

The “Sharing Economy” in Japan

Recent Developments and Pertinent Legal Issues

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I. INTRODUCTION

Recent advancements in information and communication technologies (ICT) and the rapid spread of smartphones have made people more connected. This has fundamentally changed how we interact with each other; nowadays, many people are willing to share anything they have (i.e. their assets or abilities) through online platforms. Consequently, the resulting emergence of a new type of market, the “sharing economy,” is sparking new legal issues across the world.

Two of the most prominent companies in the sharing economy, Airbnb and Uber, were founded in 2008 and 2009, respectively, in San Francisco, an innovation hub. From 2016 to 2017, I lived near San Francisco, where I undertook my LL.M., and saw with my own eyes how popular these new services were in the United States. Ridesharing services like Uber and Lyft have become a pillar of American life. Airbnb has become a similarly widespread and sophisticated accommodation service. Owners of vacant apartments or detached houses rent these spaces to Airbnb guests, some of whom do not even have to meet the hosts in person and use instead a self-check-in/out system.¹ However, the development and acceptance of these innovations vary greatly from country to country. When it comes to Germany, where I lived from 2017 to 2018 and was seconded at a law firm, Uber was prohibited and people seemed to be much more reluctant to accept these kinds of services.

This article’s main purpose is to describe recent developments in the Japanese sharing economy and to outline the novel legal issues that have emerged. First, this article will provide a brief explanation as to the concept and background of the sharing economy (II.) as well as a basic legal analysis of regulations for the sharing economy (III.). Then, it will highlight recent developments in the Japanese sharing economy, pertinent legal issues that have been at the forefront of public debate on the topic (IV.), and underlying legal issues that ought to attract a similar level of scrutiny (V.). Finally, it will explore expectations regarding the future of the Japanese sharing economy (VI.).

¹ For example, some hosts use a combination lock for a key box or simply hide a key somewhere around the facility. Then, the hosts inform their guests how to find the key with an instant messenger application. The guests check in and out by themselves and return the key following the hosts’ instructions.

II. WHAT IS THE “SHARING ECONOMY”?

1. *Definition of the Sharing Economy*

The very first question one needs to ask is simply, “what is the sharing economy?”

The sharing economy is also known as the “collaborative economy.” In its Communication “A European agenda for the collaborative economy” (hereinafter: European Agenda), the European Commission defines the “collaborative economy” as

“business models where activities are facilitated by collaborative platforms that create an open marketplace for the temporary usage of goods or services often provided by private individuals.”²

In other words, services and goods exchanged within a sharing economy are not a new phenomenon;³ however, what is new is matching private individuals or business entities via platforms for the temporary use of their goods or services. Such matching systems are made possible by recently emerging information and communication technologies.

According to the definition proposed by the European Agenda, there are three key components involved in a collaborative economy: service providers, users, and collaborative platforms⁴ (also known as “online platforms”).

The following is a brief and general explanation of how these components interact with one another:

First, the service provider offers certain services or goods on an online platform, and the user makes a request to the service provider on the platform. The platform not only provides an open market space for these parties but also matches the service provider’s supply and the user’s demand based on ICT.

Second, once the service provider and the user are matched, the service provider supplies services or goods to the user with the user paying the service provider via the platform so that the platform can obtain a certain service fee.

Finally, the user and service provider give ratings for each other on the platform. This process is important and characteristic of the sharing econo-

2 EUROPEAN COMMISSION, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A European agenda for the collaborative economy, 2 June 2016, 3, <http://ec.europa.eu/DocsRoom/documents/16881/attachments/2/translations>.

3 K. OKUWADA/T. MAKINO, *Shearingu ekonomī no honshitsu to shakaiteki juyō-sei ni kansuru kōsatsu* [A Study of the Nature and Social Acceptance of the Sharing Economy], *Nenji Gakujutsu Taikai Kōen Yōshi Shū* 30 (2015) 533, 535.

4 EUROPEAN COMMISSION, *supra* note 2.

my. Usually, individual users and service providers do not have a reputation in the market. However, in the sharing economy model, information about individual service providers is essential for users when it comes to choosing a service provider. Similarly, service providers are keen to find users who will treat their assets with the proper care. In traditional business models, like those of hotels or taxi services, users' attitudes are not usually reviewed; therefore, this mutual review system is unique to the sharing economy.

2. *Types of Sharing Economies*

The second question relates to what is shared in a sharing economy. The answer is that you can share virtually every aspect of your daily life; an article in 2015 describes this as follows:

We could “monetize” our assets — rent out our house, our car, our labor, our driveway, our spare drill and other personal possessions — using any number of brokerage websites and mobile apps like TaskRabbit, Airbnb, SnapGoods, the ride-sharing companies Uber and Lyft, and more.⁵

For convenience, in this article, I will classify these assets/services into the following four categories:⁶

1. Space – such as accommodation, parking space, and storage;
2. Transportation – such as cars, bikes, and vans;
3. Skills – such as housekeeping, babysitting, dog-sitting, and teaching; and
4. Goods – such as suitcases, dresses, and sports equipment.

5 S. HILL, The Uber-economy f**ks us all: How “permalancers” and “sharer” gigs gut the middle class, 31 October 2015, Salon, https://www.salon.com/2015/10/31/the_uber_economy_fks_us_all_how_permalancers_and_sharer_gigs_guts_the_middle_class/.

6 The Sharing Economy Association Japan (SEAJ) has proposed five categories: space, goods, transportation, skills, and money. See Y. UEDA, *Shearingu ekonomī bijinesu ni tsuite* [Regarding the Sharing Economy Business], Presentation material for the 4th meeting of the Working Group on Distribution Strategy, the Information Economy Subcommittee, the Commerce, Distribution and Information Committee of the Industrial Structure Council, the Ministry of Economy, Trade and Industry, 3 June 2016, 4, http://www.meti.go.jp/committee/sankoushin/shojo/johokeizai/bunsan_senryaku_wg/pdf/004_04_00.pdf. Also, the Japanese government report referred to in footnote 9, below, uses the same classification. However, from my perspective, the “sharing of money”, such as achieved by crowd funding, does not fall under the above definition suggested by the European Agenda. Crowd funding is a kind of donation or investment. Additionally it is difficult to define the “temporary usage” of money. Thus, while I use the other four categories in this article, I omit the “sharing of money”.

3. *Expanding Market*

The last question one must answer to obtain a basic understanding of the sharing economy is determining the size of its global market. One estimate shows that global revenue for the sharing economy was USD 15 billion in 2015, and it is estimated that it will increase to USD 335 billion by 2025.⁷ In Europe, the market revenue was EUR 4 billion in 2016 and it is estimated to reach EUR 83 billion by 2025.⁸

The Japanese government has recently issued a report on the economic impact of the Japanese sharing economy.⁹ According to the report, the production value of the Japanese sharing economy was roughly JPY 500 billion in 2016.¹⁰

III. LEGAL ANALYSIS OF REGULATIONS GOVERNING THE SHARING ECONOMY

1. *Legal Questions*

As explained above, there are three components involved in any given exchange of goods and services within the sharing-economy model: a user, a service provider, and an online platform. From a legal perspective, the following questions are the most important:

1. Which of these three components should be subject to regulation?
2. How should they be regulated?

2. *Regulations Governing the Service Providers*

Service providers usually offer services or goods that are similar to traditional ones. For example, Uber drivers provide transportation services similar to taxi drivers, and Airbnb hosts provide accommodation services simi-

7 PRICEWATERHOUSECOOPERS LLP, *The Sharing Economy*, Consumer Intelligence Series, April 2015, 14, https://www.pwc.fr/fr/assets/files/pdf/2015/05/pwc_etude_sharing_economy.pdf.

