



THE BIGGER PICTURE

Is Uber breaking or bending the rules?

Alliott Group member lawyers provide a multi-jurisdictional overview of the ride sharing industry

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Overview

Every once in a while, a new market entrant disrupts 'the way things are done' in an established market. The new player may be judged to have contravened laws and regulations or at least taken advantage of loopholes, leaving existing competitors who operate within the law, feeling aggrieved.

Uber, a California-based application which offers ride booking and 'ride sharing' applications for smartphones, continues to provoke legal debate not to mention court cases and litigation in different countries around the world. Laws are changing to close loopholes, ensure Uber type services are regulated, or in locations such as Nevada, Thailand and parts of India and Japan, to ban them altogether.

The Uber app uses GPS to match a user to a nearby driver and charges the user's credit card. Cash never changes hands, and users are not expected to tip. Uber takes 20% of the fare and the driver keeps the rest. Furthermore, Uber describes its drivers as 'independent contractors', not employees.

So is Uber a law unto itself or is it simply bending rules that are out of step with the market reality of the 'sharing economy'? Many of our colleagues at Alliot Group law firm members around the world are experts in regulatory law as it applies to the road transport sector – in this short document we provide insights into the legal position of Uber as of January 2016 in different countries. Read on to find out more about whether Uber is operating legitimately, the legal barriers it faces, and the prospects for its future operations.



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Los Angeles, California, USA



Shane Devins, an associate in Los Angeles based **Masuda Funai's** Business Law Team, comments: *"No ordinance prohibits the operation of Uber and its ride sharing services in the City of Los Angeles. Additionally, in August 2015, the Los Angeles City Council approved an ordinance allowing Uber (and all other ride sharing services) to pick up passengers at the Los Angeles International Airport (LAX), following a permit application process. It appears that Uber is properly licensed under the laws of the City of Los Angeles."*

However, Devins suggests that Uber faces further pressures and scrutiny in LA (and in California) due to: (A) its classification of drivers as 'independent contractors,' and (B) the background checks being performed on drivers prior to employment.

Dispute over classification of drivers as 'independent contractors'

Devins comments: *"A lawsuit was filed by Uber drivers in the United States District Court for the Northern District of California challenging Uber's classification of its drivers as 'independent contractors' instead of employees. The lawsuit received class action certification for all Uber drivers in California in December 2015. It is not clear whether Uber's classification of its drivers as independent contractors instead of employees is an improper classification"*

Issues over background checks

Furthermore, the Los Angeles County District Attorney (along with the San Francisco District Attorney) has also filed suit against Uber and competitor service Lyft, claiming they fail to properly complete driver background checks in violation of California's consumer protection laws. Devins comments: *"Lyft has since settled with both District Attorneys, but it appears the lawsuit against Uber is still active."*

Additional regulatory compliance requirements cloud Uber's future

In Devins' view, Uber's long-term prospects in LA may hinge upon the decision of the lawsuit relating to its classification of drivers as independent contractors: *"If Uber must classify its drivers as employees, it will be subject to additional regulations and increased costs which may render its current business model unprofitable."*

On the other hand, Devins feels that the recently passed law authorizing Uber (and other ride sharing services) to perform airport pickups seems to indicate that LA is beginning to embrace Uber and its services.



"If Uber must classify its drivers as employees, it will be subject to additional regulations and increased costs which may render its current business model unprofitable."



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New legislation to pre-empt local laws and make ride sharing services legal

Bob Ross and **Steve Golden** of Ohio law member **Hahn Loeser & Parks** report that legal and regulatory scrutiny of Uber in Ohio in general, and in Cleveland in particular, has been related primarily to Uber's existence outside of traditional taxicab regulations: *"Following recent state-wide legislation (House Bill 237 referred to as 'HB 237' is expected to come into force in March 2016), ride sharing companies and their drivers can operate legally in Ohio state."* However, ride sharing companies such as Uber will have requirements imposed directly on them, rather than requirements being imposed on drivers, and they will need to meet the requirements of HB 237 which include a \$5,000 permit fee, minimum insurance, the carrying out of driver background checks, driving and criminal record requirements and the disclosure of certain information regarding drivers and pricing to consumers.

