SyCip Salazar Hernandez & Gatmaitan

Legal Bulletin

Technology, Media & Telecoms

Regulate to Innovate: The Philippines Legalizes Uber Business Model

What it's about

Uber has been the most recent poster child of disruptive innovation; its business model refuses to fit typical parameters by which most countries regulate public transport. Like other jurisdictions, the Philippines characterize persons offering transportation services to the public as public utilities. Not only do these providers have to obtain a franchise and comply with a slew of regulations, they need to be at least 60% Filipino-owned.

It Ain't Over for Uber

Enter Uber (sometime in 2013) whose presence on Manila's streets quickly gained popularity among normally taxi-riding city residents. But it also gained the ire of franchise holders that saw an unregulated Uber as having an unfair advantage.

Legalizing Uber

However, a strong pro-Uber lobby has ultimately resulted in the world's first set of rules expressly allowing and regulating "transportation network companies" or TNCs.

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Antitrust Issues: The Philippine Competition Act

What it's about

On July 21, 2015, President Benigno Aquino III signed into law the highly anticipated Philippine Competition Act (Republic Act No. 10667), which provides a comprehensive national competition policy. Among the highlights of the act are the creation of a Philippine Competition Commission, and the prohibition of anti-competitive agreements, abuse of dominant position, and anti-competitive mergers and acquisitions.

Philippine Competition Commission

The act establishes the Philippine Competition Commission, an independent quasi-judicial body primarily in charge with the implementation of the national competition policy. To be created 60 days within the effectivity of the act, the commission is vested with a broad range of powers, from conducting administrative inquiries and instituting appropriate civil or criminal proceedings before

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Firm News and Updates

Chambers Asia Pacific Awards 2015 Philippine Law Firm of the Year

SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) received the Philippines Law Firm of the Year Award at the Chambers Asia Pacific Awards 2015. The Awards reflect notable achievements, including outstanding work, impressive strategic growth, and excellence in client service, of national and international law firms across the Asia Pacific region in the past year on the basis of research for the upcoming edition of Chambers Asia-Pacific.

The awards ceremony took place on May 4, 2015 at the Ritz Carlton, Hong Kong. Visit the Chambers Asia Pacific Awards website for the full list of winners.

In their 2015 rankings, Chambers Asia-Pacific and Chambers Global ranked SyCipLaw as a Band 1 firm and recognized the expertise of several of its lawyers. Visit the Chambers Asia Pacific website and the Chambers Global website to view the firm's complete rankings. ◆

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In May of this year, the Philippine Department of Transportation and Communication issued Department Order No. 2015-11, which expanded the recognized transport categories to include a TNC service. The Land Transportation and Franchising Regulatory Board (LTFRB) followed suit, with a series of circulars.

One of the LTFRB circulars defines a TNC as an organization, whether a corporation, partnership, or sole proprietorship that provides prearranged transport services for compensation using an internet-based technology application or digital platform technology to connect passengers with drivers using their personal vehicles.

CPC and Accreditation Requirements

The new rules require the TNC to obtain a certificate of public convenience from the LTFRB to provide transportation network vehicle services (TNVS) vehicles.

Undoubtedly to address the concerns of franchised operators, TNVS drivers must only carry passengers who pre-arrange rides through TNC-provided online-enabled application and not through phone call or booking service.

Security Check

The terms and conditions of TNVS accreditation require the TNC to accredit only drivers with a professional license, and who are registered with the LTFRB as TNVS drivers. TNC's are required to implement a zero tolerance drug and alcohol policy.

The LTFRB circulars appear to limit liability of TNCs to compliance with terms and conditions specifically applicable to TNCs, but insulates it from actions of drivers that are characterized as independent contractors.

Recently, the company applied for accreditation with the LTFRB.

Regardless of how Uber pans out, regulators may want to follow the LTFRB's lead and be open to reviewing, and even breaking the mold of rules that more and more have little to do with how people do things or live their lives.

