

Should ride-hailing services be regulated in Hong Kong? If so, why and how? If not, why not?

Introduction

This essay proposes that Hong Kong should regulate ride-hailing services. We will discuss the topic in five parts. First, we offer a general overview of ride-hailing services in Hong Kong. Second, we introduce the current legislation and court interpretation of these activities in Hong Kong. In particular, we will delve into the “legality” arguments of these services. Third, we will study how these services operate and how they are supported or challenged in common law jurisdictions including England, Canada, the United States, and Australia. This part may provide references for the later parts of the discussion supporting regulation of the services in Hong Kong. Fourth, we will evaluate the situation in Hong Kong and argue the reasons for regulation of these services in Hong Kong. This will support the fifth part of the essay, which discusses how the services should be regulated. The prime objective for regulation is to define the margins limiting legal private hire transport services that may, through the introduction of new regulations, allow ride-hailing services in Hong Kong. However, checks and balances are stressed in a bid to pay due attention to existing stakeholders such as passengers and drivers under Hire Car Permits, whose safety and livelihood are impacted respectively by the ride-hailing services. In other words, the new regulation should also not eradicate all legal liabilities of the existing ride-hailing services in Hong Kong.

1. General Overview of Ride-Hailing Services

Ride-hailing services (RHSs) are “personalized, point-to-point¹” transport services. Both taxis and RHSs carry passengers from “point A to B” upon request in exchange for payment of a fare². Many passengers may have different needs and abilities, giving rise to the different transport demands including RHSs. Also, RHSs may impact existing market players of transport services. For example, RHSs may be “cheaper and more convenient” than traditional taxis, thus often seen to bring in competition in the transport industries across many countries.

¹ Button, James. *Taxis : licensing law and practice*, Haywards Heath, West Sussex : Tottel Pub. 2006 2nd ed.

² Angrist, *et al.* *Uber vs. Taxi: A Driver's Eye View*, NBER Working Paper Series, 2017.

In some global cities such as London, RHSs is a new form of business under the category of Private Hire Vehicles, regulated as a different regime distinctive from the traditional category of taxis. We will continue our discussion of regulatory regimes in Part Three.

Among RHS companies, Uber is the largest Transportation Network Companies (TNCs). By mid-2016, Uber has reached 2 billion rides globally in over 450 cities³. Because of Uber's strong global market presence and its regulatory dynamics, we may more frequently refer to Uber situations in common law jurisdictions for the updated sources of information.

2. Current Legislation and Court Interpretation of RHSs in Hong Kong

2.1 Statutory Provisions on RHSs in Hong Kong

In Hong Kong, there is not any legislation made solely for the purpose of controlling RHSs⁴, but there are relevant Ordinances controlling car hire services directly applicable on the operations of RHSs.

The current legislation on the “use of private cars for the carriage of passengers for hire or reward” is the Road Traffic Ordinance (Cap. 374). In particular, the Transport Department cited section 52(3) of the Ordinance for its requirement of a valid “Hire Car Permit” (the “Permit”) when a person drives, uses or permits the car to attain the purpose within the stipulated provisions⁵. Any services provided without the Permit will thus be deemed unlawful under this Ordinance. In addition, the creation and use of Permits is subject to a number of statutory regulations, for instance:

1. The Commissioner for Transport derives power from this Ordinance to authorize and issue the Permits⁶.
2. The Permit will only be issued to the registered owner of the private car.

³ Hong Kong Economics Journal. “Uber 乘客人次半年倍增”, 20 July 2016, available at: <http://startupbeat.hkej.com/?p=31818>

⁴ Reuters. “Hong-Kong-police-arrest-21-Uber-drivers”, 23 May 2017, available at: <https://www.reuters.com/article/us-uber-tech-hongkong-arrests/hong-kong-police-arrest-21-uber-drivers-idUSKBN18J0GG>

⁵ Transport Department, Types of Hire Car Permit, available at: http://www.td.gov.hk/en/public_services/licences_and_permits/hire_car_permit/index_t.html

⁶ Regulation 14(1) of the Road Traffic (Public Service Vehicles) Regulations (Cap. 374D).

3. The Permit, unlike taxi licenses which have an active secondary market⁷, is non-transferrable and licensed to the original applicant only. Any transfer of ownership invalidates the Permit.
4. Table 1 below shows the type of applicable Permit for RHSs:

Table 1: Classification of RHSs under the Road Traffic Ordinance (Cap. 374).

