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RESEARCH ESSAY

SHOULD RIDE-HAILING SERVICES BE REGULATED IN HONG  
KONG? IF SO, WHY AND HOW? IF NOT, WHY NOT?

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## **Introduction**

Society has changed since the taxi industry was first regulated. The growth of ride-hailing service has changed consumer behavior and created competition to taxi industry. Hong Kong incumbent taxi industry demand ride-hailing service comply with existing taxi regulations.

However, this essay argues that Hong Kong should regulate ride-hailing services to improve consumer welfare while ensuring their safety. There are four parts to the essay. First, it will introduce the concept and problems of ride-hailing services. Second, a comparative analysis will distinguish the situation in Hong Kong from jurisdictions adopting more protectionist measures for incumbent taxi operators and open market approach. In doing so, it highlights that the best way forward is to adopt Australia and Singapore's approach. Third, the essay examines the current legal position in Hong Kong concerning ride-hailing services. It contends that existing Hong Kong legal framework is outdated and does not alleviate legitimate concerns over consumer safety protection. Fourth, recommendations will illustrate what the law should be in order to regulate ride-hailing services. The primary objectives are to ensure ride-hailing services operate with sufficient consumer protections, balances the interests of the public for more choices and induce better service quality from taxis.

## **1. Overview of Ride-hailing Services**

### *1.1 Concept of Ride-hailing Services*

“Ride-hailing services” may be defined as the use of communication technologies to take pre-bookings matching passengers to driver, who transport passengers using their own car from point-to-point for profit. This includes the use of mobile applications to either match passenger to taxis (e.g. HKTaxi App) or to private car drivers (e.g. Uber). In this essay, ride-hailing service operators, such as Uber, that connect passengers to private car drivers will be the focus because taxis are regulated already.

Uber, arguably the pioneer of ride-hailing services, connects self-employed “partner drivers” with people needing personalised point-to-point transportation through the internet or its mobile application. Founded in 2014, Uber has served a million riders in Hong Kong, using more than 30,000 drivers.<sup>1</sup> Equally as apparent from their success in the sharing economy, however, are the problems that come with ride-hailing services.

## *1.2 Problems of Ride-hailing Services*

First, ride-hailing services have caused market disruption affecting incumbent taxi operators. Taxi drivers and taxi licence holders with direct financial interest in maintaining the value of their licence, have protested.

Second, ride-hailing services exploit regulatory grey zones. Ride-hailing services derive their competitive advantages by operating in legal grey areas where regulated businesses overlap with freedom to share privately owned assets.<sup>2</sup> Although, its business model is like a taxi-service, ride-hailing services like Uber regard themselves as transportation network companies because their match-making service of passengers and drivers rely upon the network they create. Therefore, they bypass many costs that traditional taxis incur, such as operating without a hire car permit (“HCP”) and third-party insurance.<sup>3</sup> Furthermore, US Uber drivers have challenged their classification as independent contractors.<sup>4</sup>

Third, as ride-hailing service operate in regulatory grey zones, end-consumers cannot benefit from the safeguards and transparency inherent to regulatory compliance. For instance, they may be exploited by a lack of clear and certain fare structure.<sup>5</sup>

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<sup>1</sup> Cannix Yau, ‘Why won’t Hong Kong embrace sharing economy?’ (SCMP, July 2017) <<http://www.scmp.com/news/hong-kong/economy/article/2102418/why-wont-hong-kong-embrace-shared-economy>> accessed January 6, 2018.

<sup>2</sup> Yanelys Crespo, ‘Uber v. Regulation: ‘Ride-Sharing’ Creates a Legal Gray Area’ (2016) 25 U.Miami.Bus.L.Rev 79.

<sup>3</sup> Consumer Council, *A Study of the Competition in the Personalised Point-to-point Car Transport Service Market* (November, 2017), p.1.

<sup>4</sup> O’Conor v Uber Techs., Inc., 58F, Supp, 3<sup>rd</sup> 989 (ND.Cal. Spt. 4. 2014).

