

Regulation of ride-hailing apps in selected places

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1. Introduction

1.1 In recent years, the development of the sharing economy¹ has led to the emergence of various digital platforms that act as intermediaries allowing private individuals to offer their services to users. Amongst these are ride-hailing apps which involve the use of Global Positioning System-enabled software linking drivers and passengers directly, offering personalized point-to-point transportation services that have been dominated by taxis.

1.2 In Hong Kong, there is no legislation enacted solely for regulating the services provided by ride-hailing apps. In any case, insofar as the vehicles are not licensed as taxis or possess a hire car permit, it is illegal for them to carry passengers for rewards under Hong Kong law². In recent years, there have been discussions about the regulation of ride-hailing services, amid increased cases of drivers being arrested and charged for using their unlicensed private cars to work for ride-hailing apps. At the request of Hon Frankie YICK Chi-ming, the Research Office has completed a research task on regulation of ride-hailing apps in eight selected places³. These countries differ in their regulatory approaches, ranging from outright prohibition to attempts to enforce existing taxi/private hire vehicle regulations on ride-sharing apps to level the playing field between the two. The relevant documents are organized into an information pack folder with key findings outlined below.

2. Regulation of ride-hailing apps in selected places

2.1 Uber has been the focus of most studies on regulation of ride-sharing apps, in view of its extensive global market presence⁴ and the multiple regulatory challenges posted to the markets it operates in. Uber has been fighting legal battles in many jurisdictions, concerning mostly (a) unfair competition allegations in relation to traditional taxi industry; (b) public safety concerns; and (c) legal relationship between Uber and its driver. Its business model has been blocked, suspended, restricted or changed in response to the regulatory changes in those jurisdictions.

¹ There is no universally agreed definition of "sharing economy", but it broadly refers to the action of temporary sharing of underutilized resources (e.g. cars) amongst peers through online platforms.

² See Section 52(3) of the Road Traffic Ordinance (Cap. 374).

³ These are France, Germany (Frankfurt), New Zealand, Spain (Barcelona), South Korea (Seoul), Taiwan, the United Kingdom (London) and the United States (California).

⁴ Uber currently operates in 65 countries and more than 700 cities around the world.

Alleged unfair competition against taxi industry

2.2 Uber has been facing legal challenges as regards its relation to the taxi industry, particularly its peer-to-peer UberPop services⁵. Uber defends itself as a digital service and not a transport service. As such, it does not have to follow the same licensing requirement as taxi drivers do, who for that reason, see Uber as an unfair competition. In 2017, the European Court of Justice made a landmark ruling that since Uber's drivers provide transport services to customers, it should be treated as a transport company. The European court ruling has strengthened the case for European countries like Germany to impose an outright ban on Uber for its lack of a rental car licence of its own to offer passenger transport service. In France, Uber is only allowed to operate service which works with professional licensed drivers such as the premium UberBlack services. In Asia, Uber has also limited presence in South Korea. It only operates the UberBlack service in the country, having shut down all its operations in March 2015 after being charged for operating illegal services.

2.3 There are also places imposing specific rules on Uber to avoid its direct competition with taxis. For example, Spain introduced new rules in 2019 requiring the booking of an app-based ride-hailing vehicle to be made a minimum of 15 minutes in advance of a pick-up. In Taiwan, the transport regulator requires "vehicle rental services" like Uber to charge customers by a minimum of one hour in any given trip, regardless of distance. Additionally, Spain and Taiwan require the rental car drivers working with Uber to return to office before they can pick up the next customer⁶.⁷

Public safety concerns

2.4 Uber operates outside of the regulations that apply to the traditional taxi industry, giving rise to concerns whether the public are safe while using its passenger services. In November 2019, the transport authority of London refused to renew Uber's private hire operator licence as it found the company "to be not fit and proper" to hold a private hire licence⁸. For public safety reasons, New Zealand also requires Uber to hold a passenger endorsement certificate and a certificate of fitness for their vehicles. The Transport Agency of New Zealand will check the background of anyone (e.g. criminal record and medical suitability) applying for the certificate to carry passengers.

⁵ UberPop connects customers to private drivers (operating their own vehicles) via the app. The drivers generally do not adhere to the same regulations imposed on taxi drivers (e.g. licences and insurance coverage).

⁶ As taxis have obligations to not discriminate and to provide certain level of transportation service, the street hailing service (i.e. passengers flagging down of a passing taxis) is reserved for them as compensation.

⁷ Uber suspended its ride-hailing services in Barcelona in January 2019 after the regional Catalan government enacted the new rules.

