of tourism with wider local community;
- to increase tourist accommodation capacity and options which is to support projection of tourist arrivals of 30 million and rm100 billion revenue by 2020;
- to control public nuisance and address complaints from neighbours with regard to the presence of outsiders in their neighbourhood and managing maintenance upkeep issues;
- to obtain data related with short-term residential accommodation activities; and
- to manage concerns from hotel industry

Key Issues to be Addressed

Land Zoning	Public Nuisance	Safety & Security	Tax Collection	Industry Concern
<ol style="list-style-type: none"> 1. Operate 'business' in residential areas. 2. Unclear definition of an operator conducting home sharing economy in residential/ commercial zone 	<ol style="list-style-type: none"> 1. Nuisance created by noise pollution, disturbance, traffic congestions, which disrupts the neighbourhood's peace and harmony. 2. Increasing maintenance cost of shared facilities due to high wear and tear. 3. Inappropriate behaviour against normal customs. 	<ol style="list-style-type: none"> 1. Inadequate fire safety or protection system. 2. Compromised safety from unregistered guests. 3. Higher risk of break-in, thugs, theft, vandalism, etc. to both private and public facilities. 	<p>No clear mechanism to collect taxes from guests, hosts, and digital platforms.</p>	<ol style="list-style-type: none"> 1. Claims by hotel industry that STRA activities have contributed to the low occupancy rate. 2. Uneven playing field - hotels required to comply with regulations and no regulation for STRA. 3. Disadvantage to hotel industry – residential utility rates for commercialized STRA activities.

STRA Registration and Licensing Framework





Criteria of STRA

Criteria of STRA

a) What is STRA?

- Residential accommodation that is rented for a relatively short period of time.

b) What is a 'residential accommodation'?

- A 'residential accommodation' means any property used for dwelling purposes.

c) What type of properties?

- Residential properties such as bungalow, terrace house, condominium and flat; and
- Commercial properties such as Small Office Home Office (SoHo), Small Office Flexible Office (SoFo), Small Office Virtual Office (SoVo), Serviced Apartments and converted residential properties carrying commercial title.

d) What constitutes 'rented'?

- 'Rented' means making available for rent.

e) What is the duration for 'a relatively short period of time'?

- Means any period which is reasonably termed as short, typically on a daily basis.

Feedback:

1. What are your views on the criteria of STRA?
2. Are there any elements of the criteria of STRA which requires further clarification?

Scope of STRA

Include

1. **Host/Agent**
 - **Host** is an owner or a tenant who rents out their accommodation on a STRA Platform.
 - **Agent** is an appointed or authorized individual or company that manages an accommodation on behalf of the Host.
2. **STRA Platform**
 - **STRA Platform** is a digital platform that provides the service of online booking of accommodation such as *Airbnb, Inc., Booking.com, Agoda, etc.* for Host or Agent

Exclude

1. This Guideline will not be applicable **to innovative accommodation** and other forms of regulated accommodation activities. For other forms of regulated accommodation activities, there will be an exhaustive list of related of regulated accommodation that will be excluded from this Guideline.
2. **'homestay'** as defined by MOTAC.
3. **'hotels'** as defined under existing Federal laws or by-laws issued by Local Authorities.
4. **'tenancy'** as defined under the National Land Code 1965 [Act 56]

Feedback:

3. *What other organization or persons should be included in this Guideline? Why?*
4. *Are there any other residential accommodation that should be excluded from this Guideline?*



Licensing of Host/Agent

Licensing of Host/Agent

Step 1: Check for Eligibility

Host Conditions

- Malaysian citizen or permanent resident in Malaysia.

Agent Conditions

- For individual, Malaysian citizen or permanent resident in Malaysia.
- For company, must be duly incorporated in Malaysia.

Accommodation Conditions

- Must possess a Certificate of Completion and Compliance (CCC).
- Permitted categories* of land use and application.
- Must not be a government subsidised development* (PPR, PRIMA, PPAM, Selangorku, etc.)