<sup>5</sup> Nagla Rizk, ‘A Glimpse into the Sharing Economy: An Analysis of Uber Driver-Partners in Egypt’ (February, 2017) <<https://ssrn.com/abstract=2946083>> accessed December 26, 2017.

## **2. Ride-hailing Services in other Jurisdictions**

To understand whether ride-hailing services should be regulated, latest development towards ride-hailing services in other jurisdictions should be examined.

### *2.1 Australia*

All six states recently introduced laws to regulate ride-hailing services. The regulations represented a response to the impact of technological changes on the point-to-point transport industry as it gave rise to the need to change outdated legislation to accommodate innovative transport solutions to provide more choices, better competition and service quality.<sup>6</sup> The regulations also purported to create a level playing field between taxis and ride-hailing services.

All states have introduced regulatory frameworks that effectively set licensing requirements and safety standards for ride-hailing services.<sup>7</sup> For instance, the Point-to-Point Transport (Taxis and Hire Vehicle) Act 2016 (“PTP Act 2016”) of New South Wales (“NSW”) provides licensing requirements and safety standards. For ride-hailing services to be licensed, they have to be authorized<sup>8</sup> and hold a private-hire vehicle driver authority. To promote safety, ride-hailing service providers and drivers owe an express duty of care to reasonably ensure health and safety of persons while

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<sup>6</sup> NSW Government, *Point-to-Point Transport Taskforce Discussion Paper* (August,2015), p.9.

<sup>7</sup> South Australia, please see <<https://www.sa.gov.au/topics/driving-and-transport/transport-industry-services/taxi-and-passenger-transport/Operator-Accreditation>> accessed December 29,2017

Tasmania, please see <<http://www.transport.tas.gov.au/passenger/ride-sourcing>> accessed December 29,2017.

Queensland, please see Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017.

NSW – please see <https://transport.vic.gov.au/ways-to-travel/taxis-hire-car-and-ridesharing/industry-reforms/>.

<sup>8</sup> PTP Act 2016,s.27(1).

providing the service<sup>9</sup>. They must also adhere to safety standards specified, such as background checks, maintain that vehicle is registered and of roadworthiness<sup>10</sup>. Moreover, the Point-to-Point Transport (Taxis and Hire Vehicle) Regulation 2017 (“PTP Regulation 2017”) of NSW further provides that ride-hailing drivers should ensure vehicles used meet requirements in Part 5 Schedule 2 of the Road Transport (Vehicle Registration) Regulation 2007<sup>11</sup>, have 1 or more insurance policies<sup>12</sup> and provide information about the hire vehicle to passengers<sup>13</sup>.

This new regulatory framework also segregated the market into two in NSW – taxis who offer rank and hail services versus booking service providers such as hire car and ride-hailing. To aid taxi and hire car licence holders in a more competitive environment, a AUD\$250 million assistance package funded by a AUD\$1 levy per trip on all taxis and ride-hailing services for up to five years was established. Similar arrangements were made in Victoria, Western and South Australia.

## *2.2 Singapore*

In 2015, ride-hailing services were allowed to operate in Singapore when the Third-Party Taxi Booking Service Provider Act 2015 (“Singapore Act”) came into force. The Singapore Act was designed to facilitate the provision of third-party taxi booking services that are safe, reliable and efficient, and that are responsive to the demand for taxi services in Singapore.<sup>14</sup> Singapore government was eager to bring legislative oversight into the grey areas where ride-hailing services operate in.

Alike Australia, the Singapore Act has licensing requirements aimed to ensure safety. It stipulates that any third-party booking services with more than 20 participating taxis are required to register with the Land Transport Authority (“LTA”). Bidding and

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<sup>9</sup> PTP Act 2016,s.12,13 and 15(b).

<sup>10</sup> PTP Act 2016,s.21

<sup>11</sup> PTP Regulation 2017,s.8.

<sup>12</sup> PTP Regulation 2017,s.22

<sup>13</sup> PTP Regulation 2017,s.23.

<sup>14</sup> Singapore Act,s.4.

pre-trip tipping is prohibited and fare information needs to be provided to passengers prior to hire together with specified information of the ride-hailing provider.

