
Employment

Recent Developments in E-hailing Services

Land Public Transport (Amendment) Bill 2017 and the Commercial Vehicles Licensing Board (Amendment) Bill 2017

On 27 July 2017, the Land Public Transport (Amendment) Bill 2017 and the Commercial Vehicles Licensing Board (Amendment) Bill 2017 (“**Bills**”) were passed at the Dewan Rakyat. The Bills are still waiting to be endorsed by the Dewan Negara and given the Royal Assent before being gazetted and enforced. Once these Bills come into force, they would have the effect of regulating e-hailing services.

The Bills are aimed at ensuring better safety for passengers and drivers alike whilst ensuring a level playing field is achieved between e-hailing businesses and conventional taxi or cab services.

Under the Bills, “*e-hailing vehicles*” is defined to mean a motor vehicle having a seating capacity of four persons and not more than eleven persons (including the driver), used for the carriage of persons on any journey, in consideration of a single or separate fares for each of them, in which the arrangement, booking or transaction and the fare for such journey are facilitated through an electronic mobile application provided by an intermediation business.

Of significance is that under the Bills, e-hailing vehicles will now be classified as public service vehicles. E-hailing drivers in Peninsula Malaysia will be subjected to the jurisdiction of the Land Public Transport Commission (“**SPAD**”) while those in Sabah and Sarawak will be subjected to the jurisdiction of the Commercial Vehicles Licensing Board (“**CVLB**”).

Further, the promulgation of the Bills will also make it mandatory for companies that offer e-hailing services to be incorporated in Malaysia.

In this client update, we will highlight the key changes made by the new Bills and laws regulating e-hailing services.

New Intermediation Business Licence

Under the Bills, intermediation businesses which facilitate arrangements, bookings or transactions for e-hailing services would now be required to obtain an “*Intermediation Business Licence*” issued by the relevant regulatory body which would either be SPAD or CVLB (depending on the jurisdiction). If one is caught operating e-hailing services without the requisite intermediation business licence, this will be deemed as an offence and upon conviction, the offender is liable to a fine not exceeding RM500,000 or imprisonment for a term not exceeding 3 years or both.

Employment

Every intermediation business licence approved and issued by SPAD or CVLB will set out the duration of the said licence. Such a licence is renewable but however, it is not transferable. The intermediation business licence comes attached with conditions which, amongst others, include the following:-

- (a) the type and extent of intermediation business to be operated or provided;
- (b) the general level of service to be provided;
- (c) the measures to safeguard the safety and security of persons using services provided by the intermediation business; and
- (d) the standards of performance to be complied by the intermediation business licensee.

Any intermediation business licence granted may be revoked or suspended by SPAD or CVLB in the event of a breach of the governing laws and/or the conditions attached to the intermediation business licence.

Consumer Protection and Resolution of Disputes

The Bills also seek to impose a general duty on intermediation business licensees to deal reasonably with their customers and adequately address customer complaints. Notwithstanding this, SPAD or CVLB may on its own initiative come up with customer standards which will serve as guidelines - which amongst others will incorporate model procedures for the licensees to comply with in order to meet customer requirements, procedures for making, receipt and handling of customer complaints, handling of disputes and relevant compensation payment procedures to follow in the event of a breach of customer standards.

Disputes involving the licensees themselves may be referred to SPAD or CVLB. Once referred, SPAD or CVLB has the power to establish a committee to hear and resolve the dispute.

Protection against assault and obstruction

The amendments to the Bills also seeks to include offences against a person who assaults, hinders or obstructs those involved in e-hailing services.

Regulator's power to access records

An intermediation business licensee shall if requested by the regulatory body at any time, allow the body or its appointed officers to access its records. Since 16 June 2017, e-hailing operators have been required to submit data on their drivers to SPAD for purposes of screening them with various enforcement agencies.

Transitional Provision

E-hailing providers/operators will be given a grace period of one year to comply with the abovementioned requirements once the Bills come into force.