Prior to December 22, 2015, regulation of Uber and ride sharing services was left to Ohio's local government – Golden comments: *"Some Ohio cities enacted local ordinances, while others did not."* See more information below on the current legal status of Uber in each of the three largest cities in Ohio which, as Ross observes, *"will be moot in March 2016 as HB 237 will pre-empt all local laws."*

Cleveland

Owing to the Cleveland City Council declining to take any action, Golden comments that *"Uber operates in a regulatory void under the assumption that it is not subject to taxicab ordinances."*

Columbus

In contrast, Columbus enacted an ordinance that created a Peer-to-Peer Transportation Network Company License and a Peer-to-Peer Transportation Network Driver's

License. Obtaining the driver's license requires the potential driver to be at least 21 years of age, submit to a background check, pass a vehicle inspection, submit an application and pay a nominal registration fee. Golden adds that *"All ride sharing drivers must drive on behalf of a company with a Peer-to-Peer Transportation Network Company License."* The license involves a \$15,000 fee and requires the maintenance of sufficient insurance and provision of certain pricing information to consumers. The requirements in Columbus have led to Uber competitor Lyft exiting the Columbus market.

Cincinnati

Similar to Columbus, Cincinnati has enacted ride sharing ordinances, with the required Transportation Network Company License placing the same obligations on companies as in Columbus and a \$10,000 license fee. Ride sharing companies must also ensure their drivers meet various minimum requirements, submit to background checks and meet minimum criminal record and driving record requirements. Golden comments: *"Unlike Columbus, Cincinnati requires that the ride sharing company obtain a license and then enforce the requirements on its drivers."*

Employment law does not apply to ride sharing drivers in Ohio

While employment and union issues have been raised in other jurisdictions, Ross reports that in Ohio, *"HB 237 explicitly treats ride sharing drivers as non-employees for purposes of Ohio employment laws."*

Good long-term prospects

In the wake of HB 237, Uber has announced it will be recruiting 10,000 drivers in Ohio and is clearly confident in its ability to comply with requirements under HB 237.



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In Toronto, Uber has been accused of operating outside of the law by avoiding the municipal regulatory regimes for taxi companies. In response, Uber made the argument (successfully upheld by the City of Toronto in July 2015) that its UberX service (a ride sharing service whose drivers are not required to have a taxi license and for which lower fares are charged) is not a taxi service, and as such is not subject to regulations.

Horses for courses?

Michelle Stephenson of Toronto law firm **Devry Smith Frank** reports that while Uber is using a loophole in the law, Toronto's city council voted in September 2015 to create municipal legislation that would change this. However, the introduction of new by-laws was delayed until 2016. Stephenson comments: *"It is unclear at the moment whether by-laws will be amended to include technology based services such as Uber so that they face similar regulations as taxi companies. However, it has been suggested by many, including Toronto's mayor John Tory, that ride sharing and taxi companies are 'different beasts' and should be subject to a different set of regulations."*

Uber has been asked to suspend its operations in Toronto pending the new legislation, with Uber Canada Inc's general manager refusing to comply, citing a "responsibility to the 400,000 riders who rely on [them]."

Outside of the law

While Uber has stated it remains keen to find a political solution that will end the legal standoff, Stephenson comments that it will be a *"tough job to find a regulatory solution given that taxi companies and drivers are pushing for Uber to be banned outright as well as the strong opposition within city council to creating a separate regulatory framework for ride sharing companies, all while Uber itself continues to refuse to suspend its services."*



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"Uber's legal status in Canada, and Toronto specifically, is in flux and it will likely not be operating fully legally until sometime in 2016."

Additional pressure has been put on the city by taxi companies to order an injunction against UberX. The city has been criticized for acknowledging that the company is operating 'outside the law' and asking it to stop, without being willing to take steps to enforce this, believing it 'impractical to devote a huge portion of Toronto's police services to cracking down on the company to the extent where it might stop its illegal behaviour.'

Tip of the iceberg?

