

**LEGAL STATUS OF WORKERS UNDER THE SHARING ECONOMY:  
A PROPOSAL OF HYBRID EMPLOYMENT\***

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**Abstract**

The internet revolution has contributed to a better standard of living and brought about the concept of “Disruptive Technology”. This concept is disrupting the structures of existing business industries by introducing new commercial platforms or economic models which can be referred to as the “Sharing Economy”. This article examines problems on the emergence of the Sharing Economy that has given rise to complexity of employment relationships, which need a distinction between hire of work and hire of service. This paper studies an examples of the Sharing Economy which is a transportation network company (TNC), a ridesharing business such as Uber, Grab and Lyft. The characteristics of TNC’s workers resemble those of both employee and independent contractor. It is therefore crucial to distinguish one from the other in order to correctly apply the relevant laws. Therefore, this article surveys the provisions concerning the legal status of hybrid worker in Italy, Spain, and Canada that aims to minimize the problem of the

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worker misclassifications. From the comparative study, this article proposes to apply the dependent contractor status into Thai domestic law to reduce legal uncertainty for the Sharing Economy in Thailand in order to protect those working for this type of business.

**Keywords:** Transportation Network Company, Dependent Contractor, Hybrid Employment

## 1. Introduction

In the era of internet and mobile phone application, business activities and consumers' behavior have drastically changed in many ways<sup>1</sup>. Since the Third Industrial Revolution<sup>2</sup> in 1969, technology has significantly influenced over how people live their lives. Currently, the Fourth Industrial Revolution<sup>3</sup> is happening and is more potential to improve life quality of everyone worldwide and increase their income levels<sup>4</sup>. This latest revolution has combined technology with various fields of sciences to produce a better standard of living, contributing to what is called "Disruptive Technology".<sup>5</sup>

Experts have estimated that by 2020 in the US, contingent workers will make up nearly half of all US workers, and 11% of these will be working through on-demand platform<sup>6</sup>. In the EU, the gross revenue from

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<sup>1</sup> Klaus Schwab, *The Fourth Industrial Revolution* (World Economic Forum 2016), 12

<sup>2</sup> Simon Chan, 'Digital Transformation and The Third Industrial Revolution' (*Linkedin*, 11 November 2016) <<https://www.linkedin.com/pulse/digital-transformation-third-industrial-revolution-simon-chan/>> accessed 27 October 2017

<sup>3</sup> Daniel Araya and Creig Lamb, 'Surfing the 4th Industrial Revolution: Artificial intelligence and the liberal arts' (*Brookings*, 11 April 2017) <<https://www.brookings.edu/blog/brown-center-chalkboard/2017/04/11/surfing-the-4th-industrial-revolution-artificial-intelligence-and-the-liberal-arts/>> accessed 27 October 2017

<sup>4</sup> The World Bank, 'WDI 2017 Maps' (*The World Bank*, 2017) <<https://data.worldbank.org/products/wdi-maps>> accessed 27 October 2017

<sup>5</sup> Paul Armstrong, *Disruptive Technologies: Understand, Evaluate, Respond* (Kogan Page 2017) 11

<sup>6</sup> Ursula Huws, 'The rise of platform labor: a fair 'sharing economy' or virtual Wild West?' (University of Hertfordshire 2016) 27 <[https://s3-eu-west-2.amazonaws.com/bulletin-pr/wp-content/uploads/2019/01/08162835/UniofHerts\\_Research-briefing\\_Rise-of-platform-labour.pdf](https://s3-eu-west-2.amazonaws.com/bulletin-pr/wp-content/uploads/2019/01/08162835/UniofHerts_Research-briefing_Rise-of-platform-labour.pdf)> accessed 27 October 2017

collaborative platforms of 2015 was approximately at 28 billion euros, almost doubling when compared to 2014<sup>7</sup>.

The Sharing Economy allows individuals to earn from underutilized assets by sharing their resources, such as equipment, services, and skills with other people, normally with significantly lower cost than traditional retail or employment arrangements.

The emergence of the Sharing Economy has given rise to more complex employment relationships, which need a distinction between hire of work and hire of service. One of the outstanding examples of Sharing Economy is TNC, which is a ridesharing business such as Uber, Grab and Lyft. The question of legal status of the workers in this type of businesses arises, and it is crucial to find the answer in order to correctly apply the relevant laws.