Type of Hire Car Permit applicable	Purpose
Type (c) Private Service (Limousine) Hire Car	“For the carriage of clients of a contracted company, or individuals requiring personalized high-end transportation ⁸ ”.

Moreover, section 4 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) requires a valid third party insurance of RHS:

“it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Ordinance.”

Hence, obligations imposed on the users of the motor vehicles are to ensure the insurance policy applies, even if the vehicles are intended for commercial purposes involving passengers who pay.

2.2 Common law position on RHSs in Hong Kong

The recent issue concerning the statutory interpretation was raised in March 2017 in a hearing of criminal charge against Uber drivers⁹. The issue was whether the Road Traffic Ordinance (Cap. 374) and the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) had been violated, when Uber drivers offered transport hire services without valid Hire Car Permits or taxi licenses. In particular, it concerned whether the

⁷ Regulation 17(1)(b)(iii) of the Road Traffic (Registration and Licensing of Vehicles) Regulations, Cap. 374E.

⁸ *Supra* footnote 6.

⁹ Lau, SCMP, “Hong-Kong-Uber-drivers-will-face-criminal-trial-after-defence case-flops”, 28 October 2016, available at: <http://www.scmp.com/news/hong-kong/law-crime/article/2041039/hong-kong-uber-drivers-will-face-criminal-trial-after>

services offered were for “commercial purposes”, which are restrained under these two Ordinances.

The Magistrate Judge So Wai-tak ruled that the private vehicles were used “for commercial purposes¹⁰”, without a valid third party insurance coverage of the passengers in use. He stressed that “the interest and safety of passengers¹¹” should not be compromised for the convenience in RHSs, which may resemble the illegal “*pak pai*”s since the 1960s. To control the informalities of “*pak pai*”s was one of the legislative intents under the Road Traffic Ordinance¹². It may follow that, RHS companies such as Uber might be prone to joint liabilities for allowing unlicensed vehicles applied in the provision of carriage services under the platform. However the liabilities to Uber and other platform companies is a position yet ascertained until the prosecution of Hong Kong may bring up a criminal charge for the court’s review in future cases.

2.3 Distinction: The “Inherently Illegal” Argument of RHSs

Subsequent to the discussion about the legality of RHSs in Hong Kong in Part 2.1 and 2.2 above, another question may arise: are RHSs inherently illegal under the legal framework in Hong Kong?

From the Ordinances and judicial opinions, it would be clear that this may not be true: any e-commerce platform for taxis and valid vehicles to connect to passengers could not by itself constitute a criminal charge under Cap 374. It would only be unlawful when unlicensed vehicles, such as limousines delivering RHSs without a valid Hire Car Permit¹³, are involved in the services offered on the RHS platform. Clearly the regulations above would echo what Innovation and Technology Bureau commented, that “all services operated on different technologies or platforms must be lawful¹⁴”.

¹⁰ Section 52(3) of the Road Traffic Ordinance (Cap. 374).

¹¹ Wu, Reuters, “Hong-Kong-Uber-drivers-found-guilty-of-illegal-car-hire,-latest-blow-to-firm”, 10 March 2017, available at: <https://www.reuters.com/article/us-uber-hongkong/hong-kong-uber-drivers-found-guilty-of-illegal-car-hire-latest-blow-to-firm-idUSKBN16H0BN>

¹² Hall, Chris. *The Uncertain Hand: Hong Kong Taxis and Tenders*. Hong Kong: Chinese University Press, 1996.

¹³ Interpretation, Part 1 Preliminary, Cap. 374 Road Traffic Ordinance: “hire car permit means a permit issued in accordance with this Ordinance authorizing the use of a private car for the carriage of passengers for hire or reward”.

¹⁴ Government Press Releases, *LCQ5: Development-of-Innovation-and-Technology-Industry*, 17 February 2017, available at: <http://www.info.gov.hk/gia/general/201602/17/P201602170317.htm> ; Government Press Releases, *Businesses urged to abide by law*, 14 August 2015, available at: http://www.news.gov.hk/en/categories/finance/html/2015/08/20150814_134243.lin.shtml

However, from a practical point of view, understanding whether “it is impossible for RHSs to legalize” could facilitate our understanding of the legality issue of RHS and how we may propose to regulate the industry. How many Permits are issued by the responsible executive branch? How many of the licenses are vacant, thus offering room for new applications from RHS drivers?