Similar to Australia, to create a level playing field between taxis and ride-hailing services, Singapore also segregates the market by giving incumbent taxi drivers exclusive right for taxi stand pick-ups and street hailing. Furthermore, Singapore allows Taxi Driver's Vocational holders to drive both taxis and private hire cars without having to apply for a separate licence.

### *2.3 London (United Kingdom)*

Unlike Singapore and Australia that created new regulations to support the operation of ride-hailing services that satisfied similar rules to regulated taxis, the Transport for London ("TFL") adopted minimal regulatory disruption. This is because London already has a competitive personalised point-to-point pre-booked car transport service market that enabled ride-hailing services to easily enter. Ride-hailing services can seamlessly enter by complying with existing private hire regulatory framework.<sup>15</sup> Unlike other jurisdictions where ride-hailing services would operate in a grey area, the UK Government considered Uber compliant with the Private Hire Vehicle Act 1998. Therefore, TFL saw no difference between the existing private hire-car services and ride-hailing services justifying the creation of a new regulatory framework.

However, this open market approach proved flawed. This approach caused a 75.3% increase of private vehicles between 2012 to 2017, that brought congestion, pollution, safety and illegal parking problems.<sup>16</sup> With the growing public criticisms and after granting four-month licence to Uber in May 2017 declined to renew Uber's licence. Uber was not fit and proper to hold private hire operator licence and lacked corporate responsibility that put public safety at risk.

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<sup>15</sup> Transport of London, *Licensing decision on Uber London Limited* (2017) <<http://tfl.gov.uk/info-for/media/press-releases/2017/september/licensing-decision-on-uber-london-limited>> accessed October2017.

<sup>16</sup> Ibid

## *2.4 New York (United States)*

As of June 2017, the New York State Department of Motor Vehicles approved ride-hailing services to offer ride sharing service in Upstate New York and on Island. Although there is a US\$100,000 application fee and an annual renewal fee of US\$60,000 as a ride-hailing service operator, its drivers do not require costly licences.<sup>17</sup> This has impacted the value of taxi licence that are now worth 80% of the purchase price in 2011. More importantly, the unregulated surge in supply of ride-hailing drivers instead of a stage-by-stage increase of ride-hailing drivers depending on market demand has had detrimental effect on taxi operators. The demand shift from personalised point-to-point car transport service from the stand and hail service to a pre-booked service, has rendered taxis' monopoly in the stand and hail-market meaningless.

This open market approach by New York and London would be unsuitable to Hong Kong. First, Hong Kong does not have a private hire car market resembling London. Second, regulations should be implemented to facilitate the development of ride-hailing services into an efficient and safe alternative transport for consumers. Whilst, ride-hailing services would offer much needed competition against taxis, an open market approach rather than a progressive approach will cause detrimental disruption to the incumbent taxi operators and values of taxi licences. Therefore, a new regulatory framework should be implemented to control supply of ride-hailing service entrants into the market and to foster innovation.

## *2.5 Seoul (South Korea)*

Seoul does not permit ride-hailing services. The Seoul Government regard such services a violation of existing law since the vehicles and drivers are neither licensed nor regulated.<sup>18</sup> The

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<sup>17</sup> New York Department of Motor Vehicles, 'FAQ for TNC Applicants' <<https://dmv.ny.gov/more-info/faq-tnc-applicants>> accessed December 30,2017.

<sup>18</sup> Seoul Government, 'Seoul offers monetary award for reporting uber taxis' (2017) see <<http://english.seoul.go.kr/>> accessed December 28,2017.



business model of ride-hailing services also unfairly redistributed rent of taxi licensees to owners and drivers of ride-hailing services. Consequently, in 2015, South Korea passed legislation to ban unlicensed drivers from providing taxi services.<sup>19</sup> Eventhough the South Korean Government acknowledged the taxi industry needed more competition to drive up service quality, it was not prepared to regulate ride-hailing services. Instead, it launched a premium taxi-hailing service.