8 PRICEWATERHOUSECOOPERS LLP, *Europe's five key sharing economy sectors could deliver €570 billion by 2025*, 27 June 2016, <https://press.pwc.com/News-releases/europe-s-five-key-sharing-economy-sectors-could-deliver--570-billion-by-2025/s/45858e92-e1a7-4466-a011-a7f6b9bb488f>.

9 THE ECONOMIC AND SOCIAL RESEARCH INSTITUTE, THE CABINET OFFICE, *Shearingu ekonomī tō shin-bunya no keizai katsudō no keisoku ni kansuru chōsa kenkyū hōkoku-sho gaiyō* [Summary Report of the Survey on Measurement of Economic Activities in New Areas such as the Sharing Economy], July 2018, <http://www.esri.go.jp/jp/prj/hou/hou078/hou078.html>.

10 *Id.*, 32.

lar to hotels. Thus, as the regulations applicable to people/entities engaged in similar traditional businesses might also be applicable to service providers within the sharing economy, we have to pay attention to the similarities and differences between them.

Another important consideration is whether the service provider is using the online platform as his main source of income. Some service providers rely on the platform as a stable and primary source of income, but others work on an ad hoc or part-time basis and provide their services on the platform intermittently. For example, some Airbnb hosts rent their rooms only during their own vacation periods, whereas other hosts rent their extra rooms throughout the year. From this point of view, it is sometimes unclear who should be considered a “consumer” (i.e. a weaker party that needs to be protected) and who should be considered a “trader” (i.e. a person acting for purposes relating to his trade, business, craft or profession).

In relation to this issue, the European Agenda suggests that the following factors are important for being qualified as a “trader”:¹¹

1. The frequency of services;
2. A profit-seeking motive; and
3. The level of turnover.

In accord with the European Agenda’s orientation, none of these factors taken individually would be sufficient to qualify a service provider as a trader; however, their combination may point in that direction, depending on the circumstances of the case.¹²

3. *Regulations Governing the Online Platforms*

Online platforms usually offer new and innovative digital services which match the users and the service providers on the online platform. Basically, the platform is just an information society service¹³ as to which regulations are usually limited.¹⁴

However, some platforms can be considered as providing the underlying service as well as the information society service.¹⁵ In such a case they could be subject to the regulations which are applicable to service providers.

11 EUROPEAN COMMISSION, *supra* note 2, 9–10.

12 *Id.*, 9.

13 *Id.*, 5.

14 K. TOSHIMA, *Minpaku shinpō ga shimesu shearingu ekonomī kisei no mirai* [The Future of Regulations Governing the Sharing Economy as Indicated by the New Minpaku Act], NBL 1107 (2017) 1.

15 EUROPEAN COMMISSION, *supra* note 2, 6.

Whether a platform provides the underlying service should be determined on a case-by-case basis, but the European Agenda also suggests that the level of control and influence that the platform exerts over the service provider is relevant when considering this issue and that the answers to the following questions play a key role:¹⁶

1. Who sets the final price of the underlying service paid for by the user;
2. Who sets other key contractual terms between the user and the service provider; and
3. Who owns the key assets?

For example, on 20 December 2017, the Court of Justice of the European Union found that Uber must be classified as “*a service in the field of transport*” within the meaning of EU law, and not as “*an information society service*.”¹⁷ According to the Court, Uber is more than an intermediation service; Uber simultaneously offers urban transport services through its application, which is indispensable for both the drivers and the users.¹⁸

In this decision, the Court points out that Uber exercises decisive influence over the conditions under which the drivers provide their service.¹⁹ This consideration is in line with the second factor listed above.

In considering this issue, it is important to note that the above factors may differ greatly in each sharing economy business. As observed by the Court of Justice, Uber exercises great influence over the contractual relationship between the service provider (i.e. the Uber driver) and the user (i.e. the passenger). When Uber users contact an Uber driver via the Uber application, the user and the driver are immediately and automatically matched and the fee is also calculated by the application. Thus, Uber users do not have the discretion to choose a driver or negotiate the price.

In contrast, Airbnb offers a more flexible system. The service providers (i.e. Airbnb hosts) can set the price and period for rent and create their own house rules. The users (i.e. guests) are completely free to choose rooms offered on the Airbnb platform as long as the hosts accept.

16 *Id.*, 6.

17 Judgment of 20 December 2017, *Asociación Profesional Elite Taxi v Uber Systems Spain, SL*, C-434/15, ECLI:EU:C:2017:981, paras. 40 and 48, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=198047&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=131851>.

18 *Id.*, paras. 37–40; COURT OF JUSTICE OF THE EUROPEAN UNION, The service provided by Uber connecting individuals with non-professional drivers is falls under services in the field of transport, Press Release No. 136/17, 20 December 2017, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-12/cp170136en.pdf>.

19 Judgment of 20 December 2017, *supra* note 17, para. 39.

Accordingly, the legal analysis of the sharing economy requires close observation of the characteristics of each individual business.

4. *Regulations Governing the Users?*

The users solely make use of the services; they are not regulated in the sharing economy.

IV. RECENT DEVELOPMENTS IN THE JAPANESE SHARING ECONOMY

1. *Overview*

a) *Rapid Growth of Airbnb in Japan*

At the dawn of the sharing economy in Japan, such new services were not popular among Japanese people. The situation has changed since Airbnb began to gain popularity among foreign tourists in Japan. Since 2014 when Airbnb's branch was established in Japan, the Airbnb market for foreign tourists has expanded rapidly. According to Airbnb's statistics, the number of foreign tourists who used Airbnb in Japan throughout 2015 and 2016 has had the following economic impact in Japan:

	Number of foreign Airbnb guests in Japan	Estimated cumulative economic impact in Japan ²⁰
2015 ²¹	1.38 million guests (increased by 500 per cent over the previous year)	JPY 520.7 billion
2016 ²²	3.7 million guests	JPY 920 billion

Due to this rapid growth, Japan has become the most popular destination on Airbnb. Based on the booking data for the first half of 2018, Airbnb issued a forecast at the end of 2017 on the most popular Airbnb destinations in 2018: Tōkyō is ranked first and Ōsaka is ranked third.²³

20 This figure reflects the economic ripple effect, not just income earned by hosts through Airbnb. Airbnb calculated that its hosts in Japan generated incomes of JPY 236.3 billion in total in 2015. See "Airbnb hosts in Japan generated incomes of 236 billion JPY in 2015, hosting 101 nights a year on average," Travel Voice, 23 June 2016, <https://www.travelvoice.jp/english/airbnb-hosts-in-japan-generated-incomes-of-236-billion-jpy-in-2015-hosting-101-nights-a-year-on-average/>.

21 *Id.*

22 AIRBNB, Airbnb Boosts Japan Economy by JPY 920 billion, 24 April 2017, <https://www.airbnb.com/2016-airbnb-economic-impact/>.