Under Cap 374L, the number of Permits is to be maintained at the current level¹⁵, notwithstanding any power for the Commissioner to amend Cap 374L¹⁶. A recent report of the Consumer Council¹⁷ showed there was a total of 648 vehicles registered with the Permits, while the cap of total Permits targeting private services was at 1,500. However, Transport Department reported zero application of Permits from RHS applicants¹⁸.

3. Positions of Common Law Jurisdictions

3.1 England

In an attempt to understand whether RHSs should be regulated in Hong Kong, we should examine the relevant legislation and regulatory issues in England for reference.

The European Court of Justice, the Top Court of the 28 member states in the EU, ruled in December 2017 that “the service provided by Uber connecting individuals with non-professional drivers is covered by services in the field of transport¹⁹”. The result of the ruling defined Uber and possibly other RHSs as “transport firms”, which could be regulated by the EU members, including the UK under local transport laws. This further distinguished RHS companies from a mere online platform, which may otherwise be subject to less regulations without reference to local transport regulations.

While the rule may have relatively little practical implication in England where many RHS giants such as Uber are coping with the local

¹⁵ Cap. 374L, Hire Car Permits (Limitation on Numbers) Notice.

¹⁶ By the power conferred from Cap 374 s7(2).

¹⁷ Consumer Council, *A-Study-of-the-Competition-in-the-Personalized-Point-to-point-Car-Transport-Service-Market*, 28 November 2017, p.6-7, available at:

https://www.consumer.org.hk/sites/consumer/files/competition_issues/CarHailing/presentation_eng.pdf

¹⁸ Lo and Yau, SCMP, “22-Uber-drivers-arrested-in-undercover-Hong-Kong-police-operation”, 23 May 2017, available at: <http://www.scmp.com/news/hong-kong/law-crime/article/2095336/21-uber-drivers-arrested-hong-kong-undercover-police>

¹⁹ Financial Times, “ECJ-rules-Uber-can-be-regulated-as-taxi-company”, 20 December 2017, available at: <https://www.ft.com/content/7f280664-e565-11e7-97e2-916d4fbac0da>

regulations²⁰, it would be a landmark decision which granted or reinforced the authority of the local transportation laws of the member states in the EU. In fact, there are a number of regulatory issues and challenges of RHS companies faced by the local authorities.

3.1.1 Regulatory Background of RHSs in England

Taxis and private hire transports in London are regulated by different legislation such as the London Cab Act 1968 and the Transport Act 1985²¹. For areas inside London, implementation of legislation falls to the responsibility of Transport for London (TfL), while areas outside are to the local authorities democratically elected²².

Broadly construed, in England and Wales²³, the provisions in the Local Government (Miscellaneous Provisions) Act 1976 are applicable to RHSs. They are regulated under the national legislation of private hire vehicles²⁴.

3.1.2 Regulatory Issues Concerning RHSs in England

Uber operates under transport laws in London, which is its “largest market in the European continent”²⁵. TfL’s Managing Director commented on the administration of RHSs that the TfL “must ensure that regulatory requirements are met and are developed in a way that delivers the high standards customers deserve”. This followed that new disrupters of the traditional market may not have an “unfair competitive advantage” for they also have to “follow the same regulation and compliance of incumbent businesses”²⁶.

Some RHS companies may dispute to the type and extent of regulatory controls. In a High Court case in March 2017, Uber appealed against TfL’s decision that private hire drivers must pass a written English test

²⁰ Ivana Kottasova, CNN Tech, “Top-court:-Uber-should-be-regulated-like-a-taxi-company”, 20 December 2017, available at: <http://money.cnn.com/2017/12/20/technology/uber-taxi-company-europe/index.html>

²¹ Considered in: *99 Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin).

²² *Supra* footnote 2.

²³ *Supra* footnote 1; not including Plymouth, which adopted the City of Plymouth Act 1975.

²⁴ S. 46 of The Local Government (Miscellaneous Provisions) Act 1976; and The Private Hire Vehicles (London) Act 1998.

²⁵ *Supra* footnote 19.

²⁶ Topham, *et al.* The Guardian, “Uber-wins-high-court-case-over-taxi-app”, 16 October 2015, available at: <https://www.theguardian.com/technology/2015/oct/16/uber-wins-high-court-case-taxi-app-tfl>

for “new or renewal of their licenses”²⁷. It may reveal a tendency for the transport authority to bind Uber as one of the hundreds of private hire car operators similar to those of taxis, using “language proficiency” as a regulatory barrier. Policy makers in London may aim at striking a balance of new market entrants of RHS and the traditional industry players through new, plenary regulations. Further licensing requirements include due reports of criminal offences, a proper submission of medical certificates, and background checks on drivers²⁸.