In fact, the South Korean approach is similar to Hong Kong's approach presently in a number of ways. First, the Hong Kong Secretary for Transport and Housing expressed ride-hailing services would be allowed to operated in the event of compliance with the law. Otherwise, it is illegal. Second, the protectionist approach of both jurisdictions have been driven by pressure of taxi incumbents' interests to preserve the status quo and protect the value of their taxi licences by banning ride-hailing services. Third, to accommodate consumer expectations and taxi operators' interest, Hong Kong has decided to trial franchise taxi services in an attempt to improve service quality, options and inject competition.

### **3. Ride-hailing Services should be Regulated**

However, despite South Korea's ban, this section will justified that Hong Kong should regulate ride-hailing services.

#### *3.1 Insufficient taxi regulations*

To force ride-hailing services to comply with existing taxi regulation would not be the solution. In the long-run, inhibiting sharing economy will not sit well for the digital economy and it withholds services from consumers.<sup>20</sup> The best way to protect consumer is to allow ride-hailing services to continue its operation under new safety regulations. Particularly when drivers continue to risk operating illegally and consumers still use Uber even following rape incidents.

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<sup>19</sup> *Ibid.*

<sup>20</sup> Hanna Posen, "Ride-sharing in the sharing economy: should regulators impose Uber regulations on Uber"(2016) 101 Iowa.L.Rev.405.

### 3.2 Service Quality

Service quality of taxis is a major consumer concern. In 2016, the Transport Complaints Unit of the Transport Advisory Committee recorded 10,357 complaints and suggestions for improvements directed at taxi services. Even though taxis only account for 7.4% of daily public transport patronage, taxi complaints constituted 46.4% of the total complaints about public transport services.<sup>21</sup> 98% of the complaints involve the malpractice of taxi drivers, such as from not taking the most direct route to refusing hire or overcharging. In fact, a taxi driver refused hire and assaulted passengers with a metal rod.<sup>22</sup> Section 37 of the Road Traffic (Public Service Vehicles) Regulation (Cap. 374D) sets out the obligation of taxi drivers, but there is no effective enforcement given lack of evidence and high threshold in prosecution.<sup>23</sup> Only 8.1% cases<sup>24</sup> referred to Police between 2012 to 2016 were summoned.<sup>24</sup> The application has mixed reviews and the number of taxi complaints continuously increased in the past 5-year.<sup>25</sup>

### 3.2 More Choices

With taxi being the main public personalised point-to-point transport service, there are virtually no other alternatives. Governments<sup>26</sup>, Uber and trade association<sup>27</sup> surveys to revealed over 60% of respondents want more choices. Tourists also expect to use ride-hailing services given Hong Kong

### 3.3 Future Demand

The demand for personalised point-to-point service will increase in the future given population growth and increase in senior and

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<sup>21</sup> Transport and Housing Bureau. (2017) PublicTransport Study. Available from [http://www.td.gov.hk/filemanager/en/publication/ptss\\_final\\_report\\_eng.pdf](http://www.td.gov.hk/filemanager/en/publication/ptss_final_report_eng.pdf) [Accessed October 2017].

<sup>22</sup> Raymond Yeung, 'Metal-bar-wielding taxi driver arrested in Hong Kong over foul-mouthed tirade' <<http://www.scmp.com/news/hong-kong/law-crime/article/2109466/metal-bar-wielding-taxi-driver-arrested-hong-kong-over-foul>> accessed December 26,2017.

<sup>23</sup> Consumer Council(n.3),10.

<sup>24</sup> Consumer Council(n.3),11.

<sup>25</sup> Ibid(n.22).

<sup>26</sup> Consumer Council(n.3),16

<sup>27</sup> Yuke Wang, 'Overwhelming Support for Uber' (ChinaDaily,June2017) <<https://www.chinadailyasia.com/articles/60/165/134/1497892249988.html>> accessed December 28,2017.

disabled persons requiring such service. Yet notably, in the last 5-year, taxi patronages have stagnated.