***Note:**

1. Government subsidised development may operate as STRA once the moratorium period has lapsed.
2. Permitted categories of buildings are as follows:
 - **Building:** residential purposes or commercial purposes.
 - **Agriculture:** shall not occupy more than one-fifth of the whole area of the land or two hectares, whichever is the lesser.
 - **Industry:** Not allowed

Feedback:

5. *Are the eligibility criteria appropriate for STRA operation? If not, what other criteria should be considered? Why?*

Licensing of Host/Agent

Step 2: Registration with SSM

Business/Company/Limited Liability Partnership

Register your hosting activity with the Companies Commission of Malaysia (SSM):

- Go to SSM website <http://www.ssm.com.my> to understand the guideline for registration with SSM
- Pay the applicable fees (*i.e.* processing fee, name reservation fee, incorporation fee, *etc.*)

***Note:**

See the following provisions relating to entities to register with SSM:

- Section 5 of the Registration of Business Act 1956 (Revised 1978) [Act 197]
- Section 2 of the Companies Act 2016 [Act 777]
- Section 2 of the Limited Liability Partnerships Act 2012 [Act 743]

Feedback:

6. What are your views on the registration with SSM?

Licensing of Host/Agent

Step 3: Comply with rules by JMB/MC (for strata property only)

What is strata property?

Strata property is typically high-rise properties such as condominiums, apartments, and landed properties which are gated and guarded.

Powers of JMB/MC

JMB/MC is empowered to make by-laws for regulating the control, management, administration, use and enjoyment of the property.

***Note:**

See Section 70 of the Strata Management Act 2013 [Act 757]

Feedback:

7. *What are your views on the requirements to comply with rules by JMB/MC?*
8. *Are there any elements on JMB/MC rules that require further clarification?*

Licensing of Host/Agent

Step 4: Application for License with Local Authority

Residential

Type 1: Hosted rental

- The accommodation shall be occupied by the Host or Agent
- Only part of the accommodation is offered for rental

Type 2: Un-hosted rental

- The accommodation shall not be occupied by the Host or Agent
- Entire accommodation is offered for rental

Type 3: Hybrid hosted and un-hosted rental

- The Host or Agent does not occupy the accommodation continuously throughout the year.

Commercial

Type 4: Commercial

- Accommodation is categorized as commercial buildings such as SoHo, SoFo, SoVo, Serviced Apartments and converted residential buildings carrying commercial title.

Feedback:

9. Are the types of rental covers all types of rental for STRA? If not, what other types of rental that should be considered? Why?
10. Are there any elements on types of rental which require further clarification?

Licensing of Host/Agent

Step 4: Application for License with Local Authority (cont'd)

Submission of Form

Required items:

- Business/Company registration number
- Identification card/proof of residency
- Public liability insurance
- Application fee to be determined by Local Authority
- Proof of appointment or authorization from the Host if Agent
- Proof of ownership or authorization to use accommodation for STRA e.g. tenancy agreement, letter of authorization from owner, etc.

Validity Period

- The operational license may be valid for a period of **one (1)** year, depending on the Local Authority. Host/Agent are required to renew the license by submitting the application for renewal of operational license.

Feedback:

11. Are the list of required items for submission of application for license adequate? If not, what other items should be considered? Why?

Licensing of Host/Agent

Step 5: Stay Compliant

Stay compliant to current laws such as those related to taxes, nuisance control, safety, and security. Breach of laws as stipulated by the Government of Malaysia may result in revocation of license and deregistration.

Renewal of License from Local Authority

- Submit an annual summary of STRA operation to Local Authority during renewal of license

Renewal of Business License

- A new business registration may be valid for a period of **one (1)** year and does not exceed **five (5)** years on each registration

Display license

- Display license issued by Local Authority at a place visible

Pay Applicable Taxes

- Tourism tax
- Service tax
- Local Government fee (if any)
- Income tax

Feedback:

12. What are your views on the requirement to stay compliant with the licensing conditions for Host/Agent?



Licensing of STRA Platform

Licensing of STRA Platform

Overview

Scope:

- Digital platform providing the service of online booking of accommodation used by Host and Agent.
- Digital platform activities include advertising, booking, and payment transaction.