⁸ One of the issues identified by the authority was a change in Uber's systems allowing unauthorized drivers to upload their photos to other Uber driver accounts. The authority found that at least 14 000 trips were made by unauthorized drivers through Uber's platform, putting passengers' safety at risk.

Legal relationship between Uber and its drivers

2.5 The question as to whether an Uber driver is an employee or independent contractor has been considered by employment tribunals in the places studied. Employment status impacts on the rights and benefits Uber is required to pay. In the United States, California passed a bill to codify a test to ascertain whether a worker is an independent contractor or not. Uber is changing its business model in order to prove its drivers are independent contractors in an effort to pass the test. In the United Kingdom, an employment tribunal ruled in 2016 that Uber drivers should have the same rights as other full-time employee in the country.



Timeline of regulation of Uber in France

- **December 2011:** San Francisco-based Uber began to expand internationally, starting with Paris where it launched the UberPop service. UberPop allowed individuals without professional licences to provide rides, thereby providing a lower cost service than taxi service. This resulted in a number of strikes and riots organized by taxi drivers, accusing Uber of not competing on a level playing field.
- **October 2014:** France passed the Thévenoud Law which distinguishes between (a) taxi services where the drivers could station and circulate the public roadways in order to look for clients; and (b) pre-arranged transports by means of transportation other than taxis (chauffeured cars). Uber is categorized under the definition of chauffeured cars for the purpose of this legislation.

The Thévenoud Law also sets out the following requirements:

- (a) prohibiting chauffeured cars other than taxis from charging a per-kilometer tariff;
 - (b) requiring chauffeured cars to return to their base or stop in an authorized parking place between rides;
 - (c) prohibiting the use of software that shows the location of nearby available vehicles to potential customers in real-time; and
 - (d) requiring drivers who chauffeur paying passengers to have appropriate insurance for their passengers as well as completing 250 hours of training in order to obtain a professional licence.
- **July 2015:** Uber suspended its UberPop service and started a new service, UberX, using professional licensed drivers and complying with necessary requirements.
 - **March 2020:** France's highest court, the Court of Cassation, ruled in favour of an Uber driver who had asked that his contractual relationship with Uber be changed to an employment contract. The court found that Uber had control over the driver by his connection to the app which directed him to clients, and thus should not be considered an independent contractor but an employee.

Timeline of regulation of Uber in Germany (Frankfurt)

- **January 2013:** Uber initiated its services in Berlin, and then expanded quickly into Munich, Hamburg, Frankfurt, and Dusseldorf. It offered the *peer-to-peer* UberPop services which relied on non-professional drivers using their own vehicles.
- **September 2014:** A taxi trade body, Taxi Deutschland, filed a lawsuit against Uber, arguing that UberPop provided pickup service without proper licences and insurance. The regional court in Frankfurt ruled in favour of Taxi Deutschland and imposed a temporary injunction on UberPop. Uber appealed, and two weeks later the ban was lifted and UberPop continued to operate.
- **March 2015:** The Frankfurt regional court placed a second nationwide ban on UberPop following a complaint by Taxi Deutschland. The court ruled that UberPop was a peer-to-peer ride sharing services and violated local applicable laws by intermediating riders with drivers operating without a professional licence. Uber stopped UberPop after the court ruling. It then worked with licensed private hire vehicle companies in Germany, so passengers using its app get picked up by a driver from traditional private hire firm.
- **December 2019:** Uber faced another legal challenge on its business operations filed by the same taxi trade body. The Frankfurt regional court banned Uber for its lack of a necessary professional licence to offer passenger transport services using rental cars.

The judges said that Uber was more than just a go-between connecting drivers and customers, and therefore should have a rental car licence of its own. They also pointed out that the company had violated local competition law by assigning specific drivers to customers and determining prices of the trips, and that not all drivers returned to their head offices in between rides as required by law.

Timeline of regulation of Uber in New Zealand

- **May 2014:** Uber started its services in Auckland. Its operations quickly expanded to Wellington in late 2014 and further to Hamilton, Tauranga, Christchurch, Queenstown and Dunedin.

While Uber was popular among riders in New Zealand, local taxi association accused Uber of operating outside the law. Unlike regulations on taxi, Uber drivers did not hold a **passenger endorsement certificate** which includes a background check on criminal records and medical suitability to carry passengers.