Hence, it is reasonably arguable that the current market is not operating at an optimal level to satisfy consumer demands. To address the issues of service quality, choices and discrepancies between supply and demand, effective competition is needed in the personalised point-to-point industry. New market entrants will generate supply to meet the demand and offer better alternatives. More importantly, the competition will eradicate poor service quality because currently consumers view taxi services as a homogenous supply of goods as taxis look-alike. Under such market environment, there is no motivation to enhance service quality for returning passengers. With ride-hailing services, consumers will have alternatives to choose from forcing taxis to improve their service in order to compete

### *3.4 Effective Competition*

Compared to hire cars and franchise taxi, ride-hailing services will more effectively increase competition.

#### *3.4.1 Hire Cars*

In Hong Kong, hire-cars neither compete directly with taxis nor offer an alternative. There are different types of permits, such as private, hotel and tour car services.<sup>28</sup> Only private car permit holder can provide services to any persons. However, the lack of information transparency to make comparisons deter usage of hire cars.

#### *3.4.2 Franchised Taxi*

The Transport Department seek to launch 600 franchised taxis by 2018 aimed to improve choices and service quality as it competes with existing taxis.<sup>29</sup> However, their scale of operation is too limited to create any effective competition to influence taxi operators to improve service quality. The lack of franchise taxis cannot induce

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<sup>28</sup> Road Traffic (Public Service Vehicles) Regulations, s.14(1).

<sup>29</sup> Transport and Housing Bureau, *Public Transport Strategy Study – Role and Positioning Review Personalised and Point-to-point Transport Service* (2017).

the demand to shift from non-competitive street-hailing to competitive pre-booking segment.<sup>30</sup> Neither can it act as substitutes to existing ride-hailing services.

### *3.4.3 Ride-hailing Service*

Ride-hailing services can increase competitive pressure in the personalised point-to-point transport market. Ride-hailing services offer better choices leading to increased quality of service and is superior to hire cars in terms of available information regarding vehicle choice, driver, customer feedback and route to be taken. The resulting feedback will likely drive service standards up among ride-hailing service providers and others that compete with them. Other than creating competitive pressure, ride-hailing service enable more efficient allocation of resources, such as vehicle that a driver already owns. If there are five people in a given car instead of five people in five different cars, there will be substantially fewer cars<sup>31</sup> Unlike franchise taxi operators that will be unable to finance online system providing behavioral models and service tracking system after investing in new vehicles, ride-hailing service operators can leverage information technology to control the supply in anticipation of consumer needs. For instance, reduce supply on request of government authority to ease traffic. Price quotes and customer rating enables comparison and driver accountability.

In sum, emergence of ride-hailing services bring efficiency and reliability of their matching platform, transparent pricing mechanism and accountability of their driver rating system suggest ride-hailing services could offer greater efficiency advantages, provide more choices, drive service quality and meet future demand.<sup>32</sup> Ultimately, if Hong Kong wants to develop into an innovation hub, it has to embrace innovations such as these and

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<sup>30</sup> Consumer Council(n.3), p.31

<sup>31</sup> Phila Siu, 'Hong Kong lagging behind other Asian cities with reluctance to accept Uber, ride-hailing firm warns' <<http://www.scmp.com/news/hong-kong/economy/article/2097936/hong-kong-lagging-behind-other-asian-cities-reluctance-accept>> accessed December 30,2017.

<sup>32</sup> Michael Farren, 'Rethinking Taxi Regulations: The Case for Fundamental Reform' (2016)

encourage customer-orientated transition of personalised point-to-point transport market.

## **4. Current Hong Kong Position**

### *4.1 Relevant laws*

Since Hong Kong should regulate ride-hailing services, this section will analyse what the existing laws surrounding personalised point-to-point transport are, in order to identify the loopholes and determine how the law should be reformed.

There is no specific Hong Kong law governing ride-hailing services. But, the Hong Kong Government's position is that ride-hailing services are illegal since they fall outside the current regulatory regime.

Ride-hailing service does not fulfil criterias to operate as private hire cars. Under Section 52(3)(iii) of the RTO, no person shall drive or use a motor vehicle for carriage of passengers for hire or reward without a HCP. In addition, section 4(1) of the Motor Vehicle Insurance (Third Party Risks) Ordinance requires third-party insurance for the use of motor vehicles Per section 52(10)(a) of RTO and section 2(a) of MVIO, any contravention of the said requirements is liable to a fine of HKD\$5,000 and to imprisonment for 3 months for first conviction. For second or subsequent convictions, fine of HKD\$10,000 and imprisonment for 6 months.