23 AIRBNB, The U.S. Midwest, Ryokans and Brazilian Beaches: Airbnb's 2018 Travel Trends, 6 December 2017, <https://press.airbnb.com/the-u-s-midwest-ryokans-and->

b) Initial Reaction to Minpaku by the Japanese People

Airbnb-style stay is called “*Minpaku*” (民泊) in Japanese. Serving to support the rapid expansion of the *Minpaku* market in Japan, some Japanese people found it interesting to host foreign tourists. According to a survey conducted by Airbnb in 2015, the average Airbnb host in Japan is 37 years old, with a large percentage of the hosts working in the areas of art, design, or creative services.²⁴ Five per cent of all hosts are retired and hosts over 60 are the fastest growing age group of all Airbnb hosts in Japan. Another interesting feature of the average Airbnb hosts in Japan is that they are highly educated – 70 per cent of hosts hold at least a college, university, or graduate degree.

However, the total number of people who are willing to engage in such new services is very small in Japan; the active number of hosts in Japan was 22,400 in 2016.²⁵ This can be attributed to the conservative nature of Japanese culture. Although most Japanese people initially had a negative attitude towards new sharing economy businesses such as *Minpaku*, Airbnb nevertheless continues to expand in Japan as it appeals to the liberal minority of Japanese society.

A survey conducted in 2015 by the Ministry of Internal Affairs and Communications showed that Japanese people were reluctant to use new sharing economy services. Only 22.9 per cent of the respondents to the survey had an intention to use ridesharing services like Uber, and only 26.4 percent of the respondents had an intention to use *Minpaku* services like Airbnb.²⁶ According to the aforementioned survey, the main reason for such reluctance was that respondents were afraid that individual service providers would not deal with accidents or difficulties properly.²⁷ Compared to other nations, Japanese people are more likely to express concern over the safety of sharing economy services. In my view, the following are potential explanations:

brazilian-beaches-airbnbs-2018-travel-trends/. The full ranking is as follows: 1. Tōkyō, 2. Paris, 3. Ōsaka, 4. New York City, 5. London, 6. Rome, 7. Orlando, 8. Miami, 9. Sydney, and 10. Lisbon.

24 AIRBNB, Airbnb Boosts the Japanese Economy by 222 Billion Yen, 26 November 2015, <https://www.airbnb.jp/press/news/airbnb-boosts-the-japanese-economy-by-222-billion-yen>.

25 AIRBNB, *supra* note 22.

26 THE MINISTRY OF INTERNAL AFFAIRS AND COMMUNICATIONS, 2015 White Paper on Information and Communications in Japan (2015) Chapter 4, Section 2, 24–25, <http://www.soumu.go.jp/johotsusintokei/whitepaper/eng/WP2015/chapter-4.pdf#page=4>.

27 *Id.*

One reason might be that the Japanese people demand and are accustomed to high quality customer service. “The customer is God” is a common phrase in the Japanese customer service industry; customers expect to be treated with perfect care and they truly do not want to encounter any difficulties. For example, the *Shinkansen* (Japanese bullet train) is highly punctual, and its crews are known to issue formal apologies for delays of a few minutes, something which would be considered innocuous and excusable in the West. Since Japanese people are used to such perfect services, they are afraid that they might face some difficulties when sharing a ride with strangers or staying in strangers’ homes.

When it comes to *Minpaku*, the main concern of the Japanese is disturbing neighbors; the Japanese tend to have a low tolerance for noise and poor manners in residential areas. Small-size apartments are common in big cities, and thus people are mindful not to host parties or make excessive noise which could disturb their neighbors. Japanese mindfulness of the wellbeing of neighbors is also characterized by frequent complaints about neighbors who do not separate and sort garbage as is locally required. Thus, homeowners are afraid that *Minpaku* users would disrupt their neighborhood’s social peace.

c) Social Trends Toward Changes and Co-Regulation of Platforms

Nevertheless, the rapid global growth of *Minpaku* inevitably attracted the attention of Japanese society. The Japanese government also became aware of its significant economic impact, which resulted in the deregulation of *Minpaku*, as explained below. In parallel with this trend, new sharing services are growing in many economic areas and are gradually gaining acceptance in Japanese society.

To deal with possible problems involving this change, the Japanese government has considered how to efficiently regulate the platforms in the sharing economy. The government set up a special committee, *Shearingu Ekonomī Kentō Kaigi* [Review Committee for the Sharing Economy], whose members include lawyers and academics specializing in this field, as well as representatives of sharing economy platforms. The committee was organized by the Cabinet Secretariat; in attendance as observers at committee meetings were government officials from a number of ministries responsible for information policies, local economies, or environmental issues.²⁸ In November 2016, the committee formulated model guidelines for platforms, which aims to encourage them to create self-imposed rules and

²⁸ See the list of the Committee members: https://www.kantei.go.jp/jp/singi/it2/senmon_bunka/pdf/kouseiin_shiearingu.pdf.

which gives guidance on what they should consider in creating such rules (e.g. data protection, compliance, personal identification of users, and consultation services for disputes between users and service providers).²⁹

In June 2017, in accordance with the above model guidelines, the Sharing Economy Association Japan (SEAJ), which is an industrial association for sharing economy platforms, created a guideline for platforms. At the same time, SEAJ launched a certification program whereby SEAJ can certify platforms which meet SEAJ’s guidelines and allow them to display an official Sharing Economy Trust Mark.³⁰ Not only can such certified platforms gain the trust of their customers (i.e. service providers and users), they also qualify for discounts on insurance policy premiums specially designed by certain insurance companies for sharing economy platforms.³¹

This is a soft law approach in collaboration with the government and private organizations, so-called “co-regulation.” It is also the first attempt in the world to provide a certification program for sharing economy services in collaboration with a government.³² Since the current SEAJ guidelines do not cover all the possible issues regarding platforms, platforms are subject to more detailed regulations depending on each market. Nevertheless, specific legal issues relating to platforms are not at the forefront of the discussion. Rather, it is the regulations governing Airbnb and Uber service providers in Japan that are more hotly debated, as explained in the following sections dealing with legal issues specific to each field in the sharing economy, i.e. sharing of space, transportation, skills, and goods.

2. *Sharing of Space*

a) *Previous Legal Status of Minpaku*

In the field of space-sharing, as explained above, *Minpaku* has been rapidly expanding in the Japanese sharing economy. However, until quite recently it had been of serious concern that most *Minpaku* in Japan were being operated illegally.

29 SHEARINGU EKONOMĪ KENTŌ KAIGI [REVIEW COMMITTEE FOR THE SHARING ECONOMY], *Shearingu ekonomī kentō kaigi chūkan hōkoku-sho* [Interim Report of the Review Committee for the Sharing Economy], November 2016, Chapter 3, https://www.kantei.go.jp/jp/singi/it2/senmon_bunka/kaikaku.html.

30 SEAJ’s website, <https://sharing-economy.jp/en/trust/>.

31 “Japan begins licensing the sharing economy,” *Nikkei Asian Review*, 1 June 2017, <https://asia.nikkei.com/Business/Consumers/Japan-begins-licensing-the-sharing-economy>.

32 Y. ISHIHARA, *Shea keizai ga umidasu atarashī shakai to “kyōdō kisei” no kangaekata* [The New Society Arising out of the Sharing Economy and the Idea of “Co-regulation”], *Bijinesu Hōmu* September Issue (2017) 52, 53.