- **February 2015:** the Ministry of Transport initiated the Small Passenger Services Review ("SPSR") in an effort to update the law applying to small passenger vehicles like taxi and private hire cars.
- **September 2016:** Following SPSR, the Minister of Transport introduced the Land Transport Amendment Bill to parliament. The legislation change is to ensure small passenger service vehicle drivers (including Uber drivers) adhere to the same rules imposed on taxi drivers.
- **August 2017:** The amendment bill was passed. Apart from having a small passenger service licence, Uber drivers must possess a passenger endorsement certificate like taxi drivers. In addition, their vehicles must have a valid certificate of fitness for providing transportation services.

Under the amendment bill, Uber drivers need to, as part of obtaining or renewing the passenger endorsement certificate, undergo a "fit and proper person check", and the check is repeated every 12 months.

The "fit and proper person check" examines things like traffic offending, previous complaints, serious behavioural issues and always includes a police check to check for criminal offending (e.g. overseas convictions).

Timeline of regulation of Uber in Spain (Barcelona)

- **April 2014:** Uber launched UberPop (a low-cost *peer-to-peer* ride-hailing service) in Barcelona, and moved onwards to Madrid later in the year. Taxi drivers complained of unfair competition because UberPop did not comply with requirements set out for taxi drivers, and they launched legal proceedings against Uber.
- **December 2014:** The Spanish court decided to place a ban on operating UberPop in the whole country, confirming the views of taxi drivers. Uber decided to stop its operation in Spain.
- **March 2018:** Uber restarted operations in Barcelona again under the name UberX, this time using drivers with private hire vehicles ("VTCs") permits, allowing them to carry passengers for pay. Nevertheless, taxi drivers had gone on strikes since then, claiming the conditions for Uber drivers were still unfair in comparison with the regulations they had to comply with.
- **August 2018:** a national six-day taxi driver strike in Spain ended after the central government had agreed to pass regulation that would allow Catalonia to cap the number of VTC permits within their cities. (In Spain, Catalonia is an autonomous region on the northeastern corner of Spain consisting of Barcelona, Girona, Lleida, and Tarragona.) While drivers with VTC permits were allowed to continue their services under the new regulation, regional authorities could restrict the number of these drivers by refusing permits renewal after the expiry of their current permits.
- **January 2019:** Uber suspended its ride-hailing services in Barcelona after the regional Catalanian government enacted new VTC rules, which:
 - (a) require a minimum of 15 minutes wait times before a booking being made and a passenger being picked up;
 - (b) ban VTCs from circulating in the streets between jobs, requiring them to go back to a specific location such as a parking lot or garage to wait for the next pick up; and
 - (c) prohibit ride-hailing apps from displaying the real-time location of bookable vehicles prior to a reservation being made.

Timeline of regulation of Uber in South Korea (Seoul)

- **September 2013:** after three months of providing a free service to test the market, Uber launched its UberBlack service in Seoul.
- **August 2014:** Uber introduced UberX. Immediately after the launch, UberX faced anger from local taxi drivers, being upset that amateur drivers were undercutting their fares. Whereas Uber did not require its UberX drivers to possess any professional licence, taxi drivers in Seoul were reportedly expected to pay around 70 million won (HK\$495,120) for the proper documentation.
- **January 2015:** The Seoul Metropolitan Government ("SMG") issued a statement stating that UberBlack and UberX violated transportation law. It cited a number of problems related to Uber's operations such as insufficient insurance coverage for passengers and inadequate background checks for drivers. SMG offered monetary reward to people reporting Uber drivers.
- **March 2015:** Uber shut down its operation after being charged for operating an illegal service.
- **January 2016:** Uber re-launched the premium UberBlack service which works with licensed taxi drivers.
- **April 2019:** Uber partnered with local taxi industry in Seoul by allowing riders to hail taxis through its app.

Timeline of regulation of Uber in Taiwan

- **July 2013:** Uber entered Taiwan. It applied for a licence to operate as an "information service" provider, but instead had been running a passenger car service. Many Uber drivers did not have a professional driver licence, which was considered illegal by the Ministry of Transportation and Communications ("MOTC") and unfair by local taxi drivers.
- **February 2017:** after three and a half years of operation in Taiwan, Uber reportedly received 11 penalties with fines totalling US\$7.42 million (HK\$57.7 million) and was required to close business by MOTC. On 20 February, Uber announced to close its business in Taiwan.
- **April 2017:** Uber returned to Taiwan with a new business model that included partnering with local car rental companies. Under the new business model, Uber gave rental car partners and their licensed drivers access to ride-hailing opportunities that the Uber app provided.
- **June 2019:** local taxi drivers complained that some Uber drivers roamed the streets for passengers or waited for fares at taxi stands. Under pressure from local taxi drivers, MOTC amended Article 103-1 of the Regulation for Automobile (the so-called "Uber clause"), saying that Uber still essentially operated as a taxi company despite partnering with local car rental companies since 2017.

