

# REGULATING E-HAILING IN MALAYSIA

## IS THERE OVER-REGULATION?

Since the launch of Uber, the e-hailing industry continued to grow and has become an undeniable force to be reckoned with. This has triggered major disruptions in the transportation industry, especially in the ride-hailing market which was traditionally monopolised by the taxi industry. In response, several ASEAN countries have introduced regulations to regulate the e-hailing companies and its drivers to create a level-playing field for both industries while at the same time upholding and maintaining the standards of the transport industry. Mohamad Izahar bin Mohamad Izham, Partner in the Corporate and Government Advisory Practice Group, shares his thoughts on the recent e-hailing regulations in Malaysia as well as a comparison with regulatory developments in other ASEAN countries.

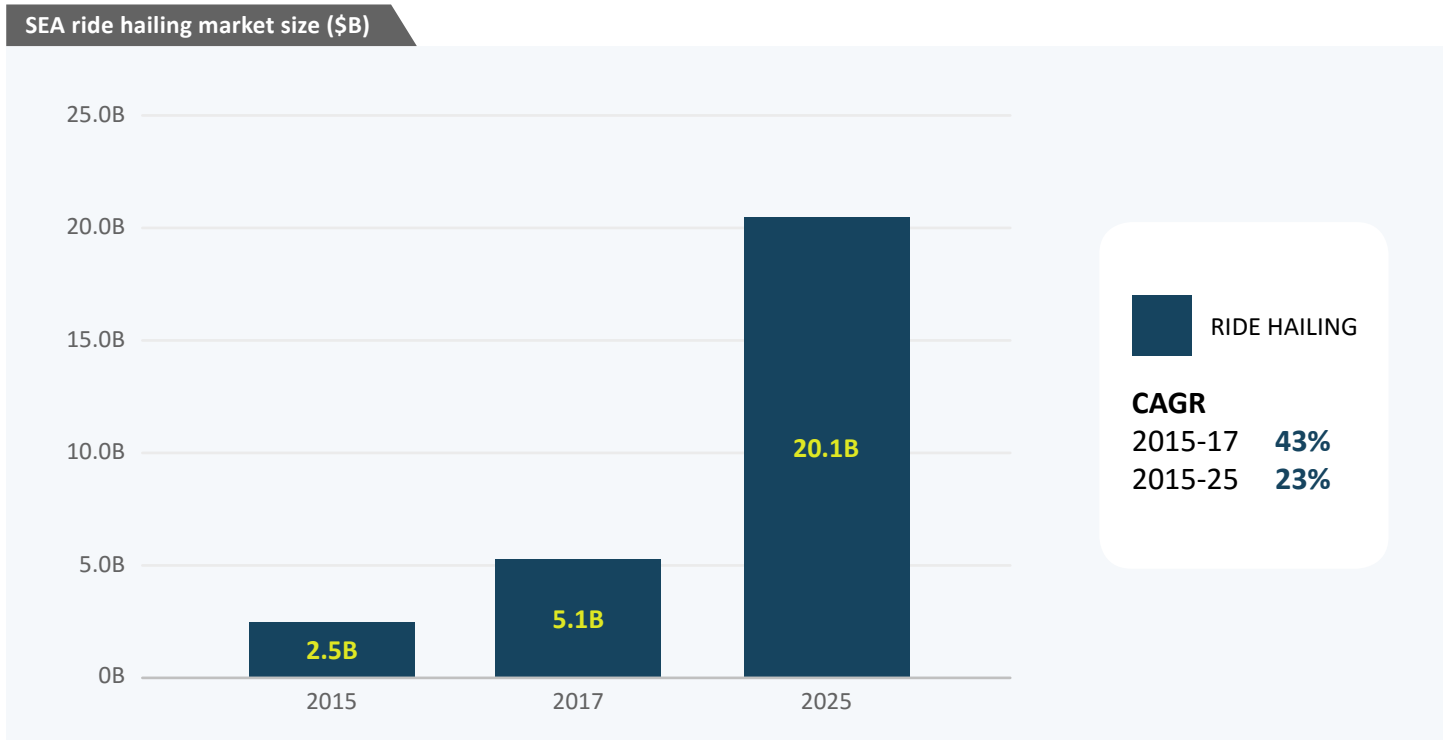
DECEMBER 2018



From its humble start-up beginnings to now being a ‘*must-have*’ mobile app in a person’s smartphone, the e-hailing industry has become an undeniable force to be reckoned with since the launch of e-hailing pioneer, Uber, in San Francisco in May 2010. Uber has since established its global presence and entered the ASEAN market in October 2012 with its first launch for this region being in Singapore.

Despite the preceding existence of taxi-hailing applications such as MyTeksi (currently part of the Grab application as GrabTaxi) in several countries, the e-hailing industry triggered major

disruptions in the transportation industry, especially the ride-hailing market, which was traditionally monopolised by the taxi industry. Today, it is a stark reality that the taxi industry struggles to keep up with the ease of accessibility and low cost offered by the e-hailing industry. The current notable operators in the ASEAN market are Grab and Go-Jek, as e-hailing pioneer Uber merged its ASEAN operations with Grab on 26 March 2018. In 2017 alone, Grab had expanded from 34 cities to 168 cities across 8 countries within ASEAN with a valuation of USD6 billion as of March 2018.



Source: Google in Asia, <https://www.blog.google/around-the-globe/google-asia/sea-internet-economy/>