The conflicts of regulatory matters between industry players of the RHSs and the regulator may even antagonize in litigation that could cost RHS companies of their licenses to operate legally. This would in turn prove that regulators could have a high degree of control over new market entrants of RHS. In September 2017, Uber was refused by the authority a license renewal, following TfL’s comment that Uber “lack(s) of corporate responsibility in relation to a number of issues which have potential public safety and security implications.” The issues include the use of Greyball software which blocks the authority from regulating the online platform of Uber. While the operation of Uber is still valid in London until the appellate decision to be made from February 2018, the case still proved how the relevant authority may limit the expansion of disruptive technology through regulations²⁹.

3.2 Canada

Quebec, the second-most populous province of Canada, introduced Uber via one-year operating license in a pilot project in 2016. Within a year it had experienced business growth having over 10,000 drivers³⁰, a phenomenon shared in other developed international cities or areas.

For the regulatory control, Quebec Supreme Court ruled that RHS companies were not one of the “actual players” of the taxi industry, which would otherwise require a taxi permit for its drivers³¹. This classification of industries, however, did not hinder policy-makers to

²⁷ Transport for London(TfL), *English-language-requirement*, retrieved on 15 January 2018, available at: <https://tfl.gov.uk/info-for/taxis-and-private-hire/english-language-requirement>

²⁸ BBC News, “Uber-loses-London-operating-licence”, 22 December 2017, available at: <http://www.bbc.com/news/uk-england-41358640>

²⁹ Titcomb, James, The Telegraph, “Key-questions:-What's-next-for-Uber-and-TfL?”, 22 September 2017, available at: <http://www.telegraph.co.uk/business/2017/09/22/key-questions-next-uber-tfl/>

³⁰ CNBC, “Uber-says-it-will-pull-out-of-Canada's-Quebec-province”, 26 September 2017, available at: <https://www.cnbc.com/2017/09/26/uber-says-it-will-pull-out-of-canadas-quebec-province.html>

³¹ The Canadian Press, “Taxi-drivers-lose-another-legal-battle-after-Quebec-Superior-Court-sides-with-Uber”, 5 October 2017, available at: <http://www.cbc.ca/news/canada/montreal/quebec-court-rejects-taxis-demands-uber-2017-1.4342217>.

strengthen regulations on RHS, with the example in September 2017 when Transport Minister mandated Uber drivers to undergo 35 hours of training and validate criminal backgrounds by the police. Despite the same set of rules were introduced to taxis in Quebec since 1 January 2014, Uber must still comply with the requirement that it had lagged behind³².

3.3 The United States

Across states and cities, the United States may have varying regulatory regulations. RHSs were often criticized on their insufficient focus on customer safety and the deviance to existing regulations. The result of the backlashes of regulatory control has led to the retreat of Uber in some areas, such as Austin, Texas, and Alaska³³.

In particular, whether RHSs should be regulated in coherence to the standards of the local taxis would be a major legal focus. For instance, in the District Court case in Massachusetts³⁴, various taxi medallion holders in the Boston area alleged that Uber had violated the local “Taxi Rules” of Boston Police Department Rule 403 and the related competition law. One of the major issues concerned the definition of “operating a taxi or private vehicle” as follows:

“In the City of Boston, no person, firm, or corporation driving or having charge of a taxicab or other private vehicle shall offer the vehicle for hire for the purpose of transporting, soliciting and/or picking up a passenger or passengers unless said person is licensed as a hackney driver and said vehicle is licensed as a hackney carriage by the Police Commissioner³⁵”

The Court agreed the plaintiffs’ submission that Uber’s provision of a smart phone application (an “app”) for requesting private vehicles would fall within the definition of “offer(ing) the vehicle for hire”. It ruled that Uber had breached Rule 403 accordingly in a narrow interpretation. This again would echo the many common law jurisdictions’ position to regulate the RHS, even though the regulatory means and extent may vary greatly.