In Japan, the *Ryokan-gyō-hō* (the Inns and Hotels Act, hereinafter: Hotels Act)³³ defines the term “*Ryokan-gyō*” [hotel business] as the business of setting up facilities and providing accommodation in exchange for accommodation fees.³⁴ To conduct *Ryokan-gyō* as defined above, a hotel business license is required under the Hotels Act.³⁵ In the Japanese government’s opinion, the operation of *Minpaku* basically falls under the definition of *Ryokan-gyō* under the Hotels Act,³⁶ which means that *Minpaku* hosts would need a hotel business license.

However, it was difficult in practice for an individual *Minpaku* host to obtain a hotel business license due to the cumbersome application procedures and excessive requirements, such as the installation of a reception desk, certain floor space requirements, and zoning restrictions.

According to a government survey conducted from October to December 2016 that considered 15,127 online *Minpaku* listings in Japan,³⁷ 16.5 percent of the listings were licensed, 30.6 percent were unlicensed, and 52.9 percent could not be identified³⁸ or were under investigation. In some big cities, the situation was even more extreme: in *Tōkyō 23-ku* (the 23 special wards of Tōkyō) and in *Seirei shitei toshi* (designated cities),³⁹ only 1.8 percent of listings were licensed, 32.8 percent were unlicensed, and 65.3 percent could not be identified or were under investigation. As this survey shows, only relatively few *Minpaku* listings were licensed, and it was even difficult to get an accurate grasp of the situation.

33 *Ryokan-gyō-hō*, Law No. 138/1948.

34 Art. 2 Hotels Act.

35 Art. 3 para. 1 Hotels Act.

36 THE MINISTRY OF HEALTH, LABOUR, AND WELFARE, *Minpaku sabisu to ryokan-gyō-hō ni kansuru Q & A* [Q & A Regarding *Minpaku* Services and the Inns and Hotels Act], <https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000111008.html#HID1>.

37 THE MINISTRY OF HEALTH, LABOUR, AND WELFARE, *Zenkoku minpaku jittai chōsa no kekka ni tsuite* [Regarding the Result of the Fact-Finding Nationwide Survey of *Minpaku*], 1 March 2017, <https://www.mhlw.go.jp/file/04-Houdouhappyou-11157000-Shokuhinanzenbu-Seikatsueiseika/0000153491.pdf>.

38 Usually, each *Minpaku* listing’s exact address is not disclosed on the online platform. Users can determine the approximate location of each listing on the platform when searching, and they receive the exact address only after their reservation is confirmed by the hosts. Thus, in some cases, the government could not precisely identify *Minpaku* listings.

39 *Seirei shitei toshi* (a designated city) is a city with a population of at least 500,000 inhabitants which is designated as such by *Seirei* (Cabinet order) and is accordingly delegated certain administrative function from the prefectures. See Art. 252-19 *Chihō jichi-hō* [Local Autonomy Law], Law No. 67/1947. As of the survey in 2016, there were 20 designated cities including Ōsaka, Nagoya, Kyōto, Kōbe, Yokohama, and Sapporo.

Under the Hotels Act, prior to its amendment in 2017, the penalty for operating a *Ryokan-gyō* without a required license was a fine not exceeding JPY 30,000⁴⁰ and/or imprisonment of up to six months, though guests staying at such illegal *Minpaku* listings were not subject to punishment.

To regulate illegal *Minpaku* businesses, local governments often instructed unlicensed *Minpaku* hosts to stop their operation; for example, up to the end of March 2017, the Ōsaka city government had instructed 722 unlicensed *Minpaku* facilities to stop their operation.⁴¹

In addition, such unlicensed *Minpaku* facilities would be subject to criminal investigation on charges of violating the Hotels Act. However, the number of cases that were reportedly referred to prosecutors was in fact limited and, seemingly, criminal measures were not effective in stopping the operation of illegal *Minpaku*. There is no reported case of imprisonment, and there is only one reported case of a man being arrested for not following the local government’s instructions to stop operation.⁴²

b) Deregulation of *Minpaku*

Despite the initial negative reaction to *Minpaku* by the Japanese, the government decided to deregulate *Minpaku* for the following reasons:

Prime Minister Abe’s policies have weakened the Yen and the relaxing of visa requirements pushed tourism to a record high (19.7 million tourists in 2015 and 24 million in 2016),⁴³ which resulted in major cities in Japan suffering from a serious shortage of hotel rooms. In 2015, hotels in Tōkyō were operating at 82.6 per cent capacity, while the occupancy rate in Ōsaka was even higher at 84.8 per cent.⁴⁴ It was said that Tōkyō’s hotel occupancy rate

40 After the amendment of the Hotels Act in December 2017, the maximum fine is JPY 1,000,000, as explained below (Art. 10 no.1 Hotels Act).

41 “Ōsaka shinai no ‘minpaku’, taihan ga ‘yami’ eigyō datta 700 shisetsu ni eigyō teishi o shidō [Most ‘Minpaku’ in Ōsaka were illegal – Ōsaka has instructed 700 facilities to stop operation],” Sankei WEST, 26 May 2017, <https://www.sankei.com/west/news/170526/wst1705260056-n1.html>.

42 THE MINISTRY OF HEALTH, LABOUR, AND WELFARE, *Ryokan-gyō-hō junshu ni kansuru tsūchi ni kakaru forōappu chōsa kekka no gaiyō* [Summary Result of the Follow-up Survey Regarding the Notice on Observance of the Inns and Hotels Act], Material No. 6 for the first meeting dated 27 November 2015 of “‘Minpaku sabisu’ no arikata ni kansuru kentō-kai [Review Committee on Desired Form of “Minpaku Service”],” 4, <http://www.mlit.go.jp/common/001111883.pdf>.

43 THE JAPAN NATIONAL TOURISM ORGANIZATION, Statistics of Visitor Arrivals and Japanese Overseas Travelers from 1964 to 2016, https://www.jnto.go.jp/jpn/statistics/marketingdata_outbound.pdf.

44 THE JAPAN TOURISM AGENCY, Statistics of Hotel Occupancy Rates in 2015, 30 June 2016, <http://www.mlit.go.jp/common/001136323.pdf>.

in 2015 was higher than that of Paris, Hong Kong, or New York,⁴⁵ and experts point out that occupancy rates exceeding 80 per cent hinder the ability of visitors to make reservations.⁴⁶ Since the Tōkyō Olympics and Paralympics are scheduled for 2020, more tourists are expected to come to Japan, and a shortage of hotel rooms is likely become an even more serious matter.

To solve this problem and to further increase the inbound tourism boom, the government deregulated *Minpaku* gradually, as follows:⁴⁷

In 2014 and 2016, the government enacted special laws to permit *Minpaku* operation in certain limited areas called “*Kokka Senryaku Tokku* [National Strategic Special Zones],” which were designated by the government as being subject to an experimental period of deregulation.⁴⁸ These laws allowed hosts to operate *Minpaku* legally without a hotel business license as long as they were recognized by local governments under certain criteria which were less stringent than the Hotels Act. However, most *Minpaku* businesses remained illegal since this law imposed cumbersome requirements on hosts, such as a minimum period of stay (originally a minimum of seven days and later amended to minimum of three days in 2016) and certain prescriptions as to the size of rooms.

Since the above deregulation did not fundamentally solve the illegal expansion of *Minpaku* throughout Japan, in 2017 the government enacted a new law, *Jyūtaku shukuhaku jigyō-hō* (Private Lodging Business Act, hereinafter: New *Minpaku* Act),⁴⁹ which came into force on 15 June 2018.