The "Uber clause" requires "vehicle rental services" like Uber to adopt hourly or daily rate. For those charging hourly rate, journey under one hour must be counted as one hour. Furthermore, rental vehicles cannot pick up passengers on the streets and must return to the office before they can pick up the next customer.

- **October 2019:** Uber announced that it would change its business model. It would start to work with the taxi industry and position as an information technology platform provider to serve "multipurpose" taxi drivers. A multipurpose taxi is defined under Taiwan law as a ride service in which the driver is not legally required to use a yellow taxi. The fares are metered, but passengers must contact the driver via an app.

Timeline of regulation of Uber in the United Kingdom (London)

- **June 2012:** Uber was awarded a Private Hire Vehicle Operator's licence by London's transport regulator, Transport for London ("TfL"), under the Private Hire Vehicles (London) (Operators' Licences) Regulation 2000 for a period of five years. Uber drivers were subject to lower licensing requirements and higher flexibility in determining fares than their taxi counterparts. These differences caused organizations such as the London Cab Drivers Club and Licensed Taxi Drivers Association to protest against Uber, claiming it should follow the same regulations as local taxis.
- **May 2017:** Uber was issued a four-month temporary licence to continue operating in London, thereby allowing time for TfL to consider a new "five-year" deal.
- **September 2017:** TfL refused to renew Uber's licence on the grounds of public safety and security implications. It cited a range of concerns including Uber being unable to have proper background checks on drivers; and its use of proprietary software it developed that could be used to block regulatory oversight. Uber was, nevertheless, allowed to continue operating during its appeal.
- **June 2018:** A UK court granted Uber a provisional 15-month licence with additional conditions. These included reporting drivers' crimes directly to the police instead of logging criminal complaints with TfL that would cause delays.
- **December 2018:** The Court of Appeal upheld the rulings of the Employment Tribunal and the Employment Appeal Tribunal made in October 2016 and November 2017 respectively. Under the rulings, Uber drivers should be classified as employees rather than self-employed and they are entitled to employee benefits such as holiday-pay and the national minimum wage.
- **September 2019:** One day before the expiry of Uber's 15 month licence, TfL gave Uber a temporary two-month reprieve on its licence to operate in London.
- **November 2019:** After the two-month reprieve, Uber had once again been denied by TfL of renewing its licence. The regulator concluded that Uber was not "fit and proper" to hold a private hire vehicle licence, after identifying a "pattern of failures" which put passenger safety and security at risk.
- **December 2019:** Uber appealed and was allowed to operate until the appeal process was completed.

Timeline of regulation of Uber in the United States (California)

- **July 2010:** Uber (formerly known as UberCab) was officially launched in California, connecting its first rider with a black town car for a ride across San Francisco.
- **May 2011:** UberCab received a cease-and-desist letter from the San Francisco Municipal Transportation Agency for operating a "cab" company without necessary licensing.
- **June 2013:** the Los Angeles Department of Transportation ordered Uber to halt all vehicle operations immediately.
- **September 2013:** the California Public Utilities Commission ("CPUC") unanimously voted to create a new category of services called "transportation network companies" ("TNC") to cover ride-hailing companies such as Uber. This made California the first state in the United States to allow ride-sharing services to operate legally.
- **April 2014:** CPUC granted Uber a TNC permit to operate in California and Uber drivers were required to have a professional licence to provide ride-hailing services.
- **April 2018:** the California Supreme Court issued a ruling that set out the test for independent contractor status in California. Under the so-called "ABC test", workers are properly classified as independent contractors only if: (a) they are free from the company's control; (b) they perform work that is outside the usual course of the hiring entity; and (c) they have an independent business in that industry.
- **September 2019:** the Governor of California signed Assembly Bill 5 ("AB5") into law to codify a test to ascertain the employee status of a worker under California law. The bill requires the application of "ABC test" to ascertain whether workers of a hiring entity are employees or self-employed.

If Uber violates AB5, failing the "ABC test" of ascertaining their drivers are independent contractors, the company would be forced to treat their drivers as employees and provide benefits such as health insurance and paid time off.
- **January 2020:** Uber is changing its business model in an effort to prove its employees are independent contractors. For example, it allows drivers to have control over their fares they charge riders and reject ride requests without affecting the bonuses they receive.

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