Employment

Other Requirements

In tandem with the objective of ensuring better safety for passengers and drivers whilst ensuring a level playing field between e-hailing businesses and conventional taxi or cab services, the Bills also ensure that similar requirements such as health checks, scheduled vehicles inspection, insurance coverage as well as issuance of drivers' cards will apply equally to all.

The Self-Employment Social Security Act 2017

Malaysia also saw a move to offer better protection to the drivers of e-hailing service providers. The Self-Employment Social Security Act 2017 (**"the Act"**) received Royal Assent on 26 May 2017 and came into force by way of a gazette notification on 13 June 2017.

The Act is applicable to all Malaysians and/or permanent residents of Malaysia carrying out a *"self-employment activity"* in Malaysia. The Act defines *"self-employment activity"* as the service of carriage of passengers by means of public service vehicle or motor vehicle either through one's own operation or under an arrangement with the owner/lessor of the vehicle and such service is given for hire or reward or for any other valuable consideration or money's worth or otherwise. If one looks at the definition of *"self-employment activity"*, the targeted group and in fact the only group at present to fall within the purview of the Act are non-other than the self-employed drivers of e-hailing service providers as well as self-employed taxi or cab drivers.

What this means is that the self-employed drivers of e-hailing service providers as well as self-employed taxi or cab drivers are mandated to contribute to the Social Security Organisation of Malaysia at the rates prescribed in accordance to the Second Schedule of the Act and the Schedule to the Self-Employment Social Security (Rates of Contribution for Taxi Driver) Regulations 2017. They are also mandated to register with the Social Security Organisation of Malaysia and a failure to do so is an offence punishable with a fine not exceeding RM10,000 or imprisonment for a term not exceeding 2 years or both.

What next?

The clarification on the status of e-hailing services is a welcome move and appreciated by all quarters including the operators, drivers and users of e-hailing services. The protection offered to the drivers through the Self-Employment Social Security Act 2017 which in essence seeks to provide for and safeguard the welfare of those defined as self-employed individuals under the Act by enabling them to derive benefits from the Social Security Organisation of Malaysia is also noble.

E-hailing service providers too have responded to these changes with some already announcing new safety measures such as installing the one-touch emergency response button on their respective mobile applications that will connect passengers to the nation response services in the event of an emergency.

However, notwithstanding the many hurdles as mentioned above, the main issue that all quarters are confronted with by these new laws is of course the additional cost that all parties will have to incur to comply with these new laws. It remains to be seen if e-hailing service providers will readily take on the burden of these new additional costs

Employment

themselves in an effort to alleviate their drivers of these administrative burdens imposed or if they will leave it to their drivers to bear.

In any event, what can be expected is that any uncertainty or inaction by the e-hailing service providers in devising viable solutions to overcome these cost hurdles may become a deterrent to new drivers entering this business or discourage existing drivers from continuing to provide e-hailing services.

Nevertheless, it remains to be seen how these new laws will impact e-hailing services. It will either be embraced with open arms or there will be growing discontentment because of the imposition of additional costs especially given the current economic climate of the country.

Contacts



John Mathew
Partner

D +60 3 2273 1919
F +60 3 2273 8310
john.mathew@christopherleeong.com



Yau Yee Ming
Partner

D +60 3 2273 1919
F +60 3 2273 8310
yee.ming.yau@christopherleeong.com



Rubini Murugesan
Partner

D +60 3 2273 1919
F +60 3 2273 8310
rubini.murugesan@christopherleeong.com



Han Li Meng
Partner

D +60 3 2273 1919
F +60 3 2273 8310
li.meng.han@christopherleeong.com



Kelvin Kho
Partner

D +60 3 2273 1919
F +60 3 2273 8310
kelvin.kho@christopherleeong.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
F +65 6225 9630
sg.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN NK LEGAL | *Myanmar*