³² CBC News, “Taxi-driver-background-checks-mandatory-in-Quebec-as-of-Dec.-1”, 16 November 2014, available at: <http://www.cbc.ca/news/canada/montreal/taxi-driver-background-checks-mandatory-in-quebec-as-of-dec-1-1.2836993>

³³ Rhodes, Anna, The Independent, “Uber:-which-countries-have-banned-the-controversial-taxi-app”, 22 September 2017, available at: <http://www.independent.co.uk/travel/news-and-advice/uber-ban-countries-where-world-taxi-app-europe-taxi-us-states-china-asia-legal-a7707436.html>

³⁴ *Johnson v. United States*, No. 16-0072, 2017 U.S. Dist. LEXIS 31232 (D.D.C. Mar. 3, 2017).

³⁵ Section 16-15.05 of the *City of Boston Municipal Code* (“ordinance 16-15.05”).

The case should be kept in mind that exceptions may occur in other areas in the United States. Some states are petitioning for new regulations to introduce RHSs in the area. For instance, in Alaska, House Bill 132 proposed to legalize rideshare companies in the state while stressing “safety, reliability, and cost-effectiveness of rides” should be maintained within statutes³⁶.

3.4 Australia

RHSs stand legal in most Australian states with different regulatory controls. For example, the government in New South Wales requires the drivers to have “criminal and car-safety checks³⁷”. A steering committee including the taxi industry and RHS providers may be formed by the government to establish the framework of control of RHSs³⁸. Northern Territory is currently the only state which keeps Uber and other RHSs banned³⁹.

4. Why RHSs should be regulated in Hong Kong

We will discuss the rationales for regulating RHSs in Hong Kong: first, to fulfil social needs for personal point-to-point hire transport services. Second, to remove barriers for RHSs to comply with the legal requirements of operation in Hong Kong:

4.1 Fulfilling Social Needs of Point-to-Point Transport Services in Hong Kong

This point argues that the social needs for point-to-point transport services may be satisfied and the related transport problems in Hong Kong be alleviated by creating a level-playing field of taxis and hailing services.

First, we investigate the current standing of the taxi industry, which has a similar market to RHSs. On the demand side, taxis account for about 8%

³⁶ Anchorage Daily News, “Alaska-is-one-of-few-states-without-Uber-or-Lyft. New-bills-could-change-that.”, available at: <https://www.adn.com/business-economy/2017/03/22/alaska-is-one-of-the-last-states-without-uber-or-lyft-new-legislation-might-change-that/>

³⁷ ABC News, “These-are-the-states-and-territories-where-Uber-is-(and-isn't)-legal”, 11 August 2016, available at: <http://www.abc.net.au/news/2016-08-11/where-is-uber-legal-in-australia/7719822>

³⁸ ABC News, “Uber-backs-away-from-launching-NT-in-face-of-government's-new-regulatory-model”, 28 April 2017, available at: <http://www.abc.net.au/news/2017-04-28/uber-backs-away-from-nt-launch-in-face-of-new-govt-regulations/8478060>

³⁹ *Ibid.*

of the public transport usage in Hong Kong, and the daily average patronage is forecasted to increase steadily to a high figure of 1,056,000 by 2021⁴⁰. However, the supply side may appear to be inelastic in relation to the growing demand. The total number of urban taxi (“the red taxi”) licenses in 2016 remains unchanged at 15,250 since 1994, the year the Transport Department last issued licenses for the urban taxis⁴¹.

In a scenario in which the current legislation regulating the number of taxi licenses is unchanged for the coming 5 years, the forecast of the increasing demand for taxi services would mean on average, each available taxi takes 58 journeys daily in 2021 (*Table2*), an increase from that of about 51 journeys in 2016. The importance of this analysis is that, in view of the increasing expectation for taxi transports, the current regulation on the taxi licenses is relatively constrained and conservative, as represented by the unchanged number of taxis. However, the essential nature of Uber and other RHSs offers flexibility in hailing, by reducing “search cost” of hire services from passengers⁴² with a wider options of vehicles available than taxis. Hence, the regulation of RHS would echo flexibility in satisfying the needs of point-to-point services for Hong Kong citizens. In view of such social voices, Wesley Wan of the Transport Advisory Committee echoed by supporting the relaxation of the current system to “allow Uber and other operators to join the market⁴³”.

Table2: The Reported and Forecasted Numbers of Taxi Journeys in Relation to the Number of Available Taxis in Hong Kong⁴⁴.