This is a new legal framework applicable throughout the country that allows hosts to operate *Minpaku* under less stringent criteria. Under the New *Minpaku* Act, registration by *Minpaku* requires only the submission of a notification to local governments instead of obtaining a hotel business license; however, the law still imposes several cumbersome requirements that aim to prevent problems associated with *Minpaku*.⁵⁰ For example, hosts who would like to use their apartments for *Minpaku* operation have to submit proof confirming that the apartment residents’ association does not prohibit

45 “Airbnb Faces Major Threat in Japan, Its Fastest-Growing Market,” Bloomberg, 19 February 2016, <https://www.bloomberg.com/news/articles/2016-02-18/fastest-growing-airbnb-market-under-threat-as-japan-cracks-down>.

46 “Japan Moves to Meet Lodging Demand with Home-Sharing,” Nippon.com, 6 January 2016, <https://www.nippon.com/en/genre/economy/100141/>.

47 For details, see K. TANIGUCHI, *Jūtaku shukuhaku jigyō-hō (heisei 29-nen hōritsu dai-65-gō) no kaisetsu* [Commentary on the Private Lodging Business Act (Law No. 65/2017)], NBL 1112 (2017) 20.

48 THE CABINET OFFICE, *Kokka senryaku tokku. Tokku minpaku ni tsuite* [National Strategic Special Zones. Regarding *Minpaku* in the Special Zones], 31 July 2018, <https://www.kantei.go.jp/jp/singi/tiiki/kokusentoc/tocminpaku.html>.

49 *Jūtaku shukuhaku jigyō-hō*, Law No. 65/2017.

Minpaku. Also, hosts are required to instruct guests about noise prevention and respond promptly to complaints from neighbors. In addition, hosts have to retain a private lodging administrator (e.g. an outside management company) if the hosts do not stay in the facilities during the guests' stay.

In deference to the hotel industry, a maximum *Minpaku* operation period of 180 days per year is stipulated, and hosts exceeding this limitation are subject to the Hotels Act. In parallel with enactment of these new regulations, the Hotels Act was amended in December 2017; illegal *Minpaku* hosts can now be fined up to JPY 1 million, whereas the previous amount was not more than JPY 30,000 as explained above.

In addition to the New *Minpaku* Act, *Minpaku* hosts are subject to additional stricter municipal regulations. In fact, as of the day the New *Minpaku* Act's entry into force, 48 municipal governments enacted rules which would discourage *Minpaku*.⁵¹ The following are examples of such municipal regulations in major cities:

- Chūō Ward in Tōkyō, which is popular with tourists for the Ginza and Tsukiji areas, prohibits *Minpaku* operations on weekdays in all areas.⁵²
- Taitō Ward in Tōkyō, which is famous for the Ueno and Asakusa areas, prohibits *Minpaku* operation on weekdays unless hosts or caretakers are stationed in the facilities during the guests' stay.⁵³
- Shinjuku Ward, a commercial and administrative center of Tōkyō, prohibits *Minpaku* operation in residential areas from Mondays to Thursdays.⁵⁴
- Ōsaka prohibits *Minpaku* operation in residential areas at all times as well as around elementary schools from Mondays to Thursdays unless hosts or

50 The Japan Tourism Agency's *Minpaku* portal website provides an overview of the New *Minpaku* Act in English: http://www.mlit.go.jp/kankoch/minpaku/overview/minpaku/law1_en.html.

51 “*Kankō-chō, jichi-tai no minpaku dokuji kisei ni kaizen yōsei e* [The Japan Tourism Agency will ask for an Improvement of Local Governments' Additional Regulations on *Minpaku*],” The Nikkei Online, 17 July 2018, <https://www.nikkei.com/article/DGXMZO32962270T10C18A7000000/>.

52 Art. 3 *Chūō-ku jūtaku shukuhaku jigyō no tekisei na unei ni kansuru jōrei* [Chūō Ward Municipal Regulation on the Sound Operation of the Private Lodging Business], Chūō Ward Municipal Regulation No. 1/March 2018.

53 Art. 17 *Tōkyō-to Taitō-ku jūtaku shukuhaku jigyō no unei ni kansuru jōrei* [Taitō Ward Municipal Regulation on the Operation of the Private Lodging Business], Taitō Ward Municipal Regulation No. 1/February 2018.

54 Art. 11 *Shinjuku-ku jūtaku shukuhaku jigyō no tekisei na unei no kakuho ni kansuru jōrei* [Shinjuku Ward Municipal Regulation on Ensuring the Sound Operation of the Private Lodging Business], Shinjuku Ward Municipal Regulation No. 37/11 December 2017.

caretakers are stationed in the facilities during the guests' stay or the number of facilities that the host rents is five or less.⁵⁵

- Kyōto, which may be the most well-known for tourists as the former capital of Japan for more than one thousand years, limits *Minpaku* operation in residential areas to the period of 15 January to 15 March every year (the off-season in Kyōto) unless hosts meet certain conditions.⁵⁶ In addition, Kyōto set additional rules regarding private lodging administrators under the New Minpaku Act; Kyōto demands that such administrators should be able to reach the facility within approximately 10 minutes (i.e. be located no more than roughly 800 meters away) so that they can quickly come to the guest(s) if there is any problem.⁵⁷

There have been concerns that such local regulations will make the New Minpaku Act effectively meaningless. In a poll conducted among around 100 home-sharers prior to the enforcement of the New Minpaku Act, 72.5 per cent said they had not registered, and 27.5 per cent said they would stop renting out their properties.⁵⁸

c) *Impact of the New Minpaku Act on the Minpaku Market*

As explained above, the New Minpaku Act has not served as a significant deregulation of *Minpaku*, having instead a rather negative impact on the *Minpaku* market.

The registration period began three months before the entry into force of the New Minpaku Act, on 15 June 2018. As of the day of enforcement, the number of *Minpaku* registrations with municipal governments stood at 3,728.⁵⁹ This figure is significantly lower than the number of facilities in Japan which were previously listed on Airbnb's platform, i.e. more than

55 Art. 2 *Ōsaka-shi jūtaku shukuhaku jigyō no tekisei na unei no kakuho ni kansuru jōrei* [Ōsaka Municipal Regulation on Ensuring the Sound Operation of the Private Lodging Business], Ōsaka City Municipal Regulation No. 40/2018; ŌSAKA CITY, *Jūtaku shukuhaku jigyō ni kansuru gaidorain* [Guidelines on the Private Lodging Business], July 2018, 5.

56 Art. 10, Art. 11 *Kyōto-shi jyūtaku shukuhaku jigyō no tekisei na unei o kakuho suru tame no sochi ni kansuru jōrei* [Kyōto Municipal Regulation on Measures to Ensure the Sound Operation of the Private Lodging Business], Kyōto City Municipal Regulation.

57 *Id.*, Art. 12 para. 7; KYŌTO CITY, *Jūtaku shukuhaku jigyō no todokede no tebiki shiryō I* [Material No.1 Regarding Notification under the Private Lodging Business Act], July 2018, 8, <http://www.city.kyoto.lg.jp/hokenfukushi/cmsfiles/contents/0000234/234789/shiryō1.pdf>.

58 "Japan's home-sharing registrations off to a rocky start," *Nikkei Asian Review*, 16 March 2018, <https://asia.nikkei.com/Economy/Japan-s-home-sharing-registrations-off-to-a-rocky-start>.

