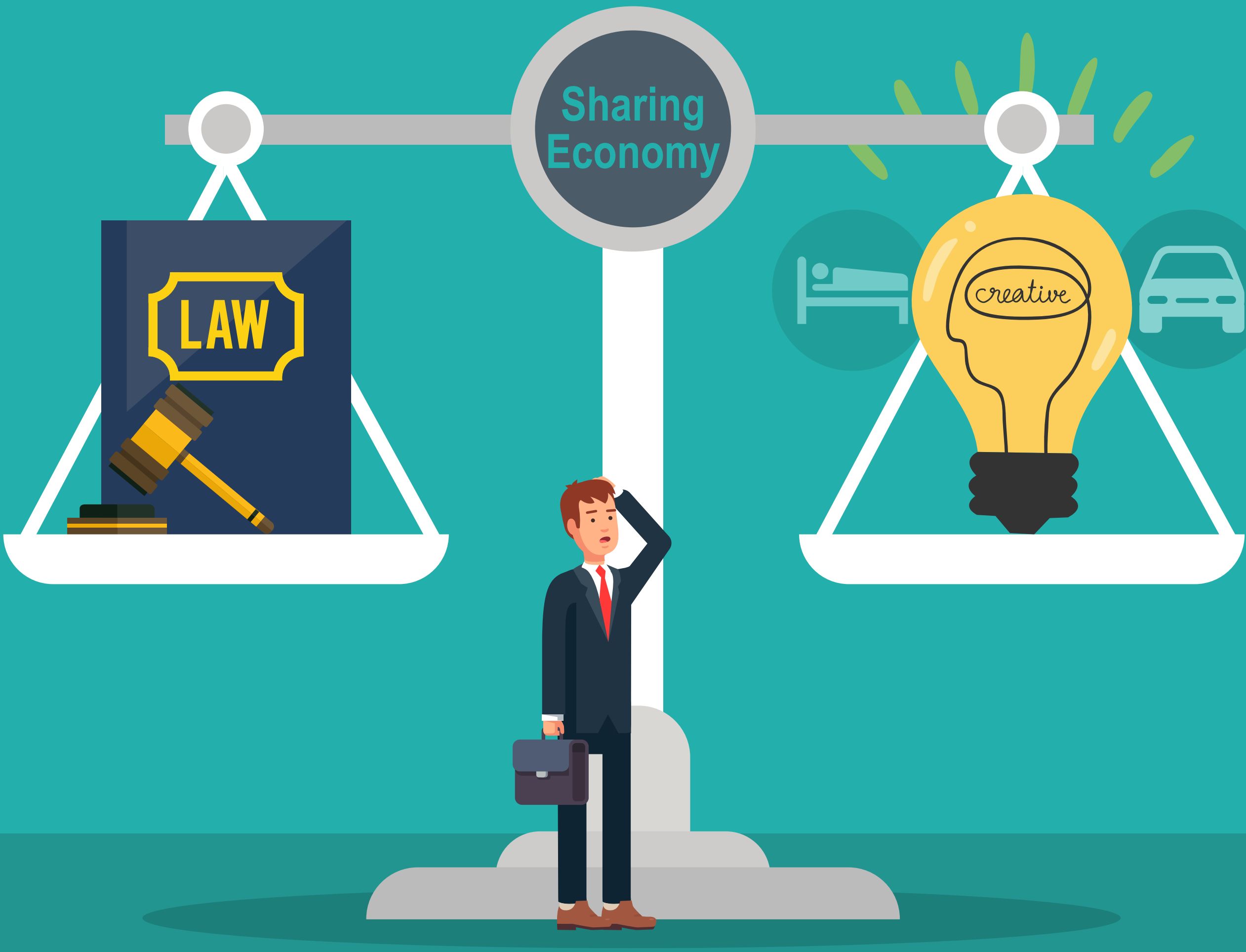

Regulating the Sharing Economy

By
CHAN YU MENG
Partner, Corporate Department, Lee & Lee

Regulation serves to protect existing interests while innovation benefits from avoiding regulation. Will both sides learn to co-exist?

We are now living in the age of the sharing economy. It is increasingly common to share the use of vehicles and accommodation with others through ride-hailing (e.g. Uber, Grab, Lyft, Ryde) and property leasing (Airbnb, FlipKey, HomeAway) companies.

These new-age companies have won over consumers and owners of those vehicles and property by providing both sides easy-to-use online platforms or mobile applications that facilitate the monetising of underutilised resources. By the same token, these companies have also captured investors by garnering eye-watering billion-dollar market valuations.

None of them has captured the imagination more so than Uber, founded less than a decade ago and becoming so prominent that changes in various industries are now referred to as "uberisation". The company popularised peer-to-peer ride-sharing. While such sharing platform companies have been praised for their clever use of disruptive technologies, their conduct and business models have been called into question.

How we share

One such business model is the allowing of home owners to become hosts via a web/app platform that facilitates the renting of empty rooms or properties on a short-term basis (usually to travellers) at a fraction of costs charged by hotels. The host charges a fee to the lodger and the platform charges both the host and lodger for use of the platform.