A version of this article was first published in the July 2015 issue of Asian Legal Business (ALB) SE Asia Edition. ◆

Relevant Rules and Links

- DOTC Department Order No. 2015-11: Further Amending Department Order No. 97-1097 to Promote Mobility, http://dotc.gov.ph/images/issuances/DO/2015/img-512091323.pdf
- LTRFB Memorandum Circular No. 2015-15: Rules and Reguations to Govern the Accreditation of Transportation Network Companies, http://ltfrb.gov.ph/media/downloadable/MC_NO._2015-015_.pdf
- LTRFB Memorandum Circular No. 2015-16: Terms and Conditions of a Certificate of Transportation Network Company Accreditation, http://ltfrb.gov.ph/media/downloadable/MC_NO._2015-016_.pdf
- LTRFB Memorandum Circular No. 2015-16: Implementing Guidelines on Acceptance of Applications For A Certificate of Public Convenience To Operate A Transportation Network Vehicle Service, http://ltfrb.gov.ph/media/downloadable/MC_NO._2015-015_.pdf
- LTRFB Memorandum Circular No. 2015-17: Implementing Guidelines on Acceptance of Applications For A Certificate of Public Convenience To Operate A Transportation Vehicle Service, http://ltfrb.gov.ph/media/downloadable/MC_NO._2015-017_.pdf
- LTRFB Memorandum Circular No. 2015-18: Terms and Conditions of a Certificate of Public Convenience to Operate a Transportation Network Vehicle Service, http://ltfrb.gov.ph/media/downloadable/MC_NO._2015-018_.pdf ◆

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the regular courts, to reviewing proposed mergers and acquisitions and issuing orders for corporate reorganization and divestment. Pursuant to its quasi-judicial powers, the commission is also empowered to impose sanctions and penalties, issue subpoenas, undertake inspections of business premises, and issue adjustment or divestiture orders.

Anti-Competitive Conduct

There are three major types of anti-competitive conduct that are prohibited under the Act: anti-competitive agreements, abuse of dominant position, anti-competitive mergers and acquisitions.

Agreements and abuse of dominant position—In prohibiting anti-competitive agreements between or among competitors, the Act penalizes anti-competitive agreements *per se*, as well as agreements which have the object or effect of substantially preventing, restricting, or lessening competition.

The act also prohibits an entity from abuse of its dominant position by engaging in conduct that would substantially prevent, restrict or lessen competition. This presupposes that the entity is in a dominant position—a position of economic strength that an entity holds, which makes it capable of controlling the relevant market independently from its competitors, customers, suppliers, and consumers. An entity in such position is prohibited from committing the following acts: **(a)** predatory pricing, **(b)** imposing barriers to entry, **(c)** making a transaction subject to the acceptance of other obligations, **(d)** price discrimination, **(e)** imposing restrictions on the lease or contract for sale or trade of goods or services concerning where, to whom, or in what form such goods or services may be sold or trade , **(f)** tying, **(g)** imposing unfairly low purchase price on the goods or services of marginalized service providers and producers, **(h)** imposing unfair purchase or selling price on their competitors, customers, suppliers, or consumers, and **(i)** limiting production, markets or technical development to the prejudice of consumers.

A justification common to both anti-competitive agreements and abuse of dominant position is that it contributes to the improvement of the production or distribution of goods and services, or that it promotes technical or economic progress, while allowing consumers a fair share of the resulting benefits.

Mergers and Acquisitions—Parties to a merger or acquisition agreement, when the value of the transaction exceeds PhP1,000,000,000.00, are prohibited from consummating their agreement until 30 days after providing notification to the commission. Consummation of the agreement without the notification will result in the agreement being considered void, and subject the parties to an administrative fine ranging from 1% to 5% of the value of the transaction. The act also prohibits merger or acquisition agreements that substantially prevent, restrict or lessen competition in the relevant market.

The law does provide exemptions for an otherwise prohibited merger or acquisition, in cases where the concentration has brought about or is likely to bring about gains in efficiencies that are greater than the effects of any limitation on competition that result or is likely to result from the merger or acquisition agreement, or when a party is faced with actual or imminent financial failure and the agreement is the least anti-competitive arrangement among the known alternative uses for the failing entity's assets.

Impact and Enforcement

There are plenty of enforcement measures introduced by the Act. An entity that is in violation of the Act or other competition-related laws may find itself not only in an administrative proceeding before the Commission, but also in a criminal and civil suit before the regular courts. The Act also makes non-adversarial administrative remedies available to the parties, such as securing a binding ruling, show cause order, or consent order. These are prescribed before the institution of administrative, civil, or criminal action.