62,000 facilities.⁶⁰ This would suggest that most of *Minpaku* listings are not able to meet the new criteria set by the New Minpaku Act.

On 1 June 2018, just before the Act’s entry into force, the Japan Tourism Agency announced that it instructed *Minpaku* platforms to cancel reservations made by illegal *Minpaku* facilities which were not registered with the municipal governments.⁶¹ In response to this instruction, just a week before enforcement of the New Minpaku Act, nearly 80 per cent of Airbnb’s listings in Japan were deleted with the previously existing reservations cancelled. As of March 2018, Airbnb had listed over 62,000 facilities available in Japan; however, according to a research company, the number of listings dropped to 13,800 by early June 2018.⁶² On its website, Airbnb announced that it would not display listings until hosts demonstrated they had a license or registration number for operation of *Minpaku* accommodations.⁶³ This confused and surprised many hosts as well as guests whose Airbnb reservation was deleted.⁶⁴ In fact, one of our law firm’s foreign summer interns was one of those individuals whose reservation was cancelled during her internship.

Seemingly, the New Minpaku Act has resulted in a significant shrinkage of the *Minpaku* market in Japan, and we might still face a shortage of ac-

59 THE JAPAN TOURISM AGENCY, *Dai-35-kai kisei kaikaku suishin kaigi shiryō 1–5* [Materials Nos. 1–5 for the 35th Promotion Committee for Reform of Regulations], 26 June 2018, 1, <http://www8.cao.go.jp/kisei-kaikaku/suishin/meeting/committee/20180626/180626honkaigi05.pdf>.

60 The Nikkei Online, *supra* note 51; E. JOHNSTON, Airbnb drops nearly 80 percent of its private home listings ahead of new peer-to-peer rental law, *The Japan Times*, 6 June 2018, <https://www.japantimes.co.jp/news/2018/06/06/business/airbnb-drops-nearly-80-percent-private-home-listings-ahead-new-peer-peer-rental-law/#.W1uxOUknZAe>.

61 THE JAPAN TOURISM AGENCY, Press Release, 1 June 2018, <http://www.mlit.go.jp/common/001236986.pdf>.

62 JOHNSTON, *supra* note 60.

63 AIRBNB, Press Release, 7 June 2018, <https://press.airbnb.com/ja/supporting-travelers-in-japan/>. According to the Nikkei’s survey conducted in early July 2018, among around 10,000 listings on Airbnb’s website, approximately 25 per cent provide a registration number under the New Minpaku Act, while approximately 65 per cent provide a license number under the Hotels Act. See “*Minpaku shinpō 1kagetsu, todokede no juri teichō uwanose kisei no jichitai medatsu* [One Month After the Enforcement of the New Minpaku Act, Low Receipt of Notifications, Some Municipal Governments Set Additional Regulations],” *The Nikkei Online*, 14 July 2018, <https://www.nikkei.com/article/DGXMZO33016080U8A710C1EA5000/>.

64 C. BAIRD, Airbnb users face summer crunch as Japan seeks delisting of unlicensed lodgings, *The Japan Times*, 7 June 2018, <https://www.japantimes.co.jp/news/2018/06/07/national/airbnb-users-face-summer-crunch-japan-seeks-delisting-unlicensed-lodgings/#.W1gw8OQnaUk>.

commodations for the Tōkyō Olympics and Paralympics in 2020 unless the situation changes.

d) Other Services for Sharing of Space

In addition to *Minpaku*, there are other types of services for space-sharing in Japan. The Tōkyō metropolitan area is the most densely populated urban area in the world, which means that there is a high demand for space for temporary use, such as parking places, meeting rooms, parties, and events. There is no special regulation for the lending of a space for temporary use, and thus sharing economy services are growing in this area.

For example, one startup company, Nokisaki,⁶⁵ provides a platform mainly designed to match owners with users who would like to utilize small spaces in the vicinity of shops or houses. The word “*nokisaki*” means a tiny space under the roof, which is like a small space you use when you seek shelter from the rain.⁶⁶ Users can utilize such tiny spaces for parking, product demonstration, or temporary sales. Currently, approximately 2,000–2,500 spaces, including indoor spaces, are registered for small business activities such as demonstration and sales, while approximately 7,000 spaces are registered for parking.

Spacemarket⁶⁷ is another startup company offering a similar service, but it deals with any kind of spaces whereas Nokisaki focuses on small ones. Spaces listed on its website include not only rooms in buildings and houses but also temples, movie theaters, and soccer fields. Currently, approximately 9,000 spaces are registered. Spacemarket expects that *Minpaku* hosts who give up operating under the aforementioned strict *Minpaku* regulations will enter its market because hosts do not need any license for such temporary lending of space for purposes other than accommodation.⁶⁸

3. *Sharing of Transportation*

With regards to services for sharing transportation, Uber is the most prominent company in the world. Uber’s services are diverse, and sometimes it provides a kind of taxi-hailing service. However, in the sense of the sharing economy defined above, this section is focused on Uber’s ridesharing ser-

⁶⁵ <https://www.nokisaki.com/>.

⁶⁶ T. ROMERO, This startup is solving Japan’s parking and retail space problem with the sharing economy, TECHINASIA, 9 August 2017, <https://www.techinasia.com/talk/japan-sharing-economy-startup-solving-retail-parking-space-problem>.

⁶⁷ <https://spacemarket.co.jp/company>.

⁶⁸ SPACEMARKET, Press Release, 26 February 2018, <https://spacemarket.co.jp/archives/12188>.

vice whereby a non-professional driver provides transportation to (an) ordinary person(s), this including ridesharing with several passengers who do not know each other.

In Japan, the taxi business is based on a license system under the *Dōro unsō-hō* (Road Transportation Act).⁶⁹ Basically, giving someone a ride for a fare is prohibited without a taxi business license,⁷⁰ and a taxi driver also needs a taxi driver’s license. Furthermore, even when done on an ad-hoc basis, it is prohibited to charge someone for a ride in a car which is not used for a taxi business. Unlicensed taxis are called “白タク (*Shiro taku*) [white taxis]” in Japanese because the color of normal car license plates is white while the color of taxi license plates is green.

In February 2015, Uber experimented with providing ridesharing in and around Fukuoka. In this experiment, in an attempt not to violate the taxi business regulations, Uber test drivers carried passengers for free, but Uber paid the drivers for their driving data. Nevertheless, the Ministry of Land, Infrastructure, Transport and Tourism considered Uber’s payments to be fares and therefore viewed the experiment as unlicensed and illegal.⁷¹ Uber stopped the experiment in accord with the government’s instruction to do so.

Thus, at least as regards populated urban areas, a ridesharing service like Uber is basically prohibited in Japan, meaning that in major cities Uber is currently limited to offering a taxi-hailing service for Uber’s exclusive taxi cars. However, this general prohibition of ridesharing services does not hold true in depopulated areas.

For depopulated areas without sufficient public transportation, the Road Transportation Act contains an exception to the license requirement. Under this exception, municipal cities or nonprofit organizations (NPOs) can provide paid transportation services⁷² without a taxi license if they register

69 *Dōro unsō-hō*, Law No. 183/1951.

70 For details on the regulations, see K. TOSHIMA / N. SATŌ, *Raidoshea • kāshea kisei no ronten seiri* [Sorting Out Issues Regarding the Regulation of Ridesharing and Car-sharing], NBL 1097 (2017) 29.

