

Backgrounder: Regulatory Challenges of China's Evolving Sharing Economy

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After catching its start in the United States, the so-called “sharing economy” has spread like wildfire in the People’s Republic of China, aided by China’s urbanization drive and rapid adoption of mobile payments. The market expanded from such initial offerings as cars, rooms, and bikes rented by scanning QR codes with smartphones, to include niche items like umbrellas, basketballs, concrete mixers, portable battery chargers, car license plates, suitcases, and home-cooked meals. Agriculture, education, medical care, and elder care have become the latest growth sectors for China’s sharing economy.²

In an era of increasing assertion by the Chinese Communist Party (CCP) of leadership over the state, the economy and society, it is noteworthy that the CCP officially supported the sharing economy as early as October 2015³ in approving China’s 13th Five-Year Plan for Economic and Social Development (2016-2020). That plan was formally adopted by the National People’s Congress (NPC) in March 2016 and calls for actively promoting the sharing economy in connection with advancing China’s “Internet-Plus” development goals.⁴ CCP General Secretary Xi Jinping similarly called out the sharing economy as an important driver of growth in his report to the 19th National CCP Congress in October 2017.⁵

Against this policy background, China’s central government, the State Council, has embraced the rapidly developing sharing economy and even made it a national strategy.⁶ In mid-2017, it approved nationwide guidance on developing the sharing economy (the “**Opinions**”)⁷

¹ Thanks go to Wei Wang, Senior Research Assistant - John L. Thornton China Center, Brookings Institution, and 2017 Brookings Institution intern Xinyue Zhang for their assistance in locating and analyzing materials for this memorandum.

² “China’s sharing economy sees surging market transactions in 2017,” *Xinhua*, March 1, 2018, at: http://www.xinhuanet.com/english/2018-03/01/c_137006724.htm.

³ Communiqué of the Fifth Plenary Meeting of the 18th Central Committee of the Chinese Communist Party, adopted by the Fifth Plenum of the 18th Central Committee of the Chinese Communist Party on 29 October 2015, English translation at: <https://chinacopyrightandmedia.wordpress.com/2015/10/29/communique-of-the-fifth-plenary-meeting-of-the-18th-central-committee-of-the-chinese-communist-party>.

⁴ Chapter 26, The 13th Five-Year Plan for Economic and Social Development of the People’s Republic of China (2016-2020), official English translation at: <http://en.ndrc.gov.cn/newsrelease/201612/P020161207645765233498.pdf>.

⁵ Xi Jinping, “Secure a decisive victory in building a moderately prosperous society in all respects and strive for the great success of socialism with Chinese characteristics for a new era,” Report delivered at the 19th CPC National Congress on October 18, 2017, at: http://news.xinhuanet.com/english/special/2017-11/03/c_136725942.htm.

⁶ Brook Larmer, “China’s Revealing Spin on the ‘Sharing Economy,’” *New York Times* magazine, November 20, 2017, at: <https://www.nytimes.com/2017/11/20/magazine/chinas-revealing-spin-on-the-sharing-economy.html>.

⁷ Guiding Opinions on Promoting Development of the Sharing Economy, issued July 3, 2017, at: http://www.ndrc.gov.cn/zcfb/zcfbtz/201707/t20170703_853853.html; English translation on China Law Translate

that promotes Internet-enabled, platform-based business models that connect consumers with what the Opinions call “resource providers” and endorses a “tolerant yet prudent” and “collaborative” approach to regulation. Issued jointly by China’s super-regulator, the National Development and Reform Commission (NDRC), together with the Office of the Central Cyberspace Leading Group and six other regulators, the 16-point Opinions encourage relaxing market access and accommodating innovation in this rapidly evolving sector, while strengthening supervision against monopolies, minimizing risks and protecting consumers.

China’s dynamic sharing economy

As a reflection of the sharing economy’s success in China, the Chinese character for “share”, 享 (pronounced *xiǎng*), was voted “Character of the Year” for 2017 among several nominees, based on the explanation that the “popularity of on-demand bikes and the boom of the sharing economy” had brought “visible benefits to people and explained the meaning of common prosperity.”⁸

In 2017, the value of transactions in the Chinese sharing economy approached \$780 billion, up 47 percent from 2016’s \$500 billion, which was in turn an increase of 103 percent over 2015’s numbers. According to a report (the “**2017 Sharing Economy Report**”) by the State Information Center’s Sharing Economy Research Center (the Center)⁹ and the Committee on the Sharing Economy in China,¹⁰ financing volume rose 25.7 percent year on year, and roughly 700 million Chinese, or half of the country’s population, used sharing services last year, compared with 26 percent of US adults.¹¹ Almost 72 million individuals, up by 13 million, provided services for platform companies in 2017, accounting for 9.7 percent of new urban employment last year. A year earlier, in 2016, the NDRC reported about 50 million people, or 5.5 percent of China’s labor force, had worked in the sharing economy.¹²

The Center now predicts this market will continue to grow by 30 percent annually over the next five years,¹³ down from 2017’s prediction it would grow at 40 percent per year and account for 10 percent of China’s GDP by 2020 and fully 20 percent by 2025.¹⁴

at: <http://www.chinalawtranslate.com/wp-content/uploads/2017/08/2017-7-28-Sharing-Economy-Opinions-JPH-Tr.pdf>.