The HCP will be subjected to conditions listed in regulation 14(5) and Schedule 3 of the Road Traffic (Public Service Vehicles) Regulations (Cap.374D) ("RTR"). Notably, it expresses that no hire car service hiring shall commence without record of the name of hirer and brief description of journey, the HCP shall be displayed inside the private car and the car exterior shall not have any unapproved markings, words or signs. Regulation 21 and 22 specifies that fine, imprisonment and cancellation of hire permit can result from contravention.

### *4.2 Safety standards*

First, safety standards are lacking. Although ride-hailing services may operate legally if they obtain the hire permit and the relevant laws, there are no mention of specific safety standards for consumer and driver safety. In the jurisdictions examined, safety standards may include driver details (including fitness and medical requirement and criminal records), driver reporting changes in health, valid safety and registration of vehicles, insurance and provision of information to passengers. Thus, the existing Hong Kong regulatory framework does not support ride-hailing services.

#### *4.3 Insurance coverage*

Second, from a passenger's perspective, the question of where legal liability falls when accident occurs is a bigger issue. This issue is key since it ensures a victim has a means to seek compensation. Although the current law provides that a motor vehicle must have insurance to protect risks to third parties, it only provides that no person shall cause another to use a motor vehicle unless an insurance exists to insure against death or bodily injury to any person caused by the use of the motor vehicle on a road. Therefore, drivers can satisfy the law by obtaining third-party insurance themselves. However, a compliant third-party insurance under the RTR can still be invalidated, thereby eliminating a victim's right to compensation. For instance, the insurer can refuse to pay under the insurance policy by arguing the policy was obtained by non-disclosure of a material fact or by representation of material fact which was false (e.g. the car was for domestic use).<sup>33</sup>

As a result, ride-hailing companies should also adequately insure their passengers and drivers. However, the current law neither obligates ride-hailing operators to provide insurance nor specify whether the insurance should cover accidents occurring from the time a driver accepts a trip to drop off or between trips or both.<sup>34</sup> The regulation should seek to clarify the coverage of insurance policy.

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<sup>33</sup> Riebana Sachs, 'The Common Carrier Barrier: An Analysis of Standard of Care Requirement, Insurance Policies, and Liability Regulations for Ride-sharing Companies' (2016) 65.DePaul.L.R.

<sup>34</sup> Yanelys Crespo(n.2).

#### *4.4 Independent contractor or employee*

Third, another uncertainty in the law is the tort doctrine of vicarious liability. This arises because Uber classified its drivers as contractors as it is not a transport company.<sup>35</sup> Consequently, Uber was able to deny vicarious liability where an Uber driver killed Sofia Liu, a six-year-old child.<sup>36</sup> The doctrine encapsulates that an employer is liable for the tortious conduct of his employee. Although, ride-hailing services like Uber allocate jobs and may require its drivers be available at all time, it does not recognise them as employees. For vicarious liability to apply, there must be (i) an employer-employee relationship and (ii) the tortious conduct must have close connection with one's employment.<sup>37</sup> The court has adopted the "control test" and integration test" in ascertaining the existence of employer-employee relationship. Control test imposes liability where an employer has the power to mandate what is to be done and how it is to be done, while the integration test examines whether works are essential to the business.

There is a strong indication of employer-employee relationship as Uber requires its drivers to be available at all times and denies the liberty of drivers to pick and choose their ride requests. Furthermore, Uber takes a 20% commission fee for each transaction that constitutes the main source of Uber's income. However, other considerations suggest drivers are mere independent contractors. Drivers are not paid by a fixed rate but by their utilisation rate, they can engage in other employments, no training is required and drivers have discretion as to the quality and manner of service. Therefore, under common law, Uber may likely not owe vicarious liability for its drivers' action. Nonetheless, to add to the confusion and legal uncertainty, a UK landmark employment tribunal ruling stated that Uber loses right to classify his UK drivers as self-employed.<sup>38</sup> Not only does this have drastic

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<sup>35</sup> Uber terms&conditions <<http://uber.com/legal/terms/us/>.