This may just be the tip of the iceberg in terms of Uber's legal issues in Canada. Indeed, there are also concerns over whether drivers and passengers are properly insured and therefore whether the service is safe. Stephenson comments: *"In City of Toronto v. Uber Canada Inc., Uber sought an order to seal its insurance policy from the public. This application was rejected. However, the exact terms of their policy are still unknown to the public."*

Stephenson concludes: *"Uber's legal status in Canada, and Toronto specifically, is in flux and it will likely not be operating fully legally until sometime in 2016."*

New Delhi, India



In India, radio taxi operators are regulated by guidelines framed by regional Transport Authorities. In Delhi at the time of Uber's entry, radio taxi operators were licensed under the 2006 Radio Taxi Scheme ('Scheme'), which did not contemplate tax/cab services aggregators such as Uber. Thus, for a while, Uber operated in Delhi outside the purview of the Scheme until a December 2014 rape in an Uber vehicle thrust it into the spotlight.

Banned, but still operating pending grant of license

In December 2014, Uber was banned from providing taxi services in Delhi until it had obtained a license/permission from the Delhi Government. Further, on December 26, 2014, the Delhi Government modified the Scheme (the 'Modified Scheme'), whereby aggregators such as Uber are now specifically recognized as licensees and required to obtain a license from the Government.

Alfred Adebare, Of Counsel at **LexCounsel in Delhi** comments: *"We understand Uber has applied for a license under the Modified Scheme and its application has been rejected twice on several grounds."* However, pending the grant of a license, Uber continued to operate despite the imposed ban.

Relentless fines

In May 2015, the Delhi Government asked Internet Service Providers to block Uber's website and app. Technical issues have however made blocking Uber's online presence difficult and Uber continues to operate despite drivers being fined/taxis impounded relentlessly by Delhi Traffic Police.

Temporary relief

In July 2015, the Delhi High Court, not in favour of an absolute ban, granted temporary relief to Uber by setting aside the Delhi Government's order rejecting Uber's license application. This paved the way for Uber to apply again for a license. Uber's application was rejected for the second time in September 2015. Uber has challenged the rejection.

Meanwhile, the Delhi High Court has given Uber until March 1, 2016 to comply with the Supreme Court judgement restricting taxis in Delhi to cars running on compressed natural gas as opposed to diesel. Adebare comments: *"It appears Uber will continue operations until this time."*

No impact on employment law yet

Adebare comments that *"the success or otherwise of employment law cases brought in other jurisdictions by Uber drivers claiming rights as 'employees' (despite Uber claiming them to be 'self-employed'), could lead to similar cases in India, though none have been reported so far."*

Compliance with banking regulations

Adebare also mentions that in 2014, Uber came under scrutiny from the Reserve Bank of India for contravening the 2007 Payment & Settlement Systems Act as it was deducting the taxi fare from the customer's credit card without further authorization (password, PIN number, etc) which was otherwise mandatory for all 'online card not present transactions' for credit cards issued in India: *"Uber has complied by migrating its mode of payment to mobile wallet type arrangements, cash and adopted a two-step authentication process into its app."*

Business model may need tweaking to comply with new regulations

While Uber has challenged the validity of the Modified Scheme before the High Court of Delhi, the Delhi Government has suggested Uber apply for a license under the new City Taxi Scheme which merges existing schemes (including the Modified Scheme) for taxis in Delhi. Adebare comments: *"Uber's compliance with the Modified Scheme (and now the City Taxi Scheme) would require major deviations from its operating model. For instance, if licensed, Uber would be required to trim its taxi fleet number in National Capital Territory region to 2,500 (currently ca. 15,000 taxis). It would also be required to maintain a call centre, and inter alia, taxis would be required to have a GPS and GPRS based tracking devices, meters installed and a display panel on top of vehicles."*

Furthermore, Uber's use of 'surge pricing' also presents challenges- in Delhi, under the terms of the Modified Scheme, this would need pre-approval by the Government. However, in Adebare's view, should Uber become a licensee, *"its use of surge pricing would be unlikely to be considered in conformity with the Modified Scheme."*



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Australia



Classification loopholes

Across Australia, Uber continues to claim that they are not a 'taxi service' and are thus neither required to pay the same fees as taxi services, nor subject to the same regulations. **Jon Broadley** of Brisbane law firm **Broadley Rees Hogan** comments: *"The avoidance of a 'taxi' classification is also to avoid the GST requirements the Australian Taxation Office is trying to impose."*

It was reported in October 2015 that in **Brisbane** (Queensland), Uber had operated 2.5 million rides over an 18 month period, but local authorities continue to issue infringement notices to Uber drivers on the grounds of 'illegal operation of a taxi service'. Broadley notes however that the rate of drivers being fined is rapidly decreasing.