Notably, these sanctions apply not only to entities engaged in trade, industry, or commerce in the Philippines, but also entities engaged in international trade or acts that are done outside the Philippines having direct, substantial, and reasonably foreseeable effects in trade, industry, or commerce in the country. ◆

Firm News and Updates

IFLR Asia Awards 2015 National Law Firm of the Year

SyCipLaw received the National Law Firm of the Year for the Philippines again at the IFLR Asia Awards 2015. The awarding ceremony was held on March 11, 2015 at the JW Marriott Hong Kong.

The IFLR1000 Financial and Corporate 2015 Rankings recognized the firm as Tier 1 in six practice areas: banking, project finance, capital markets, M&A, and restructuring & insolvency. Rafael A. Morales, Mia Gentugaya, Rose Marie King-Dominguez, and Hector M. de Leon, Jr. are recognized as leading lawyers.

The IFLR1000 Energy and Infrastructure 2015 Rankings also recognized the firm as a Tier 1 firm and partner Hector M. de Leon, Jr. as a leading lawyer.

More information on the results may be accessed at the IFLR1000 website. Please note, however, that IFLR1000 requires sign-in to access the rankings. ◆

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On page 4: Publication cover by Asia Cloud Computing Association
On page 5: Publication cover by Asian Legal Business

Firm News and Updates

ALB SE Asia Law Awards Philippine Deal Firm of the Year

SyCipLaw received the Philippine Deal Firm of the Year Award at the ALB South East Asia Law Awards. The awards recognize the industry and excellence of the people behind the great deals, tremendous projects and matters, and cases that overturned landmark decisions.

The firm was also nominated in ten other categories: Arbitration Law Firm of the Year, Banking and Financial Services Law Firm of the Year, Commercial Litigation Law firm of the Year, Energy and Resources Law Firm of the Year, Insurance Law Firm of the Year, Intellectual Property Law Firm of the Year, Asset and Corporate Finance Law Firm of the Year, M&A Deal of the Year, and Project Finance Deal of the Year.

The awards ceremony took place on May 28, 2015 at The Fullerton Hotel Singapore. Visit the ALB SE Asia Law Awards website for the full list of winners and nominees. ◆

And Wi-Fi for All: The Free Public Wi-Fi Act

The Philippine House of Representatives recently approved House Bill No. 5791, or the proposed Free Public Wi-Fi Act, a bill that mandates free Wi-Fi access in public places nationwide. The bill was favorably acted on by the lower House on June 9, 2015, and is now awaiting Senate approval.

The proposed law mandates the installation by the government of broadband hotspots in public areas, including all national government offices, state universities and colleges, public parks and plazas, public hospitals and public transportation terminals. The bill aspires to have these hotspots up and running within two years from the effectivity of the law.

The bill names the Information and Communications Technology Office (ICTO) of the Department of Science and Technology (DOST) as the project's lead implementing agency, Government units such as local government units and government owned and controlled corporations are supposed to install the hotspots, with the ICTO providing internet connectivity.

As the service will be for free, the bill proposes that Internet connection to any of the broadband hotspots in the designated public spaces will not be restricted with passwords. Only in cases where there is a clear and present security or technical risk that cannot be remedied through normal technical solutions shall the administration or management of public broadband hotspots limit access to the network through the use of passwords, which shall, however, be easily provided to the public upon request.

On privacy of citizens using the public broadband hotspots, the bill provides that in no case shall the administration or management of public broadband hotspots engage in the collection, use, or disclosure of user data, including the collection of anonymous traffic data, in accordance with existing laws.

As part of this initiative, and in anticipation of the bill's enactment into law, the DOST conducted an "alpha launch" last July 24, 2015, where free internet access was provided in certain areas, including popular parks, and several government buildings in Quezon City.

This was the product of a public-private partnership (PPP) between the ICTO and industry members, and is part of the ICTO's larger "Juan, Konek!" Digital Empowerment Program, which seeks to provide class 3, 4, 5, and 6 municipalities with Internet access. The Juan, Konek! program is aiming for 99% connectivity by the third quarter of 2015. ◆

Research report on cloud services: "Asia's Financial Services: Ready for the Cloud"

The Asia Cloud Computing Association (ACCA) launched a research report entitled "Asia's Financial Services: Ready for the Cloud—A Report on FSI Regulations Impacting Cloud in Asia-Pacific Markets". SyCipLaw partner Rose Marie M. King-Dominguez and senior associate Ruben P. Acebedo II contributed the information on the Philippines.