Mandatory Registration for License with the Ministry of Tourism, Arts and Culture (MOTAC):

No person shall carry on or operate a **travel agency business*** unless it is a company with a valid license. In this context, "*travel agency business*" means in particular the provision of **selling, arranging or making available for commission, accommodation places within Malaysia or outside Malaysia.**

***Note:** See Sections 2 and 5 of the Tourism Industry Act 1992 [Act 482]

Licensing of STRA Platform : Stay Compliant

STRA Platform must observe the following requirements:

- Comply with any conditions accompanying the license as prescribed by MOTAC.
- Ensure only licensed Host or Agent can list their accommodation on the platform.
- Provide information on how Host or Agent can register their accommodation with Local Authority.
- Share data information on Host or Agent with MOTAC.
- Pay applicable taxes.



Should **the STRA Platform neglect its responsibility** to stay compliant, for example, in ensuring verified listings are advertised, such **STRA Platform may be subject to penalty or may lose the right to operate** their business in the jurisdiction.

Feedback:

13. *Are the proposed requirements appropriate? What requirements should or should not be included under this Guideline? Why?*
14. *What other ways for STRA platform can undertake to assist the Local Authority/MOTAC to facilitate the operation of STRA?*



Night Cap (Maximum number of days)

Night Cap (Maximum Number of Days Per Year)

Types of Property	Proposed Night Cap
Residential	<u>Type 1 - Hosted rental</u> <ul style="list-style-type: none">No night cap
	<u>Type 2 - Un-hosted rental</u> <ul style="list-style-type: none">Maximum of ninety (90) to one hundred eighty (180) days over a twelve (12) month period on all platforms accumulated, per accommodation*.
	<u>Type 3 - Hybrid hosted and un-hosted rental</u> <ul style="list-style-type: none">No night cap for hostedMaximum of ninety (90) to one hundred eighty (180) days over a twelve (12) month period on all platforms accumulated, per accommodation*.
Commercial	<u>Type 4 – Commercial</u> <ul style="list-style-type: none">No night cap



Local Authorities to set night cap based on:

- the number of hotels, budget hotels in the locality, *etc.*;
- whether it is a tourist area/tourist attraction;
- location *i.e.* urban, rural, *etc.*; and
- development in the area.

***Note:** Local Authority has the discretion to increase Night Cap subject to additional terms and conditions such as higher operational license fee.

Feedback:

15. Is the Night Cap appropriate for the types of rental under this Guideline?
16. Are there any elements on the Night Cap which require further clarification?

Implementation of Night Cap by STRA Platform

STRA Platform must:



1

Report periodically to MOTAC affirming that they have exercised reasonable care to verify that the licensed Host and Agent utilizing their service are complying with the Night Cap requirement

2

Maintain business records for each of their Hosts and STRA operation and provide this information to MOTAC upon request

Feedback:

17. *What other roles can STRA Platforms fulfil in order to effectively implement the Night Cap requirement?*
18. *What would be the costs to STRA Platforms in establishing and maintaining the mechanism to implement the Night Cap?*



Safety

Fire Safety Requirements

- All STRA are subjected to the existing fire safety regulations.
- In addition, the following are recommended minimum fire safety requirements for STRA.



Install smoke detector/alarm



Portable extinguisher to be provided in accordance with the relevant codes of practice and placed in a prominent position



Make a detailed emergency evacuation plan available at the property

Install smoke detector/alarm

position
and placed in a prominent
the relevant codes of practice

the property
evacuation plan available at

Feedback:

19. Are the recommended fire safety requirements adequate? If not, what other best practices should be considered? Why?
20. What is the current fire safety standard imposed by STRA platform?