<sup>36</sup> Tim Bradshaw, Uber settles lawsuit over child death (2015) <<http://www.nydailynews.com/news/national/family-sues-uber-driver-kills-6-year-old-girl-article-1.1594163>> accessed January 13,2018.

<sup>37</sup> D Srivastava, *The Law of Tort in Hong Kong* (LexisNexis,2014).

<sup>38</sup> Hilary Osbourne, 'Uber loses right to classify UK drivers as self-employed'

repercussions on Uber's business model and costing millions, it establishes vicarious liability. Thus, recommendations should seek to set the requirement that companies insure their drivers for consumer protection.

## **5. Recommendations**

### *5.1 Objective*

In light of failures in the approach of New York and London, applying existing regulatory regime to ride-hailing services will not meet the objective of efficiently maintaining a level-playing field for all industry stakeholders to compete and safeguard the welfare of drivers and consumers. Per NSW's Point to Point Taskforce, mere law amendments creating a new category for ride-hailing would force the taxi industry to stick to an outdated regulatory framework and business model that makes it more difficult for them to compete.<sup>39</sup> Thus, a new regulatory regime for taxi and ride-hailing providers is needed.

First, the new regulatory regime should focus on providing clear standards and sanctions to address key concerns such as passenger safety. Second, the regulations should be designed to impose only basic requirements necessary to ensure safety, while not stifling innovation or competition. Third, any reform should be premised on creating a level playing field between ride-hailing services and taxi services. For instance, restrict the initial fleet size of ride-hailing service operators for policy reasons so as to not jeopardise taxi welfare on a large scale. A progressive approach would be favoured that allow a managed decline in the price of taxi licence.

### *5.2 Definition of Ride-hailing Services*

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<<https://www.theguardian.com/technology/2016/oct/28/uber-uk-tribunal-self-employed-status>> accessed December 28,2017.

<sup>39</sup> Transport for NSW, "*Point to Point Transport Taskforce: Report for the Minister of Transport and Infrastructure*" (NSW Government, November 2015),4.



The regulation should provide that an operator will be a provider of ride-hailing services if it has the following characteristics<sup>40</sup>:

- a) facilitate bookings for taxis or hire vehicles to provide passenger services (including for immediate or for later time); and
- b) send information about bookings to drivers for passenger service;
- c) can be accessed by taxi drivers and drivers of passenger service who are not employees, with the ride-hailing service provider.

This should be read together with the definition of “passenger service” which means the transport by private vehicle of passengers within Hong Kong for hire or reward.

### *5.3 Operating Requirements*

Ride-hailing services are required to register with the Transport Department, in order to operate in Hong Kong. To minimise disruption, the Commissioner for Transport can utilise the 1,500 HCPs issued. Ride-hailing service providers, vehicle and partner drivers should all be licensed. They may consider factors such as the financial standing and business experience of the applicant, ability to provide safe ride-hailing service, demand in Hong Kong and any other relevant matters when deciding to grant a licence.

To protect incumbent taxi drivers, the number of operators should be limited. In other jurisdictions, the number is in the range of 3 – 11, depending on how many partner drivers each operator can efficiently operate.

The number of operator and number of partner drivers will dictate how fast the market can develop a competitive ride-hailing service. More vehicles with HCP will create better competition, but too much will disrupt the incumbent taxi market. The Government should take reference from other jurisdictions to determine the

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<sup>40</sup> With reference to Singapore Act.

right number of ride-hailing operators and drivers to build competition in a progressive manner.

As the private hire market empower consumers to shop and compare prices, drivers and reliability, the prices should also not be regulated unlike taxis.<sup>41</sup> Taxi possess more anonymity and invisibility than ride-hailing services.

#### *5.4 Safety Regulatory Conditions*

These existing safety regulations conditions intend to adapt Hong Kong's existing system of hire car regulations (described above) to enable the safe operation of new partner drivers without too much restrictions.