With the e-hailing industry here to stay, several ASEAN countries have already begun to regulate the operators and its drivers in order to maintain the standards of the transportation industry and create a level-playing field for the taxi and e-hailing operators.

This article will look at the Malaysian approach in regulating e-hailing, followed by the industry updates within ASEAN in introducing e-hailing regulations and an analysis of the various ASEAN frameworks in comparison to the Malaysian position.

## THE PRESENT POSITION: E-HAILING REGULATIONS IN MALAYSIA

E-hailing regulations in Malaysia came into effect on 12 July 2018 with the passing of the 2017 amendments to the Land Public Transport Act 2010 (Act 715) (“**LPTA 2010**”) and the Commercial Vehicles Licensing Board Act 1987 (Act 334) (“**CVLBA 1987**”).

The current law regulates both e-hailing operators and drivers. In order to operate an e-hailing service, the operator is required to have an intermediation business licence which allows the licensing board to regulate the operator by attaching conditions, such as ensuring standards and safety measures. An intermediation business is defined as a “*business of facilitating arrangements, bookings or transactions of an e-hailing vehicle whether for any valuable consideration or money’s worth or otherwise*”. This definition differs slightly in the LPTA 2010 where the scope of vehicles is larger and extends to land public transport services specified in the Third Schedule which lists public service vehicle service.

For drivers, their e-hailing vehicles are now classified as Public Service Vehicles (“**PSV**”) which has been defined as “*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*”. Likewise, drivers are required to obtain a PSV licence and apply for a driver’s card or electronic driver’s card to be displayed in the e-hailing vehicle. A 1-year grace period from the effective date of 12 July 2018, has been granted to the e-hailing industry in order to comply with the changes.

The following table sets out a more detailed illustration of the requirements for e-hailing operators and drivers.

