

Will The Battle Between The Taxi Industry And The E-Hailing Operators Be Finally Put To Rest?

IN THIS ARTICLE, LAI ZHEN PIK DISCUSSES THE NEW REGULATORY FRAMEWORK FOR E-HAILING OPERATORS.

Introduction

The introduction of the e-hailing system had changed the landscape of public transport in Malaysia and, at the same time, intensified the competition in the taxi industry. Whilst the taxi industry was subject to specific regulatory requirements there was previously no express law to regulate the operation of the e-hailing system. Many taxi drivers had spoken out against the unfairness of burdening the taxi industry with such requirements when the e-hailing industry was not Regulated ¹.

The **Land Public Transport (Amendment) Act 2017** (“**LPT Amendment Act**”) and the **Commercial Vehicles Licensing Board (Amendment) Act 2017** (“**CVLB Amendment Act**”) were enacted to amend the existing **Land Public Transport Act 2010** (“**LPTA**”) and the **Commercial Vehicles Licensing Board Act 1987** (“**CVLB**”) respectively. The amendment Acts which came into force on 12 July 2018 have provided the regulatory framework for the operation of the e-hailing system.

The LPTA applies to the land public transport industry in Peninsular Malaysia; whereas the CVLB applies to Sabah, Sarawak and the Federal Territory of Labuan.

In this article, we focus on the important regulatory requirements introduced under the LPTA affecting the e-hailing industry in Peninsular Malaysia.

Licence to operate

Under the LPTA, taxi cabs operators or providers are subject to the requirement to obtain an operator’s licence being a person who operates or provides a public service vehicle service using a class of public service vehicles².

The term “public service vehicle service” means the carriage of passengers by means of one or more public service vehicles of the same class or different classes, whether for hire or reward or for any other valuable consideration or money’s worth or otherwise³.

The public service vehicles listed under the First Schedule of the LPTA included taxi cabs but not e-hailing vehicles. In addition, any application for an operator’s licence must be submitted by a sole proprietor, partnership, private or public company or co-operative⁴.

A person is deemed to be operating or providing a public service vehicle service if he:

- a. uses or drives a public service vehicle himself; or
- b. employs one or more persons to use or drive a public service vehicle, to
- c. operate or provide a public service vehicle service, and he
 - i. owns the said public service vehicle; or

- ii. is responsible, under any form of arrangement with the owner or lessor of the said public service vehicle to manage, maintain or operate such public service vehicle⁵.

In contrast, companies operating or providing e-hailing services are not required to obtain an operator's licence as they are merely involved in the business of facilitating bookings or transactions between private car drivers and passengers, and do not fall within the ambit of section 16 of the LPTA.

With the LPT Amendment Act coming into force, the following amendments were made:

- i. A new chapter relating to "Licensing of Intermediation Business" was inserted into the LPTA, in which "intermediation business" was defined to mean business of facilitating arrangements, bookings or transactions for the provision of land public transport services whether for any valuable consideration or money's worth or otherwise.
- ii. "E-hailing vehicle" was inserted as one of the classes of public service vehicles under the First Schedule of the LPTA 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**."*⁶

Based on the above, any person operating or providing e-hailing services is required to obtain an intermediation business licence from the **Land Public Transport Commission** or **Suruhanjaya Pengangkutan Awam Darat ("SPAD")**⁷. An applicant for an intermediation business licence or the e-hailing company must observe the following requirements:

- a. be registered with the Companies Commission of Malaysia or Malaysia Cooperative Societies Commission;
- b. have a minimum share capital of RM100,000;
- c. one of the members on the board of directors or the board of the cooperative has to be a Malaysian who resides in Malaysia; and
- d. such other conditions in relation to the intermediation business as may be issued from time to time⁸.

Licence to drive

Any driver of a public service vehicle on a road is required to obtain a vocational licence issued by the **Road Transport Department** or **Jabatan Pengangkutan Jalan Malaysia**⁹.

A reference to "**public service vehicle**" under the **Road Transport Act 1987 ("RTA")** is to have the same meaning as assigned under the LPTA¹⁰.

With the extension of the classes of "public service vehicle" under the First Schedule of the LPTA to include e-hailing vehicles, any driver of an e-hailing vehicle will be required to obtain a vocational licence (similar to that of a driver of a taxi cab) under the RTA.

As part of the requirements to obtain a vocational licence, the applicant will be required to show that he is a fit and competent person to be licensed and will be required to, amongst others, attend

and complete a course of instruction and be issued a certificate of attendance for such course of instruction (the latter of which shall be valid for a period of 12 months)¹¹.