⁸ Zhou Xin, ““Original aspiration” chosen as Chinese word of the year,” *Xinhua*, December 21, 2017, at: http://www.xinhuanet.com/english/2017-12/21/c_136843062.htm; Jiayun Feng, “The Chinese Word of the Year Shortlist,” *SupChina*, December 11, 2017, at: <https://supchina.com/2017/12/11/chinese-word-year-shortlist>.

⁹ “China’s sharing economy sees surging market transactions in 2017,” *Xinhua*, March 1, 2018, at: http://www.xinhuanet.com/english/2018-03/01/c_137006724.htm.

¹⁰ 中国共享经济发展年度报告（2018），国家信息中心分享经济研究中心，中国互联网协会分享经济工作委员会，2018年2月，at <http://www.sic.gov.cn/archiver/SIC/UpFile/Files/Default/20180320144901006637.pdf>.

¹¹ Yingzhi Yang, “China’s sharing economy is minting multibillion-dollar tech unicorns,” *South China Morning Post*, March 8, 2018, at: <http://www.scmp.com/tech/article/2136317/chinas-sharing-economy-minting-multibillion-dollar-tech-unicorns>.

¹² “5.5 pct of China’s labor force work in sharing economy: report,” *Xinhua*, September 18, 2017, at: http://www.xinhuanet.com/english/2017-09/18/c_136618778.htm.

¹³ “China’s sharing economy sees surging market transactions in 2017,” *Xinhua*, March 1, 2018, at: http://www.xinhuanet.com/english/2018-03/01/c_137006724.htm.

¹⁴ Adam Minter, “China Is the Future of the Sharing Economy; Conditions are ideal for the sector to thrive,” *Bloomberg*, May 18, 2017, at: <https://www.bloomberg.com/view/articles/2017-05-18/china-could-be-the-future-of->

As of March 2018, one in two of China's technology unicorns – private companies valued at more than US\$1 billion – are sharing economy businesses.¹⁵ The biggest of 31 sharing unicorns, Didi Chuxing, is (or was as of April 2018) the second largest unicorn in the world,¹⁶ after its rival Uber, which Didi defeated in a battle over the Chinese ride-hailing market.¹⁷ As of February 2018, Didi boasted 400 million registered customers in more than 400 Chinese cities and reportedly was delivering 25 million rides per day, roughly twice as many as Uber and all the other global sharing apps combined, according to *Wired* writer James Crabtree.¹⁸

Other Chinese sharing economy unicorns include Lu.com, a peer-to-peer lending and wealth management platform formerly known as Lufax; room-share platform Tujia, with over 650,000 online listings in China and overseas as of October 2017;¹⁹ co-work space provider UrWork (now called Ucommune); group deals platform Meituan-Dianping (which bought bike-sharing platform Mobike in April 2018²⁰); and bicycle-sharing firm Ofo.²¹

China's platform companies are also going global, in a trend encouraged by the Opinions. Chinese bike-sharing companies have introduced their innovative dockless bikes overseas. Ofo recently claimed first place globally with more than 10 million yellow bikes in over 250 cities across 21 countries such as Russia, India and Malaysia, while second-ranked competitor Mobike's seven million orange bikes are now available in more than 200 cities in 12 nations, including Singapore, the United Kingdom, Germany, Australia and, most recently, Chile.²² Indeed, Mobike was hailed as one of the 50 enterprises that changed the world in 2017 by Fortune magazine.²³ Both companies are also now offering their dockless bikes in Washington, D.C.²⁴ China's home-share companies offer rooms to Chinese travelers in foreign markets.²⁵ Chinese startup UrWork (now called Ucommune) claims to be the leading Asian co-work space provider, with 100 locations in over 30 cities in the world, including Singapore, New York, Los

[the-sharing-economy-j2uyrh27](#); Zhong Nan, "Report says China's sharing economy to grow 40% annually," *China Daily USA*, March 2017, at: http://usa.chinadaily.com.cn/epaper/2017-03/23/content_28654886.htm.

¹⁵ Yang, *supra* note 11.

¹⁶ The Global Unicorn Club, CBInsights, at: <https://www.cbinsights.com/research-unicorn-companies> (visited April 15, 2018).

¹⁷ William C. Kirby, "The Real Reason Uber Is Giving Up in China," *Harvard Business Review*, August 2, 2016, at: <https://hbr.org/2016/08/the-real-reason-uber-is-giving-up-in-china>.

¹⁸ James Crabtree, "Didi Chuxing took on Uber and won. Now it's taking on the world," *Wired*, February 9, 2018, at: <http://www.wired.co.uk/article/didi-chuxing-china-startups-uber>.