E-hailing Services Requirements		
	E-Hailing Operators	E-Hailing Drivers
How does the amended regulations affect the e-hailing industry?	E-hailing operators will now have to apply for an intermediation business licence with the Land Public Transport Commission ("SPAD").	E-hailing drivers are now subject to the same licensing requirements as taxi drivers as they are both categorised as PSV. This includes obtaining the PSV licence and ensuring that their vehicles are up to standard.
What are some of the licensing requirements?	<ul style="list-style-type: none"> <li>E-hailing operators have to register with the Companies Commission of Malaysia or Co-operative Societies Commission of Malaysia.</li> <li>They are required to have a minimum capital of RM100,000 and at least 1 board member who is a citizen and permanent residence of Malaysia.</li> </ul>	<ul style="list-style-type: none"> <li>Drivers are required to be Malaysian citizens above 21 years old.</li> <li>Drivers are required to pass criminal records and medical checks, not be blacklisted by the Road Transport Department (Jabatan Pengangkutan Jalan) ("JPJ") or the Royal Malaysia Police (Polis Diraja Malaysia) ("PDRM"), and undergo a 6-hour training module.</li> <li>The cost of the training module will be less than RM200 for each driver.</li> </ul>
What are the other requirements?	<p>The operators may be subjected to further requirements by SPAD:</p> <ol style="list-style-type: none"> <li>the type and extent of intermediation business to be operated or provided by the holder of an intermediation business licence;</li> <li>the general level of service to be provided to persons using services provided by the holder of an intermediation business licence;</li> <li>the measures to safeguard the safety and security of persons using services provided by the intermediation business; and</li> <li>the standards of performance to be complied with by the holder of an intermediation business licence in the operation of the intermediation business.</li> </ol>	<ul style="list-style-type: none"> <li>Vehicles to be used for e-hailing purposes are required to have a minimum three-star ASEAN NCAP rating and be of a 4 to 11-seater (including the driver's seat).</li> <li>Vehicles above 3 years old are required to undergo annual inspections at PUSPAKOM if they are more than 3 years old. Vehicles above 10 years are not permitted to be used to conduct e-hailing services.</li> <li>E-hailing vehicles have to display a decal issued by JPJ when carrying passengers.</li> <li>E-hailing vehicles are required to be covered by vehicle, passenger and third-party insurance.</li> </ul>

Source: Land Public Transport Act 2010 (Act 715), Commercial Vehicles Licensing Board Act 1987 (Act 334) and Soalan Lazim, Pelaksanaan Perkhidmatan E-Hailing Versi 26 Julai 2018, [http://www.spad.gov.my/sites/default/files/faq\\_perkhidmatan\\_e-hailing\\_26072018.pdf](http://www.spad.gov.my/sites/default/files/faq_perkhidmatan_e-hailing_26072018.pdf)

## INDUSTRY UPDATES AND REGULATIONS AT A GLANCE: E-HAILING IN OTHER ASEAN COUNTRIES

Currently, e-hailing is regulated at varying degrees throughout the ASEAN countries. The table below is a snapshot of the industry regulations in relation to e-hailing in ASEAN.

ASEAN Countries With A Regulatory Framework		
Country	Industry Updates	Regulations
Indonesia	<p><b>16 October 2018</b></p> <p>The Ministry of Transportation prepared 2 draft regulations: implementation of specific ride-hailing apps and minimum service standards.</p>	<p>N/A</p> <p><b>Note:</b> The Ministry of Transportation had tried implementing several legislations (the most recent being Transportation Ministerial Regulation No. 108/2017) but were revoked due to criticism from the taxi operators and drivers.</p>

<b>Philippines</b>	<p><b>6 April 2018 and 10 August 2018</b> The Philippine Competition Commission issued an interim measures order and “Commitment Decision” to bind Grab to meet its service quality and pricing standards to address the competition concerns.</p> <p><b>9 July 2018</b> Grab was fined PHP10 million for imposing a PHP2-per-minute charge on its passengers. The PHP2-per-minute charge is now deemed legal. However, the fine still stands.</p> <p><b>17 October 2018</b> Grab was fined PHP16 million for violating its interim measures order.</p>	Department Orders and Memorandums issued by the Land Transportation Franchising and Regulatory Board (“LTFRB”).
<b>Singapore</b>	<p><b>24 September 2018</b> Grab and Uber have been imposed with directions to restore market contestability and were collectively fined a total of SGD13 million for its merger by the Competition and Consumer Commission of Singapore (“CCCS”).</p>	No specific regulations regulating the e-hailing industry yet. Currently, there is the Third-Party Taxi Booking Service Providers Act 2015 which only applies to taxi-hailing operators.
<b>Vietnam</b>	<p>The Vietnamese Government has a 5-year e-hailing pilot program running through 2021 which involves 10 taxi and e-hailing operators.</p> <p><b>6 February 2018</b></p> <ul style="list-style-type: none"> <li>• Vietnam’s taxi company, Vinasun, sues Grab for unfair business practices.</li> <li>• Matter is currently still deferred as of 17 October 2018.</li> </ul> <p><b>19 May 2018</b> The Vietnam Competition Authority is still assessing the Grab-Uber merger.</p> <p><b>23 June 2018</b> Vietnam’s Ministry of Transport has rejected Grab’s expansion plans as they are currently only allowed to operate in five cities.</p>	N/A