Maximum Occupancy

Host to determine maximum occupancy based on the following:

1

Overcrowded

The accommodation cannot be inhabited in excess of the proportion of one adult to every 350 cubic feet of clear internal space.*

2

Building Plan of the Property

The building plan stipulates the ordinary use of the premise e.g. the name and uses of rooms. **

Note:

*See Section 79 of the Local Government Act

**See Section 10 of Uniform Building By-Laws 1984

Feedback:

21. What are your views on the maximum occupancy requirement?

22. Are there any elements on maximum occupancy which require further clarification?

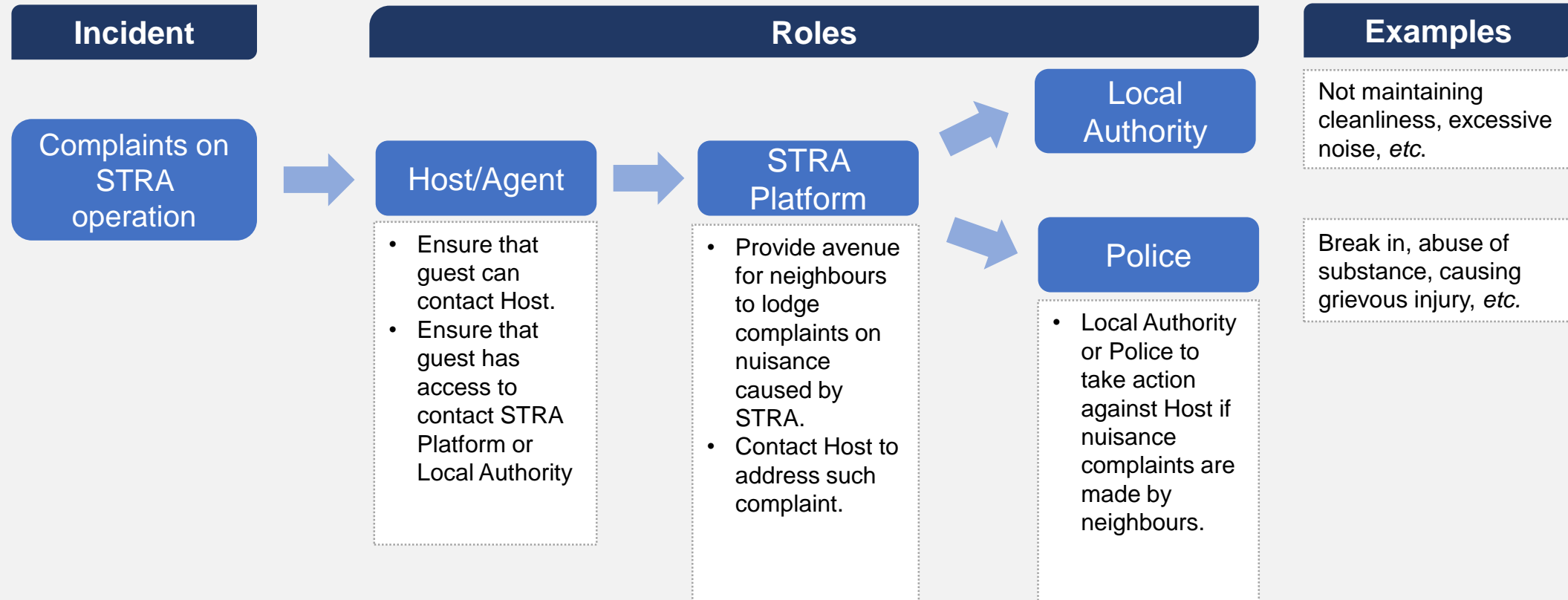


Nuisance Control

Nuisance Control: Prevention and Handling of Complaints

What is nuisance?

An act which is harmful or offensive to the public or a member of it and for which there is a legal remedy.*



***Note:** See Section 268 of the Penal Code [Act 574] and Section 2 of the Local Government Act 1976 [Act 171]

Feedback:

23. Is the prevention and handling of complaints process clear and sufficient? If not, what other processes should be considered? Why?