In addition to the above-mentioned statutory requirements relevant to intermediation business operators and drivers of e-hailing vehicles, the following requirements apply to e-hailing vehicles:

I. Inspection of vehicles

It is mandatory for e-hailing vehicles which have reached the age of three years from their registration dates to be inspected once every 12 months at **PUSPAKOM**, an authorised vehicle inspection company¹², in accordance with the prescribed inspection standard¹³. A vehicle which fails to meet the stipulated inspection standards must undergo a re-inspection at PUSPAKOM inspection centres¹⁴.

II. Vehicle model

All e-hailing vehicles are also limited to brands and models which achieve at least a three-star safety rating under the **ASEAN New Car Assessment Program ("NCAP")**¹⁵. This model is identical to the one adopted by the SPAD during the liberalisation of the taxi industry in August 2016 which provides wider options for taxi cabs¹⁶.

III. Display of distinguishing mark

A driver of an e-hailing vehicle must display at all times whilst carrying a passenger a distinguishing mark on the vehicle which is to be determined by the SPAD¹⁷. This is similar to a taxi cab which is required to display on the dashboard in front of the front passenger and at the rear of the left front seat, an identification card of the driver in the prescribed form determined by the SPAD¹⁸.

IV. Insurance

It is a requirement for e-hailing drivers to have insurance policies covering the vehicle, passenger and third party¹⁹.

Grace period

Notwithstanding the above, there is a one-year grace period granted to any intermediation business operator who has commenced its business operation prior to 12 July 2018 to make an application for a licence in accordance with the LPTA²⁰.

Passenger fare

The fares to be charged for an e-hailing vehicle shall be determined by the intermediation business licensee²¹. Notwithstanding that, the following are to be observed by e-hailing operators or companies in respect of their fare structures²²:

- i. A maximum of 10% commission can be charged for each journey undertaken by taxi drivers providing e-hailing services;
- ii. A maximum of 20% commission can be charged for each journey undertaken by other e-hailing drivers; and
- iii. Surge pricing can be charged at two times the fare incurred.

Conclusion

The introduction of regulatory requirements on the e-hailing industry players is a laudable effort to regulate e-hailing operators.

LAI ZHEN PIK CORPORATE/M&A PRACTICE GROUP

¹ <http://www.nst.com.my/news/nation/2018/07/391319/taxi-drievrs-stage-protest-against-e-hailingruling-outside-parliament>

² Section 16(1) of the LPTA.

³ Section 2 of the LPTA.

⁴ Circular No 6 of Year 2017 on the “New Policies for Taxi Cab, Hire Car and Limousine Taxi Cab classes of the Public Service Vehicles” (Pekeliling Bil. 6 Tahun 2017: Dasar-Dasar Baharu Bagi Perkhidmatan Kenderaan Perkhidmatan Awam Kelas Teksi, Kereta Sewa dan Teksi Mewah) issued by the Land Public Transport Commission (Suruhanjaya Pengangkutan Awam Darat or SPAD) on 31 October 2017 (“SPAD’s New Policies”).

⁵ Section 16(2) of the LPTA.

⁶ Paragraph 1 of the First Schedule of the LPTA.

⁷ Section 12A of the LPTA.

⁸ Paragraph 7 of the FAQ relating to the Implementation of e-Hailing Services (Soalan Lazim Pelaksanaan Perkhidmatan E-Hailing”) issued by the SPAD — www.spad.gov.my/ms/node/3490 (“SPAD’s FAQ”).

⁹ Section 56 of the RTA.

¹⁰ Section 2 of the RTA.

¹¹ Rule 4(b)(iv) of the Public Service Vehicles (Licensing and Conduct of Drivers, Conductors and Passengers) Rules 1959 (“PSV Rules”).

¹² Rule 4 of the Motor Vehicles (Periodic Inspection, Equipment and Inspection Standard) Rules 1995 (“Inspection Rules”).

¹³ Rule 7 of the Inspection Rules.

¹⁴ Rule 5 of the Inspection Rules.

¹⁵ Paragraph 12 of the SPAD’s FAQ.

¹⁶ The SPAD’s New Policies.

¹⁷ Rule 15B of the PSV Rules.

¹⁸ Rule 15A of the PSV Rules.

¹⁹ Section 90(1) of the RTA and paragraph 12 of the SPAD’s FAQ.

²⁰ Section 32(1) of the LPT Amendment Act.

²¹ Item 23 of Part I of the Fifth Schedule of the Motor Vehicles (Commercial Transport) Rules 1959.

²² Paragraphs 13 and 14 of the SPAD’s FAQ.

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