Another sharing model allows private car owners to become drivers and ferry passengers around – unlocking money-making opportunities for an otherwise underutilised asset. The platform earns by charging passengers a fee and the driver is paid by the platform depending on the amount of fares the driver picks up.

Common to these types of sharing economy platforms is hosts and drivers must own the residential property or vehicle that is being shared and be responsible for their own expenses. As the platform treats both property owners and drivers as independent contractors, owners and drivers are responsible for paying taxes from the income derived from utilising the platform.

Involvement in sharing economy platforms does expose participants to some moral hazards. The risk that a party to a transaction has not entered the transaction in good faith is one such example. As such, the success of sharing economy businesses is underpinned by the building of trust by employing a communal rating or review system.

The idea of sharing resources is innovative and arguably boosts efficiencies and offers alternative resources. Yet when carried out on a large scale, it may incur social and economic costs and may result in the violation of laws which were enacted to protect against the incurrence of such costs in the first place.

Sharing accommodation

In many countries, only licensed hotels are allowed to provide short-term rentals and there is a general prohibition against the short-term renting out of private residences. In addition, hotels are required to charge an occupancy or hotel tax to lodgers, but private home owners are not expressly required to do so.

In Singapore, the minimum short-term rental period is three consecutive months. In other countries, it can range from 30 days to no more than 120 days in a year.

Short-term rental of private residences is prohibited because such properties are located in areas planned and zoned only for residential purposes and are not planned to accommodate the disruptions caused by tourism, such as crowding, noise and pollution.

Private residences also lack the requisite fire and safety regulations and inspections that licensed hotels are subject to in order to ensure the safety of occupants.

In addition, it is speculated, that by converting into short-term rentals of properties which would ordinarily have been intended for long-term rentals, this would reduce the long-term rentals supply, thus raising rental prices in the long-term rental market. This could be socially and economically detrimental, especially in a market where property prices are on the rise and more people may be forced to rent instead of buy property.

Sharing transportation

In many countries, the provision of public transportation utilising motorcars is carried out only by licensed taxi operators. All taxis are generally required to be insured and the conduct of taxi drivers is also regulated to protect passengers.

Before becoming a taxi driver in Singapore, one is subject to both health and background screenings, must be able to speak and read basic English and undergo a training course of about 25 hours and pass three test papers. Drivers are also subject to a regulatory framework that governs their conduct and discipline.

When car sharing business platforms first began operating around the world, the business went on unregulated and their drivers did not have to comply with the regulations imposed on taxi drivers. Concerns were raised about the level of training of such private hire vehicle drivers, whether sufficient background checks were made, and the unfair competition it created for taxi drivers due to uneven regulation.

Many countries have since updated their laws to allow car sharing platforms to operate by regulating their activities through laws similar to those that regulate taxi companies albeit on a less stringent basis.

Yet there are other countries that still ban the operation of such sharing platforms until they follow the regulations set for taxi operators as they believe that such standards must be followed in order to accord proper protection for consumers and permit fair competition to taxi operators.

Regulating innovation

Not all sharing platforms ensured that their business models or operations were fully compliant with the laws of the countries in which they operate before commencing business.

Perhaps due to the successes they achieved in pushing technological boundaries and financial incentives given to risk legal violations, such sharing platforms grew accustomed to and adopted the same approach when it came to assessing and pushing legal boundaries.

When concerns and criticisms from the community and regulators mounted, instead of seeking engagement and compliance, some of these platforms went on the offensive by lobbying for laws to be changed to accommodate their business models and in some cases even initiating legal proceedings against local authorities.

Despite the disruptions, governments around the world recognise the need to not stifle innovation and try hard to find a balance – making sure established businesses are not punished for complying with regulations and that new sharing economy businesses are not punished for innovating.

In Singapore, regulators have allowed car sharing platforms to operate provided that drivers register themselves, attend a 10-hour training course, and are open to health and background screenings and a demerit point discipline system. As for sharing accommodation, Singapore regulators are currently studying and consulting with the public on the proposal to permit private residences to be used for short-term accommodation, subject to conditions, including requiring the licensing of platform operators, requiring home owners to apply for approval for such use and only approving applications when there is minimal erosion of residential amenity and character of the housing estate.

Sustainable innovation

Profitability is derived from serving a community through the provision of products and services. Sustainability of that profit must therefore involve sustaining that community. It is increasingly clear that long-term success in the sharing economy industry requires its players to adopt and demonstrate more responsible behaviour and higher self-governance in their businesses.

The directors of such sharing economy businesses must accept that the businesses they operate owe obligations to stakeholders beyond just the company and its shareholders. They need to identify other key stakeholders, like customers, employees, and the community, and ensure that the obligations owed to these stakeholders are understood and met.

Sharing economy businesses have to voluntarily engage regulators and policymakers early on in the process, sharing with them their market entry and business conduct strategies and being upfront and honest with the impact that their businesses may have on stakeholders and coming up with appropriate solutions.

Equally, regulators and policymakers should adopt a more entrenched culture of appreciation, rather than apprehension, towards innovation. They should look out for new technologies even before they are publicly released, in order to have better foresight about the consequences of such technologies and formulate concordant solutions, thus ensuring sustainable innovation without harming existing interests. ■