Ride-hailing services should have<sup>42</sup>:

- i. driver background check (including licencing status, competence, driving records, criminal records, fitness or medical condition);
  - a. Driver should not have in the past seven years committed drug related offences, fatal accidents, violent crimes, sexual offences, driving without insurance and driving with a suspended license.<sup>43</sup>
- ii. valid registration and safety of vehicles used (including maintenance);
- iii. provide adequate Insurance to protect driver and passengers (including during rides and between rides);
- iv. vehicles have valid HCP;
- v. reporting of safety incidents and accidents;
- vi. recording of bookings, drivers, vehicles and passenger; and
- vii. sending of information (including fare, distance, driver ratings, luggage or peak surcharge) to passengers prior to hire.

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<sup>41</sup> Law Commission for England and Wales *Taxi and Private Hire Services* (8824, May 2014) at 2.28.

<sup>42</sup> With reference to Singapore Act, PTP Act 2016 and PTP Regulation 2017.

<sup>43</sup> Joe Sullivan, Details on Safety, Uber: Newsroom (July 15, 2015), <http://newsroom.uber.com/details-on-safety>.

- viii. Safety management system
- ix. Complaint and feedback handling system

For drivers and vehicles with HCP should<sup>44</sup>:

- i. hire car in good condition, insured to carry passengers, and not older than 7 years;
- ii. satisfy certain driver requirements, such as valid licence, 3 years driving experience and pass background check;
- iii. report of health changes and safety incidents;
- iv. comply with safety requirements by ride-hailing service providers;
- v. send information to providers about passenger service;
- vi. not have discriminatory conduct against passengers.

Any contraventions (e.g. unregistered ride-hailing service providers or neglect of safety standards) shall be liable to a fine not exceeding HKD\$100,000 and/or imprisonment for terms of 6 months. In case of continued contravention of the regulations, the Commissioner of Transport has the power to cancel the breached licence.

### *5.5 Segregation*

It is important to set restrictions on scope of business of ride-hailing drivers to segregate the market. Private drivers will not be allowed to pick-up passengers from taxi stands or streets. Instead, hiring is only to be arranged by hailing operator platform. To provide taxi with business flexibility, taxi licence can use ride-hailing services to pick up passengers.

### *5.6 Insurance*

Uber does not currently offer collision insurance when the driver has the app on, but has not accepted request (i.e. between rides). This insurance gap is not covered by driver's own insurance because insurer can avoid payment due to misrepresentation. With

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<sup>44</sup> Ibid(n.40).

reference to the National Association of Insurance Commission, the ideal insurance solution would be for “all ride-hailing drivers to have coverage on a full-time basis available for all ride-hailing activities”.<sup>45</sup> To accomplish this coverage solution, drivers can purchase commercial coverage or TNC can provide coverage for all ride-hailing activity period.<sup>46</sup> Since, commercial insurance are often much more expensive than domestic insurance, it would be more realistic to put the obligation on ride-hailing service providers. Alternatively, the use of insurance tailored for ride-hailing drivers can be explored.<sup>47</sup>

## **Conclusion**

Given public calls for better service and choices, ride-hailing services should be regulated to provide effective competition and safe alternative travel options to passengers. As the world grows digital, Hong Kong should aspire to be a smart city allowing all transport models. Therefore, the Government should adopt a progressive regulatory framework to facilitate the provision of consumer-orientated personalised point-to-point transport service, to fulfil its ambitions to be an innovation hub.

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<sup>45</sup> *Transport Network Company Insurance Principles for Legislators and Regulators*, National Association of Insurance Commissioner (March,2015).  
<[http://www.naic.org/documents/committees\\_c\\_sharing\\_econ\\_wg\\_exposure\\_adopted\\_tnc\\_w\\_hite\\_paper\\_150331.pdf](http://www.naic.org/documents/committees_c_sharing_econ_wg_exposure_adopted_tnc_w_hite_paper_150331.pdf)> accessed January 1,2018.

<sup>46</sup> Ibid.

<sup>47</sup> Talia G Loucks, ‘Travellers Beware: Tort Liability in the Sharing Economy (2015) 10 WJLTA 4.