Interestingly, the Queensland Government has been hesitant in taking a stance – however, an official review on the matter of ride sharing services is due around August 2016.

In contrast, in **Canberra** (ACT), Australia's capital city, the Government has shown strong support for Uber. Broadley adds: *"As of October 30 2015, Uber and similar ride sharing start-ups are regulated and legal – legislation has yet to be passed however, although this is said to be arriving in the near future."*

In **Sydney** (New South Wales), the NSW Government announced regulation of legalised ride sharing businesses as of December 17, 2015, describing the changes as a necessary update on 'out-dated' transport regulations. Taxi licence owners will be compensated with a \$250 million dollar "industry adjustment package." While taxis will maintain exclusive rights to hailing jobs and cab ranks, Taxi Drivers Association spokesman Michael Jools commented that *"the industry as we know it has been destroyed."*

Broadley adds: *"The taxi industry and general public will await the introduction of legislation in 2016 to review the actual details of the changes."*

Tax controversy

While Uber claims it is not a taxi service and therefore its drivers do not need to pay the GST (Goods & Services Tax) required of licensed taxi drivers, the ATO (Australian Taxation Office) views it differently, recently announcing it would be specifically targeting Uber drivers who aren't paying income tax or GST for their ride sharing services. Broadley comments: *"A hearing before the Federal Court of Australia in NSW was scheduled for December 15, 2015 with Uber seeking a declaration from the court that ride sharing drivers do not provide a taxi service and thus should be excused from GST obligations."*

Driver classification yet to be tackled

To date, there have been no court rulings in Australia on the classification of Uber drivers, specifically whether they are employees or independent contractors. Broadley comments: *"The distinction is an important one; for example, the different classes will determine the taxation treatment of Uber drivers and income from the service fares."*

Safety concerns

As in many countries, there are safety concerns. *"One reason for this concern is that for example, the Department of Main Roads in Queensland requires taxi cabs to have security cameras. However, there is currently no similar requirement on Uber drivers,"* adds Broadley.

Inevitable regulation ahead

Broadley believes that legalization and regulation of ride sharing is inevitable: *"Recent legalization of ride sharing in NSW and ACT may be indicative of what is to come in Australia as a whole. Uber drivers will likely be required to pay for licensing and fees, and to strictly adhere to tax and GST requirements."*



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Testing legal loopholes

Following a recent case brought to the High Court by Transport for London (“TFL”), which sought to clarify the legality of Uber in the UK, it has been confirmed that the ‘ride sharing app’ does not breach UK law. However, **Soma Fattah** of **Sherrards Solicitors** in London confirms that the *“the company does seem to be testing some legal loopholes.”*

All cab drivers (including Uber drivers) are required to hold a Private/Public Licence issued by TFL for which various tests need to be passed including an enhanced background check, medical check and topographical assessment; obtaining a licence can take a few months. In comparison, Black Cab drivers are required to pass The Knowledge test and undertake intensive training and testing over a typical period of 2-4 years before they are deemed qualified to operate.

Fattah also notes that the company’s tax reporting may raise eyebrows in the UK in light of the recent high profile media spotlight on Starbucks, Google and Amazon: *“As a multinational company, Uber, appears to be transferring some of its profits to the Netherlands (where the company has its head office) where corporation tax is lower, meaning that Uber pays a minimal amount in tax to HM Revenue and Customs.”*

Employment law issues

Similar to some of the jurisdictions explored in this report, use of the legal classification to describe its drivers (‘Partners’ and the term ‘self-employed contractors’), provokes controversy and employment law court cases, the first of which was brought in July 2015 and remains to be settled. Fattah comments that the group of Partners has brought formal legal proceedings against the company *“for an apparent lack of basic worker rights, such as paid vacations and*

minimum wage protection. They are arguing that they are in fact employees due to the degree of control exercised by Uber.”