24. Who are other authorities or stakeholders should be included in the process?

Nuisance Control: Host Responsibilities

Host's Responsibilities

- 1** Provide House Rules
(i.e. noise control, maximum occupancy, *etc.*)
 - 2** Highlight to guests the existence of laws with regard to nuisance, and its relevant penalties
 - 3** Comply with by-laws by the Joint Management Body or Management Committee in addressing nuisance
 - 4** Communicate with neighbours and responsible to address complaints on their STRA guest made by neighbours
 - 5** Communicate with STRA Platform in managing complaints on their STRA operation
 - 6** Keep a record of any complaints or incidents of STRA operation in case the complaints or incidents may affect the renewal of approval of the STRA license
-



Applicable Taxes and Fees

Taxation: Host/Agent and STRA Platform Responsibility

Income Tax	Service Tax	Tourism Tax	Local Government Fee
<p>Assessed on a net basis, calculation of the rental gain from STRA to be disclosed in tax filings</p>	<p>6% for all services* at or more than RM500,000 by any person operating accommodation</p>	<p>RM10 per room, per night</p> <ul style="list-style-type: none">▪ imposed on tourists; and▪ applies to operators having more than four rooms only	<p>RM2 – RM3 per night (e.g. as practiced by the State of Penang and Malacca)</p>
<ul style="list-style-type: none">• Host/Agent• STRA Platform	<ul style="list-style-type: none">• Host/Agent• STRA Platform	<ul style="list-style-type: none">• Guest	<ul style="list-style-type: none">• Guest

Feedback:

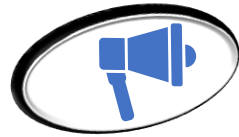
25. What are your views on the taxation requirements imposed?
26. Are there any elements on taxation which require further clarification?

Taxation: Host/Agent and STRA Platform Responsibility



Calculation of Taxation Rate

To calculate taxation rate based on records of transaction of rental of STRA from the day the listing is advertised throughout a **twelve (12)** month period



Be Transparent

Be transparent with the income collected from STRA operation



Understand Tax Implications

Read and understand the relevant tax documents, consult experts on taxation and generally understand tax implications before operation



Local Government Fee

Check with the Local Authority on any additional Local Government fee such as Heritage charges imposed by such Local Authority

Summary of Feedback

Topic	Question
Criteria of STRA	1. What are your views on the criteria of STRA?
	2. Are there any elements of the criteria of STRA which requires further clarification?
	3. What other organization or persons should be included in this Guideline? Why?
	4. Are there any other residential accommodation that should be excluded from this Guideline?
Licensing of Host/Agent	5. Are the eligibility criteria appropriate for STRA operation? If not, what other criteria should be considered? Why?
	6. What are your views on the registration with SSM?
	7. What are your views on the requirements to comply with rules by JMB/MC?
	8. Are there any elements on JMB/MC rules that require further clarification?
	9. Do the types of rental covers all types of rental for STRA? If not, what other types of rental that should be considered? Why?
	10. Are there any features on types of rental which require further clarification?
	11. Are the list of required items for submission of application for license adequate? If not, what other items should be considered? Why?
	12. What are your views on the requirement to stay compliant with the licensing conditions for Host/Agent?