**ASEAN Countries Without A Regulatory Framework**

Country	Industry Updates	Regulations
<b>Brunei</b>	<p><b>20 March 2018</b> Brunei’s first ride-booking app (Dart Logistics) was approved by the Ministry of Communications and given provisional permit by the Land Transport Department.</p>	N/A
<b>Cambodia</b>	<p><b>June 2016</b> Cambodia’s first ride-booking app, ExNet was launched.</p> <p><b>September and December 2017</b> International players such as Grab and Uber entered the Cambodian market.</p>	N/A
<b>Laos</b>	<p><b>25 April 2018</b> Laos’ first ride-booking app, LOCA was launched.</p>	N/A
<b>Myanmar</b>	<p><b>2016</b> Local apps such as HelloCabs and Oway Ride were launched.</p> <p><b>April and July 2017</b> Uber and Grab entered the Myanmar market.</p>	N/A
<b>Thailand</b>	<p><b>21 October 2013 and 28 February 2014</b> MyTeksi and Uber entered the Thailand market.</p> <p><b>28 March 2018</b> The Thailand Development Research Institute is currently looking to other countries in order to develop legislations to regulate and legalise e-hailing.</p>	N/A

## ANALYSING THE E-HAILING REGULATIONS IN MALAYSIA: LOOKING AT ASEAN

The observation that can be made from the review of e-hailing regulations in ASEAN is that only a handful of countries besides Malaysia have some form of regulation, that is, Singapore, Philippines, Indonesia and Vietnam. It can be argued that the main reason for this is that in many of the other ASEAN countries, the e-hailing industry is still relatively new with e-hailing operators only entering some of the markets in 2017, and even as recent as this year as seen in Brunei.

### REGISTRATION OF E-HAILING OPERATORS

In Malaysia, an application to SPAD for an intermediation business licence is mandatory in order for e-hailing operators to provide e-hailing platforms. More importantly, the emergence of an intermediation business as a new category on its own in the regulations indicates the Government's recognition that e-hailing is a distinct industry separate from traditional taxi operations.

In the Philippines, although "ride-sharing" or "app-based ride-hailing" services are also recognised as distinct from local taxis, the regulations identify e-hailing services as Transportation Network Vehicle Service ("TNVS") under the transport network companies ("TNC"). This distinction has become somewhat blurred as a recent Government directive provides that the TNC and TNVS are to be considered as public utilities, one impact of which limits foreign equity participation in operators to 40%. As a result of this classification, e-hailing and taxi vehicles appear more synonymous as the regulator, LTRFB, has taken steps to regulate e-hailing vehicles akin to similar protectionist measures imposed on taxis.

In contrast, the Indonesian approach mirroring the traditional view that e-hailing operators are merely "app companies", attempted to take

Despite the various forms of e-hailing regulations introduced in the respective ASEAN jurisdictions, a commonality in themes can be observed in the e-hailing frameworks considered. Among such common themes include the registration of e-hailing operators, the regulations of e-hailing drivers, and the implementation of rate control in the industry.

the registration of operators a step further by requiring ride-sharing companies to partner with transportation companies licensed by the ministry or compelling them to register for their own transportation company licence. This resulted in drivers becoming part of a co-operative of driver employees or of partner transportation companies as can be seen with Uber's previous partnership with Indonesia's second-biggest taxi operator, PT Express Transindo Utama Tbk, and Go-Jek and PT Bluebird, a taxi company's, collaboration.