71 “*Kinkyū kokudo kōtsū-shō intabyū – Fukuoka ūbā gyōsei shidō no riyū* [Urgent Interview with the Ministry of Land, Infrastructure, Transport and Tourism – Reason behind the Administrative Guidance Regarding Fukuoka Uber],” NewsPicks, 10 March 2015, <https://newspicks.com/news/866792/body/>; Minutes of the Special Committee in the 190th Diet sessions of the House of Representatives, 22 April 2016, http://www.shugiin.go.jp/internet/itdb_kaigirokua.nsf/html/kaigirokua/028719020160422011.htm.

72 However, these organizations are not to pursue profit and the fee is to cover only operational costs. See THE MINISTRY OF LAND, INFRASTRUCTURE, TRANSPORT AND TOURISM, *Kisei kaikaku suishin kaigi setsumei shiryō* [Material for the Promotion Committee for Reform of Regulations], 23 March 2017, <http://www8.cao.go.jp/kisei-kaikaku/suishin/meeting/committee/20170323/170323honkaigi07.pdf>.

with the government and meet certain conditions.⁷³ Using this exception, as of 2017 it is reported that more than 400 municipal cities and approximately 100 NPOs provide such transportation services.⁷⁴ Hence, Uber has made use of this exception as a first step to introduce a ridesharing service to the Japanese market – Uber services rural areas in Kyōto and Hokkaidō.

Kyōtango is a depopulated and aging rural city on the northern tip of Kyōto Prefecture. As of 2016, among approximately 5,500 residents in Tango-chō in Kyōtango, more than 40 per cent were aged 65 or older; taxi companies began withdrawing from this area in 2008 due to unprofitability.⁷⁵ On 26 May 2016, using Uber’s smartphone application, a NPO in Kyōtango started a ridesharing service in Tango-chō with 18 local drivers. This is the first ridesharing service using ICT in Japan.⁷⁶ However, since most of the users are elderly people, Uber had to alter its service as follows in order to fit the local demand:

One problem is that the elderly users do not have smartphones or are unfamiliar with how to efficiently use smartphone applications. Thus, Uber temporarily provided tablets for free and encouraged users to ask their neighbors who have tablets or smartphones to call Uber on their behalf.

Another problem is the payment by credit card, which is required by Uber’s application. Some elderly users do not have credit cards. Also, when users ask their neighbors to call Uber on their behalf, it is cumbersome to reimburse the neighbors for the fare after the ride. Thus, in December 2016, Uber altered its service so that users can choose to pay either by credit card or with cash in Kyōtango.⁷⁷ In August 2016, Uber started a similar collaboration with Nakatonbetsu town, Hokkaidō, which has less than 2,000 residents.⁷⁸

While Uber has made its best effort in the two local experiments described above, the existing regulations seem to be too strict for Uber to expand its

73 Art. 78 no. 2 Road Transportation Act.

74 THE MINISTRY OF LAND, INFRASTRUCTURE, TRANSPORT AND TOURISM, *supra* note 72.

75 K. MOTODA, *Kyōtango-shi ga Uber no shikumi o saiyō, idō jakusha kyūsai ni muke yūshō yusō* [Kyōtango Adopted Uber’s System and Paid for Transportation to Help with the Transportation of Disadvantaged People], Nikkei Business Publications, 30 May 2016, <https://www.nikkeibp.co.jp/atcl/tk/15/433782/052800351/>.

76 UBER, *Sasaeai kōtsū ga stāto: shuppatsu-shiki to kisha happyō-kai o kaisai* [Mutual Support Transportation Has Started: Opening Ceremony and Press Release Conference Held], <https://www.uber.com/ja-JP/blog/kyotangoevent/>.

77 UBER, *Kyōtango-shi no “sasaeai kōtsū” de genkin no shiharai o stāto* [Start of Cash Payment in “Mutual Support Transportation” in Kyōtango], <https://www.uber.com/ja-JP/blog/tango-cash/>.

78 UBER, “Nakatonbetsu raidoshea” o goshō-kai [Introduction of “Nakatonbetsu Ridesharing”], 28 June 2017, <https://www.uber.com/ja-JP/newsroom/>.

ridesharing service all over Japan. In July 2018, in Awaji-shima, an island with around 130,000 residents in Hyōgo Prefecture, Uber experimentally launched a new ride-hailing application to connect taxi drivers and residents/visitors in collaboration with local taxi companies.⁷⁹ Uber thus seems to have changed its strategy and is focusing on partnerships with taxi companies rather than trying to start a competitive ridesharing service.⁸⁰

While a paid ridesharing service is basically prohibited, as explained above, splitting travel costs with passengers is legal in Japan. A startup company, Notteko,⁸¹ provides a platform to connect people who would like to engage in ridesharing featuring split travel expenses. Drivers post their travel plans, and users contact the drivers with whom they would like to share a ride. Users do not pay the drivers, but they split travel expenses, such as payments for gas, toll roads, and parking. It seems that this kind of platform has already been popular in other market areas like Europe (e.g. a platform named BlaBlaCar), but it is relatively new in Japan. This is perhaps because of the cultural aspect, specifically the Japanese people's concern about potential difficulties as has been discussed above.

4. *Sharing of Skills/Goods*

With regards to the sharing of skills or goods, there is less debate about legal issues in this field, and thus recent startup companies are growing in various areas. Platforms can connect people willing to share just about anything; one can request or offer any services, and one can lend or borrow any goods. Some platforms have more specified purposes, such as cooking lessons or dog-sitting during an owner's absence.

V. UNDERLYING LEGAL ISSUES THAT OUGHT TO ATTRACT A SIMILAR LEVEL OF SCRUTINY

Expansion of the sharing economy has created many new legal issues which should be discussed thoroughly in the near future.

79 UBER, Uber Partners with Taxi Companies and the Local Government on Awaji Island to Launch the First Taxi Pilot Program, 23 May 2018, <https://www.uber.com/ja-JP/newsroom/first-taxi-pilot-in-awaji/>; UBER, *Uber, Awaji-shima ni okeru Nihon hatsu no takushī haisha no jisshō jikken o kinen shi* [Uber Commemorates Japan's First Taxi-hailing Experiment in Awaji-shima], 21 July 2018, <https://www.uber.com/ja-JP/newsroom/awaji-taxi-launch/>.

80 "Uber pulls up in Japan with taxi-hailing service," Reuters, 22 May 2018, <https://www.reuters.com/article/us-uber-japan/uber-pulls-up-in-japan-with-taxi-hailing-service-idUSKCN11N140>.

81 <https://notteco.jp/>.

1. Labour Law

Since working as a service provider in a sharing economy represents an alternative approach to work life, there is a question about whether a service provider is self-employed or an employee of the platform.⁸² This issue is receiving public attention especially in relation to Uber. In some lawsuits filed by Uber drivers in the U.S. and the U.K., courts have found that the providers were employees/workers of Uber who should be protected by certain labour laws;⁸³ conversely, other U.S. courts have held the opposite.⁸⁴ There is no clear answer yet. In Japan, there have not yet been any cases directly on the matter because Uber's ridesharing service is unavailable.

2. Tax Law⁸⁵

The growing sharing economy also poses questions in the area of tax law.⁸⁶ The most basic issues may be (1) who should pay taxes in the sharing economy and (2) what kind of tax they should pay?