Competitor response and Employment Tribunal ruling will determine Uber’s future

Uber seems to have enjoyed a fast expansion across the UK, possibly due to its focused use of technology and its purported ‘transparency’ over fares, which are significantly cheaper than that of a traditional black cab. In response, Black Cab drivers have launched an offensive with their new app ‘Cab:app’ which aims to rival Uber. **Paul Marmor** comments: *“How this will play out over time is uncertain at present.”*

Marmor also feels that Uber’s overall long-term prospects and the way in which it operates in the future will depend on The London Central Employment Tribunal ruling: *“Should Partners be classified as employees, Uber will arguably have to look at the way in which its current business model operates and look to make changes in order to continue making a profit in the way it has been to date.”*



“The company does seem to be testing some legal loopholes.”



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Germany



Legal problems under the German Passenger Transportation Act

Lawyer **Stefan Simon** of **SPITZWEG Partnerschaft** in Munich reports that Uber is illegal in Germany with several German courts prohibiting the introduction of ride sharing services as an alternative to the traditional taxi transportation system: *“Legal problems arise for Uber under the German Passenger Transportation Act (Personenbeförderungsgesetz) of 1968. The main point is that, according to the provisions of this Act, Uber is not considered a professional transportation service, but instead one that is offered by private persons, and this is prohibited.”*

While Uber has tried to outline the professional nature of its business model in order to be registered as a ‘taxi’ transportation system, German courts so far have not agreed with the points put forward in this sense.

A clash of old and new?

Simon expresses the view that *“The German Uber experience seems to be nothing more than a clash of a new media-based transportation service with a legal framework that is based on technical knowledge from the 1960s.”* However, he also points out that Uber needs to prove it can provide a stable and accountable service comparable to traditional taxi services in existence since the 19th century. Simon adds: *“This is something that Uber needs to prove in the legal sense as well as part of a wider public debate.”*



“The game is not over in Germany for Uber.”

Struggles with EU Law

Simon also points out the conflict of the German Passenger Transportation Act with EU Law. In his view, the fact that Uber has its legal headquarters in the Netherlands, whereas the services are offered in Germany, puts into question the EU principle of freedom of establishment and services: *“The administrative practice of granting licences for traditional taxi transportation systems in Germany, but not permitting Uber to offer its system, may be subject to scrutiny under EU state aid law.”*

More changes could be on the horizon for Uber in Germany and Simon feels *“The game is not over in Germany for Uber.”*



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Italy



Unfair competition ruling

In Italy, where the taxi industry is highly regulated and the availability of taxi licences is restricted, the debate has centred largely on ride sharing services such as Uber creating unfair competition against licenced taxi drivers.

In May 2015, a court ruling in Milan, triggered by taxi associations, dealt a major blow to Uber's business in Italy by making its POP service (equivalent to UberX in the UK and using drivers who do not have a commercial licence) illegal in the same way that any other taxi company without a licence would be.

Bigger legislative issues related to liberalisation

Michele Calleri, a partner at member firm **Studio Legale Associato** in Milan, comments that the bigger issue surrounding Uber and the regulation of taxi regulation relates to the liberalisation of services: *"In big cities, the cost of a licence is around EUROS 100,000."*

Calleri adds: *"The Association of Transport Companies asked for our assistance - we proposed that licenced drivers should be entitled to a fleet size of more than one taxi so that they have the ability to increase the size of their business and therefore their market offering."*

"If the objective is to enable fair competition between operators, the first step in our view should be to offer the same conditions to all market participants with the value of licences being influenced less by public limitations and more by the quality of the offering."

The search for a legal solution goes on

Calleri adds: *"The Italian Government is trying to find a legal solution that will allow Uber, with certain conditions, to operate some of their services, with no prejudice to existing operators."*

Uncertainty over shape of future operations

As in some other jurisdictions, the court ruling leaves Uber's Italian operations hanging in the balance, although its UberBlack service which uses drivers with licences vetted by the company, continues to operate in Milan and Rome.



"The Italian Government is trying to find a legal solution that will allow Uber, with certain conditions, to operate some of their services, with no prejudice to existing operators."



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