Apart from registration as an entity with the Companies Commission of Malaysia or the Co-operative Societies Commission of Malaysia, there are no equity restrictions or requirements to partner with transportation companies imposed on e-hailing operators in Malaysia. The approach is progressive as it recognises e-hailing as a form of an intermediation business, distinct from traditional taxi operations that does not require the Government's "protection" by curbing foreign participation or meddling in business strategies. It is our view that this flexibility provides room for the e-hailing industry to independently grow and determine its future; driven by market forces and free from Government intervention.

### REGULATIONS ON E-HAILING DRIVERS

For e-hailing drivers, the Malaysian regulations have imposed strict requirements by not only requiring drivers to obtain a PSV licence but also to pass criminal records and medical checks, and not be blacklisted by JPJ or PDRM. It is also a requirement to provide insurance coverage for the driver, passenger and third parties, and for drivers to undergo a 6 hour training module. Such regulatory measures are arguably necessary in order to ensure e-hailing driver standards are streamlined in the transportation service industry as a whole; irrespective of whether they are e-hailing or taxi drivers.

Singapore has a similar approach requiring drivers to apply for a separate licence in order to be registered as an e-hailing driver. For example, one has to apply for the Private Hire Car Driver's Vocational Licence ("PDVL") in Singapore, which includes a compulsory 8 hours and 2 hours of classroom training and self-study respectively, followed by a test in order to qualify as an e-hailing driver. Statistics evidenced by the regulator, the Land Transport Authority of Singapore has indicated that the passing rate for the test is relatively low with only 51% passes as of June 30 2018. In comparison, the fact that Malaysia does not correspondingly impose a test upon completion of the 6 hour training module is not an automatic cause for concern. For one, e-hailing drivers are already subject to PSV licensing requirements, exactly the same as taxi drivers, which has a test component on road safety. Another argument against having such a requirement is the potential that it

can be misused to create a barrier to entry by enforcing a "professional" quota on qualifying e-hailing drivers.

E-hailing drivers in Singapore are also required to convert their vehicles in order to provide private hiring services requiring them to among others permanently display a pair of serialized tamper-evident decals on their windscreen as opposed to only when providing e-hailing services. In our view, this distinction can be attributed to the differing work environments within both countries' e-hailing industries. The drivers in Singapore tend to be full-time drivers due to the tedious licensing procedures and high start-up costs. In contrast, e-hailing in Malaysia is ubiquitously known as a "part time industry" where 75% of the drivers in Malaysia on the e-hailing platform work on a part-time basis, and hence a pragmatic approach would be to display a distinguishing mark only when a passenger is on board.

Although not fully implemented yet, the decal albeit temporary in nature may face a backlash in Malaysia's current e-hailing environment. Although theoretically intended as a mark to indicate compliance to safety standards and enhance customer confidence, from an operational perspective there may be reluctance from e-hailing drivers to identify their vehicles, for fear of reprisals with the ever-increasing tension with taxis. We can surmise that the Government's attitude in streamlining driver requirements, but

at the same time remaining adaptable to e-hailing intricacies (indicative by the temporary decal example), is recognition of a

proactive approach in regulating an emerging industry.

## RATE CONTROL

Prior to the introduction of the regulations, there were many grouses from e-hailing drivers that e-hailing operators had charged as high as 25% in commissions. The regulations currently restrict the operators' commission at a maximum of 20% for normal drivers and 10% for taxi drivers while capping the surcharge at a maximum of 2 times the normal fare. It is important to note that the regulations do not prescribe the rates that can be charged by e-hailing drivers as compared to rates that are controlled by the Government in the taxi industry.