With regards to the first question, platforms and service providers usually have to pay taxes, whereas users typically do not.

The second question involves more complicated issues. Private individuals can easily serve as a service provider via online platforms, sometimes in the form of a second job but in any event generating a small but taxable amount of income. However, in practice tax authorities have difficulty identifying such income and collecting the appropriate tax from service providers. In addition, in Japan, there are different tax calculations for employees and self-employed persons.⁸⁷ Hence, the aforementioned labour

82 EUROPEAN COMMISSION, *supra* note 2, 11–13.

83 H. KUNITAKE, *Shearingu ekonomī to koyō kankei – Amerika to Igrisu ni okeru Uber soshō o meguru oboegaki* [The Sharing Economy and Labour Law Issues – Note on Uber Lawsuits in the U.S. and the U.K.], *Kikan Rōdō-hō* 257 (2017) 139, 149–151.

84 O. BEN-SHAHAR, Are Uber Drivers Employees? The Answer Will Shape The Sharing Economy, *Forbes*, 15 November 2017, <https://www.forbes.com/sites/omriben-shahar/2017/11/15/are-uber-drivers-employees-the-answer-will-shape-the-sharing-economy/#59d7a4195e55>.

85 This section is based on Professor Tetsuya Watanabe's insightful presentation, "Taxation of the sharing economy," at the symposium "Global Economy and the Answers of Tax Law in Japan and Germany", held on 25 May 2018 at Waseda University. However, the information and opinions contained herein are the sole responsibility of the author.

86 EUROPEAN COMMISSION, *supra* note 2, 13–15.

87 S. MORINOBU, "Muzukashī" Airbnb, Uber e no kazei giron o isoge [The "difficult" issue of taxing Airbnb and Uber requires discussion], *Wedge Infinity*, 5 April 2017, <http://wedge.ismedia.jp/articles/-/9256>

law issue is also related to this issue. There is, furthermore, another difficult problem with the taxation of platforms. Platforms can provide services anywhere in the world through the internet. Sometimes they do not have a permanent establishment (PE), which would mean they have to pay taxes in countries where they provide such services. This is a problem throughout the whole e-commerce arena; Amazon, for example, is facing a similar issue regarding corporate income tax in Japan.⁸⁸

The Tax Commission of the Japanese government is considering whether to amend tax regulations to deal with these issues.⁸⁹

3. Competition Law

Competition law issues also are emerging in relation to the sharing economy. Given their nature, the more that platforms connect users and service providers, the more that such platforms attract further users and service providers; this in turn risks leading to such platforms' monopolization or oligopolization of markets.⁹⁰ In addition, if a platform imposes restrictions on service providers so as to prohibit them from using other competing platforms, such a platform would gain an advantage over competitors, but such restrictions may create a competition law issue.⁹¹ For instance, in November 2017, the Japan Fair Trade Commission investigated Airbnb Japan on the suspicion of unfair trade practice under the Antitrust Act⁹² due to alleged demands made to agents of *Minpaku* hosts not to use other competitive *Minpaku* platforms – Airbnb denied the accusation.⁹³

88 *Id.*

89 R. SATŌ, *Shearingu ekonomī no mondai-ten – Kazei jō no kanten kara* [Problems with the Sharing Economy – From a Perspective of Taxation], Issue Brief No. 985 (2017), http://dl.ndl.go.jp/view/download/digidepo_10992702_po_0985.pdf?contentNo=1.

90 T. NAGASAWA, *Purattofōmu to ryūtsū torihiki kankō gaidorain* [Platforms and the Guidelines Concerning Distribution Systems and Business Practices], *Jurist* 1508 (2017) 22, 22.

91 *Id.*, 26.

92 Art. 19 *Shiteki dokusen no kinshi oyobi kōsei torihiki no kakuho ni kansuru hōritsu* [Act on Prohibition of Private Monopolization and Maintenance of Fair Trade], Law No. 54/1947.

93 “*Eabīsha ni tachiiri dokkin-hō ihan utagai de kōtori-i* [The Japanese Fair Trade Commission Investigated Airbnb on Suspicion of Violating the Antitrust Act],” *The Nikkei Online*, 17 November 2017, <https://www.nikkei.com/article/DGXMZO23594990X11C17A1CC0000/>.

VI. EXPECTATIONS REGARDING THE FUTURE OF THE JAPANESE SHARING ECONOMY – WILL THE SHARING ECONOMY SAVE LOCAL COMMUNITIES?

As explained above, the expansion of the sharing economy in Japan has created many new legal issues and is somewhat hindered by legal regulations. Nevertheless, it is expected that the sharing economy will have a positive effect on Japanese society.⁹⁴ In particular, it is expected to alleviate some of the problems associated with Japan's changing demographics, i.e. an aging society with fewer children. In light of the rapid decrease in the working population and the financing deficit faced by local and state governments, there is a limit to what the public sector can do. The sharing economy might offer a solution to this problem in some ways, such as making use of unused private assets or encouraging mutual assistance in local communities.⁹⁵ In fact, some local governments are collaborating with sharing economy platforms.⁹⁶ The aforementioned collaboration of Uber with small cities is an example.

Will the sharing economy save Japanese society? It will be exciting to see what impact the sharing economy has on the future of Japan.

SUMMARY

A new type of market, the “sharing economy,” is sparking new legal issues across the world. The two most prominent companies in the sharing economy are Airbnb and Uber. The development and acceptance of these innovations vary greatly from country to country. The article describes recent developments in the Japanese sharing economy and outlines the novel legal issues that have emerged. It starts with providing a brief explanation as to the concept and background of the sharing economy as well as a basic legal analysis of regulations for the sharing economy. It then highlights recent developments and the pertinent legal issues that have been at the forefront of public debate on the topic. Furthermore, it discusses underlying legal issues that ought to attract a similar level of scrutiny. Finally, it explores expectations regarding the future of the Japanese sharing economy.

(The Editors)

94 S. OKADA, *Shearingu ekonomī o meguru ronten* [Issues Regarding the Sharing Economy], Issue Brief No. 983 (2017) 2–3, http://dl.ndl.go.jp/view/download/digidepo_10983262_po_0983.pdf?contentNo=1.

95 Y. UEDA, *supra* note 6, 18.

96 *Id.*, 21–25.

ZUSAMMENFASSUNG

Ein neuer Markt, die sogenannte „sharing economy“, wirft weltweite neue juristische Fragestellungen auf. Die bekanntesten Akteure in diesem Markt sind Airbnb und Uber. Die Entwicklung und die Akzeptanz dieser neuen Formen der Betätigung variieren erheblich in den einzelnen Ländern. Der Beitrag gibt einen Überblick über einschlägigen Entwicklungen in Japan und diskutiert die daraus resultierenden neuen Fragestellungen für das japanische Recht. Zunächst werden das Konzept und den Hintergrund für die Entstehung der „sharing economy“ sowie rechtlichen Rahmens in Japan knapp vorgestellt. Sodann geht es um die jüngsten Entwicklungen und die aktuelle rechtliche Diskussion in Japan zu selbigen. Ergänzend werden einige grundlegende rechtliche Probleme diskutiert, den dieselbe Aufmerksamkeit zukommen sollte. Abschließend wirft der Beitrag einen Blick auf zu erwartenden künftigen Entwicklungen im Rahmen der japanischen „sharing economy“.

(Die Redaktion)