	Indicators	2021 (Forecast only*)	2016	2015	2014
a.	Average daily taxi transport passenger journeys	1,056,000*	933,000 (-3.5%)	966,000 (+0.6%)	973,000 (+3.7%)

⁴⁰ Transport and Housing Bureau, *Public-Transport-Strategy-Study-(June-2017)*, p.6&46, available at: [http://www.thb.gov.hk/eng/psp/pressreleases/transport/land/2017/Final%20Report%20\(Eng\).pdf](http://www.thb.gov.hk/eng/psp/pressreleases/transport/land/2017/Final%20Report%20(Eng).pdf)

⁴¹ SCMP, “Hong-Kong-taxi-licences-hit-record-high-of-almost-US\$1m”, 7 August 2013, available at: <http://www.scmp.com/business/money/markets-investing/article/1294823/hong-kong-taxi-licences-hit-record-high-almost-us1m>

⁴² Frenken and Schor, *Putting-the-sharing-economy-into-perspective*, Environmental Innovation and Societal Transitions, p.4-8, June 2017, Vol.23.

⁴³ Yau, Cannix, SCMP, “Uber-secures-third-party-insurance-coverage-in-bid-to-be-legalised-in-Hong-Kong”, 23 February 2017, available at: <http://www.scmp.com/news/hong-kong/economy/article/2073507/uber-secures-third-party-insurance-coverage-bid-be-legalised>

⁴⁴ Transport Department, *Average-Daily-Public-Transport-Passenger-Journeys-by-Mode-during-2007-2016-(in-thousands)*, 2017 Annual Transport Digest.

	Number / (year-on-year % change)				
b.	Available taxis Number / (year-on-year % change)	18138 *	18138 (0%)	18138 (0%)	18138 (0%)
c.	Ratio of: a to b	58.2:1 *	51.4:1	53.3:1	53.6:1

Further factual evidences could be supported by the case of Singapore, with similar demographic characteristics to Hong Kong. Land Transport Authority attributed the reason of narrowing taxi waiting time in 2015 partly by the “increasing availability of private hire car services such as Uber and GrabCar⁴⁵”. By encouraging RHSs under the local government incentive of “Taxi Availability Framework⁴⁶”, the authority believed RHSs had helped digested the demand for taxis.

Table3: Figures about taxis in Singapore and Hong Kong⁴⁷.

	Indicators	Data in Singapore (Year – Figure)	Data in Hong Kong (Year – Figure)
a	City Population	2014 – 54,697,000 2015 – 5,535,000 2016 – 5,607,300 ⁴⁸	2014 - 7,229,500 2015 - 7,291,300 2016 - 7,336,600 ⁴⁹
b	Average daily passenger *	2014 - 1,020,000 ⁵⁰ 2015 – N/A 2016 – N/A	2014 – 973,000 ⁵¹ 2015 – N/A 2016 – N/A

⁴⁵ Land Transport Authority, *Satisfaction-with-taxi-services-remains-high-in-2015*, News Releases, 14 March 2016, available at: <https://www.lta.gov.sg/apps/news/page.aspx?c=2&id=d070bbf6-ed00-4586-ab48-080572fc64cb>

⁴⁶ Land Transport Authority, *Taxi-Availability-Framework-simplified-in-response-to-changing-taxi-operating-environment*, News Releases, 28 December 2016, available at: <https://www.lta.gov.sg/apps/news/page.aspx?c=2&id=8d105be4-5fa5-4837-b346-300533288a03>

⁴⁷ Available data in 2014, for year-on-year comparison.

⁴⁸ Singapore Department of Statistics, *General-Household-Survey-2015*, available at: https://www.singstat.gov.sg/docs/default-source/default-document-library/publications/publications_and_papers/GHS/ghs2015/ghs2015.pdf

⁴⁹ Hong Kong Annual Digest of Statistics, 2017.

⁵⁰ Land Transport Authority, *Singapore-statistics-in-brief*, p.1-2, available at: <https://www.lta.gov.sg/content/dam/ltaweb/corp/PublicationsResearch/files/FactsandFigures/Statistics%20in%20Brief%202015%20FINAL.pdf>

⁵¹ *Supra* footnote 48.

c	No. of taxis	2014 – 28,736 ⁵²	2014 – 18,138 ⁵³
		2015 – 28,259	2015 – 18,138
		2016 – 27,534	2016 – 18,138

In addition to the quantitative analysis, we may refer to the qualitative differences of RHS to taxis. According to the Consumer Council, e-hailing services may focus on “random and mobile customers”, relying on “the use of booking mobile app” and “quotation in-advance pricing”. They may accumulate market intelligence via utilization of information technology to understand “consumer behaviour and needs”⁵⁴.