The report reviews the current regulatory landscape and lists key regulatory challenges to the adoption of cloud services by the Financial Services Industry (FSI). The report compares regulations in 14 Asia-Pacific markets in nine specific areas: (1) processes for adopting cloud; (2) contracts for cloud services; (3) data location; (4) data use limitations; (5) security; (6) data segregation; (7) business continuity; (8) audit, review and monitoring; and (9) exit. It also makes recommendations to policymakers to improve conditions for cloud computing adoption by FSIs.

Aside from the Philippines, jurisdictions covered include Australia, China, Hong Kong, India, Indonesia, Japan, Malaysia, New Zealand, Singapore, South Korea, Taiwan, Thailand, and Vietnam.

The executive summary and full report are available online for download from the Legal Resources section of the SyCipLaw website (www.syciplaw.com/news/articles/lr/074) and from the ACCA website (http://asiacloudcomputing.org/research/fsi2015).◆

Outsourcing Update:
BPOs are Finding a Home in Cebu

One of the fastest-growing and dynamic industries in the Philippines today is the business process outsourcing industry. Generally, no foreign ownership restrictions apply to BPO activities (although BPO companies must be capitalized at at least US$200,000 to be 100% foreign owned; otherwise they must be at least 60% Filipino-owned).

In the Philippines, the BPO industry is principally comprised of contact centers, information technology outsourcing (ITO) enterprises, back office processing or knowledge process outsourcing (KPO), and the health care segment which includes data transcription.

While most outsourcing businesses have established themselves in the National Capital Region (comprised of major cities such as Makati, Taguig, Pasig and Quezon City), BPOs have begun to see the attractions of Cebu City, also known as the Philippines' Queen City of the South. In fact, Cebu is in the top 10 of the Tholons list of preferred outsourcing destinations worldwide. Tholons, an advisory company on global outsourcing and investments, ranks cities based on several categories showing their outsourcing readiness, including quality, availability, and skills of workers in the BPO industry, operations cost, infrastructure readiness, and cost of living, among others.

Recently, one of the leading software development companies in Vietnam established its operations in Cebu through its Philippine subsidiary. Based on news sources as well as data obtained from the Cebu Educational Development Foundation for Information Technology (CEDF-IT), the contact center industry remains the biggest employment generator in the IT-BPM industry in 2014, with a total headcount of 685,000 employees followed by 187,000 in the back office or KPO industry, 86,000 in the ITO, and 87,000 in the health care segment.

As of June 30, 2015, there are six IT parks and forty-six IT Zone buildings in Cebu, which are registered with the Philippine Economic Zone Authority or PEZA. The latter is the government agency mandated to administer an incentive regime for, and register, locators. As of May 31, 2015, there are at least 200 BPO companies operating in Cebu.

A version of this article will appear in the September 2015 issue of Asian Legal Business (ALB) SE Asia Edition. ◆

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Asian Legal Business:
Philippine BPOs: Employment Prospects & Issues

The June 2015 issue of the Asian Legal Business (ALB) Asia Edition included a regional update article on "Philippine BPO" Employment Prospects & Issues" by SyCipLaw partners Amer Hussein N. Mambuay and Russel L. Rodriguez. The article is found on page 13.

Visit ALB's Issuu account (http://issuu.com/asianlegalbusiness/docs/alb_jun_2015/1) to access a copy of the publication.

The issue also contains photos from the Philippine In-House Legal Summit on page 46. SyCipLaw partners Simeon Ken R. Ferrer and Hiyasmin H. Lapitan participated in a panel on ASEAN Corporate Governance. ◆

Additional Legal Resource

The International Comparative Legal Guide to: Telecoms, Media and Internet Laws and Regulations 2015

The International Comparative Legal Guide to: Telecoms, Media and Internet Laws and Regulations 2015 includes answers to frequently asked questions on relevant legislation and regulatory agencies; foreign ownership or investment; licenses and authorizations; public and private works; access and interconnection; price and consumer regulation; radio spectrum; cyber-security, interception, encryption and data retention; distribution of audio-visual media; and internet infrastructure.