Many countries also experience this similar problem. Some countries such as Italy, Spain and Canada have solved this issue by creating a new employment category called the hybrid employment or the Dependant Contractor, which is expected to provide protection on workers in the Sharing Economy. The Dependent Contractor is a combination partly of a traditional employee and an independent contractor. In other words, on one hand, the intermediary, which is the owner of service applications, has major power to control how the Dependent Contractor does and deliver their work. For example, the intermediary has its power to set amounts of fee or charge, and even to dismiss their workers through barring them from using the service application. In this respect, the Dependent Contractor is comparable to traditional employees. On the other hand, the Dependent

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<sup>7</sup> European Parliament, 'THE SITUATION OF WORKERS IN THE COLLABORATIVE ECONOMY' (In-depth-Analysis, October 2016)  
<[http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/587316/IPOL\\_IDA\(2016\)587316\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/587316/IPOL_IDA(2016)587316_EN.pdf)> accessed 27 October 2017

Contractor has the freedom to design his/her work schedules, which is comparable to independent contractors.

## 2. Basic Concept of the Sharing Economy

The term “Sharing Economy” has been mentioned in the Oxford Dictionary in 2017 as “an economic system in which assets or services are shared between private individuals, either free or for a fee, typically by means of the Internet”.<sup>8</sup> It is also a hub of peer-to-peer activity for obtaining, giving, or sharing access, and is coordinated through a web interface featuring community feedback.<sup>9</sup>

Sharing Economy is a communal economic concept. It was initially introduced in 1978 in an academic journal "Community Structure and Collaborative Consumption" by Marcus Felson and Joe Spaeth<sup>10</sup>, who are now both social scientists at University of Illinois, Urbana-Champaign. The idea was to generate income from the exchange of services or goods with an underutilized property that belong to individuals or groups, over several digital platforms. It became widespread in early 21<sup>st</sup> century as a new model of business using the technology as an advantage after the Fourth Industrial Revolution.

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<sup>8</sup> Lexico, ‘Definition of Sharing Economy in English: sharing economy’ (Lexico, 2017) <[https://en.oxforddictionaries.com/definition/sharing\\_economy](https://en.oxforddictionaries.com/definition/sharing_economy)> accessed 24 August 2017

<sup>9</sup> Juho Hamari, Mimmi Sjöklint, and Antti Ukkonen, ‘The sharing economy: Why people participate in collaborative consumption’ (2015) Journal of the Association for Information Science and Technology, DOI: 10.1002/asi.23552 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2271971](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2271971)> accessed 25 August 2017

<sup>10</sup> Marcus Felson and Joe L. Spaeth, ‘Community Structure and Collaborative Consumption: A Routine Activity Approach’ (1978) 21(4) American Behavioral Scientist 614–624 <<http://journals.sagepub.com/doi/10.1177/000276427802100411>> accessed 11 May 2018

### **3. Transportation Network Company: Ridesharing Services**

A well-known transportation network company such as Uber, Lyft and Grab are a part of a disruptive digital market called the Sharing Economy<sup>11</sup>. Ridesharing service is a platform that allows car owners to become entrepreneurs by taking private vehicles to others for short-term rental in exchange for compensation. Examples of this type of business in the United States are RelayRides and Getaround. It also includes a platform that allows car owners to bring their vehicles for delivering people from one location to another.

### **4. The Interpretation of Uber's Legal Status**

Uber is one of the famous disruptive businesses under the scope of "Sharing Economy". Through the use of Uber applications on smartphones, Uber carries on its business by pairing "driver" who uses their own private cars with "passenger" who wants transportation to different destinations. Uber's fee is based on distance, time, and current demand for the services.

Uber has always insisted that it is a technology company, not a taxi company or a public transport operator. However, these claims became invalid when the European Court of Justice (ECJ) has interpreted the legal status of Uber in the case - the Asociación Profesional Elite Taxi v. Uber Systems Spain SL - upon the request by the Commercial Court No. 3 of Barcelona for a preliminary interpretation on December 20, 2017<sup>12</sup>. In this

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<sup>11</sup> Arun Sundararajan, 'The Sharing Economy: The End of Employment and the Rise of Crowd-Based Capitalism' (The MIT Press 2016)

<sup>12</sup> C-434/15 – Asociación Profesional Elite Taxi v Uber Systems Spain, SL, Judgment of the Court (Grand Chamber) of 20 December 2017

regard, the ECJ followed the opinion of Mr. Maciej Szpunar<sup>13</sup>, a legal advisor of the ECJ (Advocate General) and decided that:

*“... an intermediation service such as that at issue in the main proceedings, the purpose of which is to connect, by means of a smartphone application and for remuneration, non-professional drivers using their own vehicle with persons who wish to make urban journeys, must be regarded as being inherently linked to a transport service and, accordingly, must be classified as **a service in the field of transport** within the meaning of Article 58(1) TFEU.”*

Under this judgment, Uber must make its operations comply with the relevant transport regulations governing local taxi services in the same way as regular taxi in European countries. Thereby, driver registration with rigorous training and testing is also required.