Rajah & Tann NK Legal Myanmar Company Limited

T +95 9 7304 0763 / +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

RAJAH & TANN 立杰上海
SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

GATMAYTAN YAP PATACSIL
GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 894 0377 to 79 / +632 894 4931 to 32 / +632 552 1977
F +632 552 1978
www.cagatlaw.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Sole Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

Hanoi Office

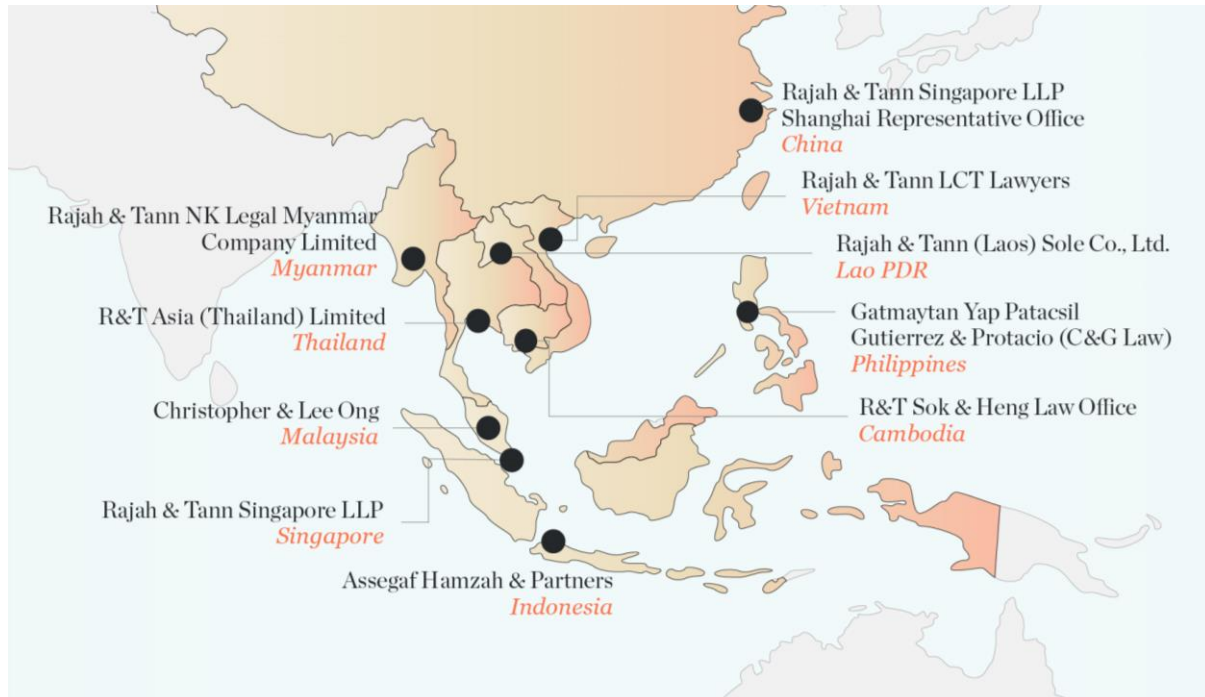
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Client Update: Malaysia

2017 AUGUST

**LAWYERS
WHO
KNOW
ASIA**

Member firms are constituted and regulated in accordance with local legal requirements and where regulations require, are independently owned and managed. Services are provided independently by each Member firm pursuant to the applicable terms of engagement between the Member firm and the client.



Our Regional Presence

Christopher & Lee Ong is a full service Malaysian law firm with offices in Kuala Lumpur. It is strategically positioned to service clients in a range of contentious and non-contentious practice areas. The partners of Christopher & Lee Ong, who are Malaysian-qualified, have accumulated considerable experience over the years in the Malaysian market. They have a profound understanding of the local business culture and the legal system and are able to provide clients with an insightful and dynamic brand of legal advice.

Christopher & Lee Ong is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Japan and South Asia.

The contents of this Update are owned by Christopher & Lee Ong and subject to copyright protection under the laws of Malaysia and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Christopher & Lee Ong.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business or operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Christopher & Lee Ong.