The Philippine section, contributed by SyCipLaw partner Rose Marie M. King-Dominguez and senior associate Ruben P. Acebedo II, is available for download from the Legal Resources section of the SyCipLaw website (www.syciplaw.com/news/articles/lr/069).

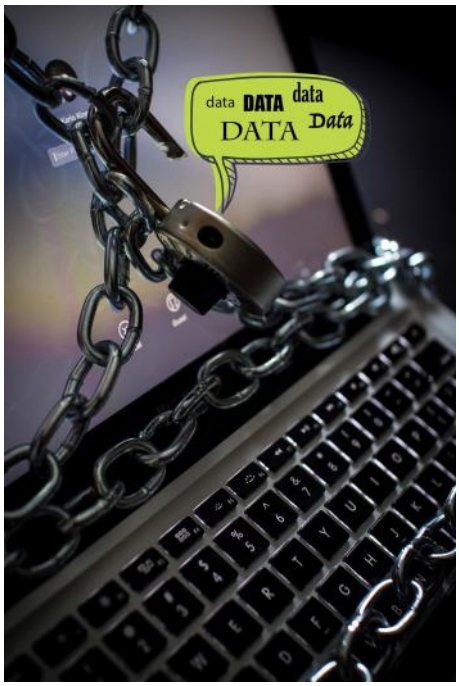
The entire guide may also be viewed for free at the ICLG website (www.iclg.co.uk/practice-areas/telecoms-media-and-internet-laws/telecoms.-media-and-internet-laws-and-regulations). ◆

SyCip Salazar Hernandez & Gatmaitan 70 YEARS

SyCipLaw celebrates its 70th anniversary this year. Among the events organized to commemorate this milestone are "*kapihans*" (a Filipino word to describe a place or venue to have coffee, similar to a *kaffeeklatsch*) - sessions for experts and stakeholders to discuss the most recent legal issues and developments, including:

- FOREIGN ACCOUNT TAX COMPLIANCE ACT (FATCA) (June 19)
- DO YOU HAVE TRUST ISSUES: AN OVERVIEW OF THE PHILIPPINE COMPETITION ACT (Aug. 26)
- UPDATES ON LABOR AND IMMIGRATION (Sept. 18, Subic in partnership with the Subic Bay Metropolitan Authority and the Subic Bay Workforce Development Foundation, Inc.)
- UPDATES ON LABOR AND IMMIGRATION (Oct. 9, Cebu in partnership with People Management Association of the Philippines Cebu, Inc.)
- DOING BUSINESS AFTER ASEAN INTEGRATION (Nov. 13)

Privacy Settings:
Data Privacy Act Update



The passage of the Data Privacy Act (DPA) in August 2012 illustrates the thrust of the Philippine Congress to enact laws that regulate the ICT industry in the country. The law primarily aims to protect the processing of personal information in information and communications systems in the public and private sectors. Three years after its passage, however, implementing rules and regulations for the DPA have yet to be issued, notwithstanding the law's mandate to get this done.

The delay is due in no small part to the fact that the agency supposed to promulgate the rules—the National Privacy Commission (as provided for in the DPA)—also has yet to be formed. And the Commission, which is an independent body tasked to implement and administer the DPA, is supposed to be attached to the Department of Information and Communications Technology, another entity that does not yet exist.

The DPA's authors in Congress are already asking the Office of the President to explain why implementation of the DPA appears to be at a standstill. With the new competition act coming on line (which statute also provides for the creation of a competition commission), and elections in 2016, current administration will need to push out the rules soon or leave the DPA's implementation to the next president. ◆

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About SyCip Salazar Hernandez & Gatmaitan
SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) was founded in 1945. It is the largest law firm in the Philippines.

We offer a broad and integrated range of legal services, with departments in the following fields: banking, finance and securities; special projects; corporate services; general business law; tax; intellectual property; employment law and immigration; and dispute resolution.

Within this structure, we have specialists in key practice areas such as mergers and acquisitions, energy, power, infrastructure, natural resources, government contracts, real estate, insurance, international arbitration, mediation, media, business process outsourcing, and technology. ◆

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