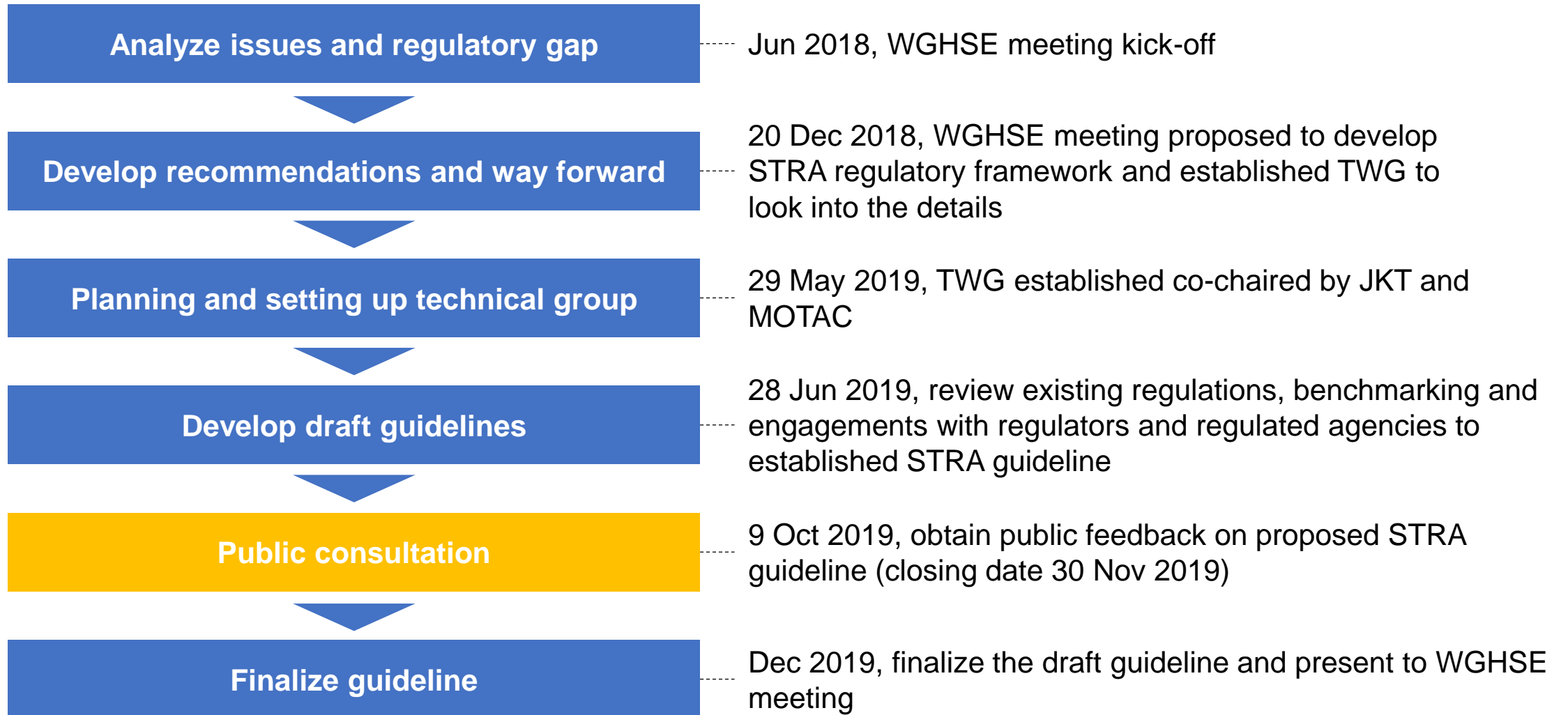
Summary of Feedback

Topic	Question
Licensing of STRA Platform	13. Are the proposed requirements appropriate? What requirements should or should not be included under this Guideline? Why?
	14. What other ways for STRA platforms assist the Local Authority/MOTAC to facilitate the operation of STRA?
Night Cap (Maximum number of days per year)	15. Is the Night Cap appropriate for the types of rental under this Guideline?
	16. Are there any elements on the Night Cap which require further clarification?
	17. What other role can STRA Platforms fulfil in order to effectively implement the Night Cap requirement?
	18. What would be the costs to STRA Platform in establishing and maintaining the mechanism to implement the Night Cap?
Safety	19. Are the recommended fire safety requirements adequate? If not, what other best practices should be considered? Why?
	20. What is the current fire safety standard imposed by STRA platforms?
	21. What are your views on the maximum occupancy requirement?
	22. Are there any elements on maximum occupancy which require further clarification?

Summary of Feedback

Topic	Question
Nuisance Control	23. Is the prevention and handling of complaints process clear and sufficient? If not, what other processes should be considered? Why?
	24. Who are other authorities or stakeholders that should be included in the process?
Applicable Taxes and Fees	25. What are your views on the taxation requirements imposed?
	26. Are there any elements on taxation which require further clarification?

Project Timeline



Thank You!

Co-chair



JKT MOTAC

Members



Secretariat



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