Traditional players may sometimes depart from dissenting views and welcome the change. According to the House of Commons Library, The London Taxi Drivers Association claimed in 2016 that street hail is probably “irreversible”. Taxis services would be available via an app in order to upscale the services in a positive way for the consumers⁵⁵.

4.2 Removing Barriers to Comply with Existing Legislation

This point argues that the existing legislation provides a range of practical hurdles for RHS to follow local regulations. The review or renewal of existing legislation could achieve enforceability and effectiveness when barriers to comply with existing legislation are removed.

Despite the availability of vacant Hire Car Permits introduced in Part 2.1, not all individuals in practice may produce the documents required to apply for the Permits, such as the certified true copy of a “Business Registration Certificate” and a “Memorandum” of the Company. These document requirements may be considered as one of the hurdles for RHS drivers to apply for the Permits⁵⁶. In addition, since RHS are likely to be informal, drivers may not produce evidence or copies of “contract with client” requiring private hire car services.

Recently, the Transport Department has advised new measures in effect on 1 February 2017⁵⁷ that the information related to “the proposed

⁵² *Supra* footnote 49.

⁵³ *Supra* footnote 19.

⁵⁴ *Supra* footnote 17, p.23-26.

⁵⁵ House of Commons Library, *Taxi-and-private-hire-vehicle-licensing-in-England-&-Wales*, Briefing Paper, 10 August 2016.

⁵⁶ Transport Department, Application for hire car permit – private service (limousine).

⁵⁷ Transport Department, New Measures. Available at:

http://www.td.gov.hk/en/public_services/licences_and_permits/hire_car_permit/index.html

business model/ case” may be considered by the Department to approve of the application. However, the question whether RHS would be leniently granted considerations of the documentation requirement has not been ascertained.

The barriers to comply with existing legislation may be viewed along with the criticisms against it. In London, the Local Government (Miscellaneous Provisions) Act 1976, which regulates all London Private Hire Permits, was criticized for “being out of date” by the operators regulated under it⁵⁸. Similarly in Hong Kong, it may be suggested that the legislation is “lagging behind the e-commerce trend⁵⁹” when the Ordinance regulates RHSs with rules over two decades ago.

5. How RHS should be regulated in Hong Kong

In Part Five, we draw reference from the relevant legislation in the common law community, including the US, England, Canada and Australia. Although no consensus may be reached on every regulatory matter, we could introduce the elements generally discussed by these jurisdictions and consider them in the situation in Hong Kong.

5.1 Persuasive Judgments for Regulating RHSs under Local Transport Laws

The ECJ ruling could bring a strong persuasive value to the legislation of RHSs in Hong Kong. Under the definition of ECJ, RHSs are, “by means of a smartphone app and for remuneration, non-professional drivers using their own vehicle with persons who wish to make urban journeys, (and they) must be regarded as being inherently linked to a transport service and, accordingly, must be classified as ‘a service in the field of transport’ within the meaning of EU law”⁶⁰. In another English case, Lathan LJ suggested “a unified system of control” for central purposes⁶¹. This could be understood as to support the central management of both taxis and private hire vehicles in the context of England. These two judgments may

⁵⁸ Parliament, *Written-evidence-from-Blue-Line-Taxis-(TPH-28)*, The Inquiries to the UK Parliament, December 2010, available at:

<https://publications.parliament.uk/pa/cm201011/cmselect/cmtran/writev/taxi/m28.htm>

⁵⁹ Quote from Legislator Andrew Wan Siu-kin: *Supra* footnote 18.

⁶⁰ Bowcott, Owen, The Guardian, “Uber-to-face-stricter-EU-regulation-after-ECJ-rules-it-is-transport-firm”, 20 December 2017, available at: <https://www.theguardian.com/technology/2017/dec/20/uber-european-court-of-justice-ruling-barcelona-taxi-drivers-ecj-eu>

⁶¹ *Shanks v North Tyneside Borough Council* [2001] EWHC Admin 533.

be references for Hong Kong to integrate RHS into the existing point-to-point car service market.

5.2 Distinction: Different Licensing Conditions for Taxis and RHSs in Hong Kong

According to the Transport and Housing Bureau, it is “legally infeasible to impose new license conditions for regulating the taxi services” because the licenses are “permanent in nature⁶²” in Hong Kong. For example, there is no penalty against unsatisfactory service of taxi drivers through licensing or condition renewals.