Indonesia had attempted to set the minimum and maximum rates for e-hailing operations but they were eventually scrapped as the Indonesian Supreme Court ruled that it was anti-competitive. Nonetheless, there exists some form of rate control implemented in Singapore and the Philippines. In Singapore, due to the finding that Grab and Uber had breached the Singapore Competition Act, the CCCS issued directions which includes Grab maintaining its pre-merger pricing algorithm and driver commission rates. Likewise in the Philippines, the Philippines Competition Commission issued an interim measures order and a "Commitment Decision" which specified that pricing and payment policies such as incentives and promotions prior to the Grab and Uber merger would be maintained.

In the long run, the Government's approach in not prescribing the rates can be lauded as supporting the ideals of capitalism dictated by the industry's supply and demand. For one, although Uber and Grab represent the traditional heavyweights of the e-hailing industry, there are other e-hailing platforms in Malaysia, with no less than 10 e-hailing platforms competing head-to-head with the taxi industry and other transport service providers. Malaysians affected by the price increase of Grab rides since the Uber and Grab merger in March 2018, have naturally opted to revert back to taxis or looked at other e-hailing platforms for their commute.

In fact, there is no indication in the decline of e-hailing users. There are currently 1.7 million ride-sharing users in 2018 and this number is expected to steadily reach 2.1 million in 2020. It remains to be seen what action will be taken, if any, as the investigation on the Uber-Grab merger by the Malaysian Competition Commission is still ongoing at the present time. Even so, the Government's recognition that it has legal recourse under competition legislation should rate control transpire as an issue is a preferred approach as opposed to introducing "knee jerk" regulations to dictate e-hailing rates.

## THE WAY FORWARD: E-HAILING IN MALAYSIA

It is a consistent theme across the ASEAN jurisdictions that the development of e-hailing regulations have largely mirrored the taxi industry, a reflection of the "level playing field" ideology present throughout. From encouraging partnerships between e-hailing operators and transportation companies to attempting to control e-hailing rates, the e-hailing regulatory framework across ASEAN, although piecemeal, marks a paradigm shift towards taxi regulations. On the other hand, the new regulations introduced in Malaysia evolved with the Government's recognition that the advent of technology and disruption in transportation services is not easily regulated with a one size fits all model.

Despite the continued protests from the taxi industry worldwide demanding for a level playing field, it is our view that such notion propagated is instead a plea to resuscitate and instil protectionist policies in favour of the taxi industry. The faltering standards of the taxi operators and its drivers from poor customer service to overcharging journeys have been a nationwide affliction long before the presence of e-hailing. The reality is that imposing stringent regulations on the e-hailing industry would not correspondingly solve the deep-seated problems of the taxi industry.

Instead of over-regulating the e-hailing industry, the Malaysian Government has instead undertaken efforts to address this by incentivising taxi drivers to migrate to e-hailing by relaxing taxi requirements and providing financial assistance for the purchase of vehicles for e-hailing purposes. There has even been a call by the Ministry of Transport to encourage e-hailing operators to "adopt" taxi drivers. This move would not only bridge the animosity between the two industries, but would also encourage both to work together towards a common goal of developing the transport services industry.

In conclusion, we appreciate that the Malaysian approach in regulating e-hailing is "forward thinking" in recognition that the industry is independent and that traditional prescriptive Government regulation, a commonplace feature in some ASEAN jurisdictions, is not necessarily the best approach. At the end of the day, respecting the fundamental consumer right to choose may be the better solution in promoting and creating a level playing field for all. Although the Government can extensively regulate both industries, perhaps a win-win for everyone is an open market best summed up by the Minister of Transport himself in response to criticisms by the e-hailing companies on the e-hailing regulations, *"if they think it's not profitable, then they can leave the industry"*.

If you have any questions or require any additional information, you may contact the following person or the ZICO Law Partner you usually deal with.



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This article was edited by ZICO Knowledge Management.

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