## 5. The Concept of Hybrid Employment

Hybrid employment has been created to deal with employment relationships that fall between traditional employees and independent contractors. It is claimed that this hybrid category will provide advantages for workers in the Sharing Economy and create specific measures to tackle the relevant problems. To this end, the author studies legal provisions related to hybrid employment of 3 countries as follows:

### 5.1 Italy

Italy recognizes the existence of hybrid employment under the circumstances where the workers have great discretions over the manners or performance of their own work but still greatly rely or depend on

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<sup>13</sup> C-434/15 – Asociación Profesional Elite Taxi v Uber Systems Spain, SL, Opinion of Advocate General Szpunar delivered on 11 May 2017

employer's wages ("lavoratore parasubordinato" or "quasi-subordinate"). In order for the hybrid worker to receive their protection, they must meet the four requirements; namely, (1) collaboration, (2) continuity and length of the relationship, (3) functional coordination with the principal, and (4) a predominantly personal service. With these four conditions, the hybrid workers are entitled to a variety of social security benefits such as maternity leave, sick leave, and worker's compensations.

## **5.2 Spain**

Spain has adopted Estatuo del trabajo autonomo - LETA or Statute for Self-Employed Workers regulating the work of independent contractors, freelance jobs and all aspects of self-employment. The law is defined as "individuals not subject to the authority or organization of another person". This type of workers is entitled to such benefits as maternity and paternity leave, temporary sick leave, and beneficial social security programs for special groups.

However, LETA has also created a hybrid category of workers: "Trabajador Autonomo Economicamente Dependiente" (TRADE or self-employed worker with economic dependence). This employment category resembles the Italy's hybrid category of quasi-subordinated or "lavoratore parasubordinati".

In determining whether a worker is a TRADE or employee, they must meet the threshold of economic dependency at 75%. In addition, the following four criteria also need to be considered; (1) amount of independent work or reliance on the principal's directives; (2) the worker undertakes an obligation of personal service, without using subcontractors; (3) the worker bears the entrepreneurial risk; and (4) actual ownership of the tools and instrumentalities of production. Besides, in order for TRADE workers to be recognized by law, they must also disclose to the principal



their status as TRADE at the beginning of the contract as well as make their positions registered with the social administration agency.

### **5.3 Canada**

Canada adopted the Ontario Labor Relations Act (1995) that provides a wider definition of employee in order to include the Dependent Contractor in its law as follows:

“a person, whether or not employed under a contract of employment, and whether or not furnishing tools, vehicles, equipment, machinery, material, or any other thing owned by the dependent contractor, who performs work or services for another person for compensation or reward on such terms and conditions that the dependent contractor is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor.”

The concept of hybrid employment was adopted with a view to clarifying the definition of workers who are in the grey area, and in need of labor protections. To ascertain the status of hybrid worker, an economic dependency of 75% with a single company however needs to be considered as well.

## **6. Conclusion**

After conducting the comparative studies on the laws related to hybrid employment in the three different jurisdictions; namely, Italy, Spain and Canada, the author has found that their laws have been substantially developed to embrace the utilization and execution of the work's unique nature under their legal systems. This is despite that the original purpose of such developed laws is not to protect the workers specifically in the Sharing Economy, but generally those in the grey area. In this regard, due to the rapid growth of the Sharing Economy business in Thailand, the author

suggests that Thailand should also adopt legal provisions of hybrid employment to protect the workers in these business industries as follows:

### **6.1 Criteria of Dependent Contractor Status**

In order to expand labor protections on workers in the Sharing Economy, whose status falls between traditional employee and independent contractor, the author views that Thailand should adopt the Canadian approach as a model to widen its definition of “Employee” under the Labor Protection Act, B.E. 2541, aiming to cover the “Dependent Contractor” status. In this respect, the requirement of the following four criteria shall also be prescribed: (1) workers work predominantly for one principal with a 75% of economic dependency, (2) they are subject to the control of the principal as to how the services are provided, (3) they use their own tools in the provision of the services, and (4) they have undertaken any business risks, or expects a profit from the provision of the services. If these criteria of Dependent Contractor are fulfilled, the workers will be able to gain the Dependent Contractor status and be eligible to the same labor rights as a traditional employee.

### **6.2 Safe Harbor for Sharing Economy Business**

Thailand should also create a safe harbor to exclude some people, who carry on the Sharing Economy for good causes without being paid or for the purpose of a community’s benefits etc., from being treated as a traditional employee. To illustrate, people who use the ridesharing service through the smartphone application only to save fuel or parking fees should not be regulated as a traditional employee. However, it remains difficult to determine who should be within the scope of the safe harbor. In this regard, the author suggests the criteria of economic dependency per a single company at least 75% of the total income and the number of working hours per month that is close to those of traditional employees.

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