However, as we have discussed in Part Three, regulations of RHS may involve additional checks and balances, such as the background checks of drivers by TfL in London, and the driver training hours needed in Canada. Hence, additional checks and balances on RHS would be achieved only by the introduction of separate licensing conditions, even if RHSs should be regulated under local transport laws in Part 5.1.

5.3 Checks and Balances: Requirements for RHS Drivers under Departmental Regulations

From a licensing point of view, Button commented that “safety” should not give way to “accessibility” of RHSs. While the general public may welcome new types of transportation to better satisfy transportation needs, regulators would be more concerned on the related passenger safety issues, such as the sufficiency of coverage of third party insurance of RHSs to ensure accidents are insured during hire. Enabling the accessibility of RHS may pose a danger to members of the society, if “vehicles or the way of driving a vehicle⁶³” are uncontrolled. Still, it would be equally important for the RHS, with its surging employment figures and market demand, to be expected a right by the general public to keep RHS governed properly.

As common law jurisdictions have yet consent to a uniform set of rules governing RHS, regulators may consider also the situation in Hong Kong. For instance, the Consumer Council proposed to set requirements for “insurance coverage, background checks for drivers, record keeping of

⁶² Legislative Council, *Legislative-Council-Panel-on-Transport-Public-Transport-Strategy-Study-Role-and-Positioning-Review-Personalised-and-Point-to-Point-Transport-Services*, p.4-6, available at: <https://www.legco.gov.hk/yr16-17/english/panels/tp/papers/tp20170317cb4-666-5-e.pdf>

⁶³ *Supra* footnote 1.

every trip and setting up ways for passengers to lodge complaints and feedback⁶⁴”.

Informalities in city areas, such as hawking, pedestrian area performances and RHSs, are common in Hong Kong and they may lead to “grey areas” in the legal system if the relevant legislation are ambiguous or difficult to be enforced. In the case of Hong Kong transport, minibus, for instance was legalized only until 1969 to regulate the once-“*Hak Pai*”s⁶⁵. Hence, all the points above work towards eliminating “grey areas”. For example, are the RHS drivers considered employees of the platform companies? Vehicles may often be used for family, social or business purposes when not hired for RHSs. What should the checks be? Some legislators may allege that, “if passenger services are not regulated, this will in effect mean that illegal passenger services are allowed⁶⁶.” Therefore there may be a need to check and balance the RHSs via renewable regulations by the related government departments.

Conclusion

The former Secretary for Justice, Mr. Rimsky Yuen, SC, commented that the Department of Justice is “neutral in technological policies⁶⁷” in the case of Uber. The Government may, “for the good of the society as a whole⁶⁸”, implement policies by enacting new laws. Undoubtedly, ride-hailing services in Hong Kong may involve policy concerns to propel its legislation. Much focus of the essay has therefore been yielded in Part Two on the current legislation of these services in Hong Kong, and in Part Four on the rationales supporting for regulation of ride-hailing services. The ways of regulating ride-hailing services, discussed in Part Five, would have to draw references to the nature of ride-hailing services, and the legal implications and controls of the services in the common law community. These have been discussed respectively in Part One and Part Three. Under this subject it is also important for the regulation of ride-hailing services to be checked and balanced by different licensing requirements.

⁶⁴ Yau, Cannix, SCMP, “Consumer-Council-rebukes-Hong-Kong-government-on-its-failure-to-embrace-ride-hailing-services”, 28 November 2017, available at: <http://www.scmp.com/news/hong-kong/community/article/2121946/consumer-council-rebukes-hong-kong-government-its-failure>

⁶⁵ *Ibid.*

⁶⁶ *Supra* footnote 60.

⁶⁷ Government Press Releases, “律政司司長談Uber召喚車服務”, 17 August 2015, available at: <http://www.info.gov.hk/gia/general/201508/17/P201508170276.htm>

⁶⁸ Department of Justice, *Advice to Government*, Speech-by-the-Hon-Teresa-Cheng,-GBS,-SC,-JP-Secretary-for-Justice-at-the-Ceremonial-Opening-of-the-Legal-Year-2018-on-8-January-2018-(Monday), para 5, available at: <http://www.doj.gov.hk/eng/public/pdf/2018/sj20180108e1.pdf>

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