¹⁹ Reuters, "China's Answer to Airbnb Just Raised \$300 Million," *Fortune*, October 10, 2017, at: <http://fortune.com/2017/10/09/tujia-china-investment-travel-rental/?iid=sr-link2>.

²⁰ Sarah Dai and Zen Soo, "Chinese tech executives mull the independence of start-ups in wake of Mobike acquisition," *South China Morning Post*, April 5, 2018, at: <http://www.scmp.com/tech/start-ups/article/2140446/chinese-tech-executives-mull-independence-start-ups-wake-mobike>.

²¹ Yang, *supra* note 11.

²² Ouyang Shijia, "China continues its growing ascendancy in global bike-sharing market," *China Daily*, March 9, 2018, at: <http://www.chinadaily.com.cn/a/201803/09/WS5aa1e44aa3106e7dcc140957.html>.

²³ "Chinese brands building global name," Eng.gov.cn, December 22, 2017, at: http://english.gov.cn/news/top_news/2017/12/22/content_281475985737704.htm.

²⁴ Max Smith, "DDOT: DC generally favors dockless bike share so far; dozens stolen," *WTOP*, February 27, 2018, at: <https://wtop.com/dc-transit/2018/02/ddot-dc-favors-dockless-bikeshare>.

²⁵ "Corporate China's 'red economic zone' envelops Japan," *Nikkei Asian Review*, August 21, 2017, at: <https://asia.nikkei.com/Business/Companies/Corporate-China-s-red-economic-zone-envelops-Japan>.

Angeles, San Francisco and London, servicing over 3,000 enterprises and 40,000 individual members.²⁶ Singapore approved Lufax to set up shop in July 2017.²⁷ And Didi, which has partnered overseas with other ride-sharing companies, including Lyft in the US, Ola in India and Taxify in Europe,²⁸ completed its first cross-border acquisition -- a controlling stake in 99, a major ride-hailing company in Brazil -- in January 2018.²⁹ Co-working startup Naked Hub, headquartered in Shanghai, has opened sites in Hong Kong, Vietnam, Australia and England.³⁰

All of these platform companies have rattled traditional businesses throughout urban China, just as they have elsewhere across the globe. Taxi drivers have protested, traffic authorities have cited ride-hail drivers (and complained about increased congestion and pollution), and police have fined home-share providers for operating without licenses. China's central government, following its standard experimental approach to legislation,³¹ initially looked on as line ministries and local governments mobilized to rein in this "disruptive" new sector. In contrast to the initial alarm that often accompanied the challenge to traditional transportation, lodging, and other businesses around the world, the Chinese government at all levels has generally welcomed the sharing economy, choosing to legitimize relevant businesses through policy pronouncements and regulation, rather than outlaw them altogether.

In approving the Opinions in June 2017, Premier Li Keqiang praised the sharing economy as a "reinvigorating force" for economic growth that was absorbing excess capacity and creating new jobs. He urged all levels of government to be inventive in "striking a balance between 'enabling' regulation and risk preparedness," and to ensure a "level playing field for all to compete and excel."³² In his March 2018 government work report to the NPC, Premier Li claimed that China leads the world in the sharing economy, as well as hi-speed rail, e-commerce and mobile payments, and promised to boost the platform and sharing economies and create an innovation and entrepreneurship landscape featuring online-offline combinations and collaborations.³³

²⁶ "China's co-working Unicorn UrWork (Beijing) Venture Investment completes C round funding, cementing its market leader position in China," December 27, 2017, at: <https://www.prnewswire.com/news-releases/chinas-co-working-unicorn-urwork-beijing-venture-investment-completes-c-round-funding-cementing-its-market-leader-position-in-china-300574969.html>. See, also, Jordan Crook, "WeWork files complaint against UrWork for trademark infringement, unfair competition," *TechCrunch*, September 12, 2017, at: <https://techcrunch.com/2017/09/12/wework-files-complaint-against-urwork-for-trademark-infringement-unfair-competition/?ncid=rss>.

²⁷ Aradhana Aravindan, "China's Lufax to launch first overseas platform in Singapore," *Reuters*, July 17, 2017, at: <http://www.reuters.com/article/us-lufax-singapore-idUSKBN1A2102>.

²⁸ Crabtree, *supra* note 19.

²⁹ Ouyang Shijia and Ma Si, "Sharing economy creates global pioneers," *China Daily*, February 28, 2018, at: <http://www.chinadaily.com.cn/a/201802/28/WS5a959795a3106e7dcc13e73d.html>.

³⁰ <https://www.nakedhub.com/en/>, last visited March 23, 2018.

³¹ Yanying Bi, "Experimentalist approach of Chinese legislation model: From passive response to institutional design," *The Theory and Practice of Legislation*, Volume 3, 2015 - Issue 2, pp. 141-67, at: <http://dx.doi.org/10.1080/20508840.2015.1083243>.

³² Xu Wei, "China takes measures to boost sharing economy," *English.gov.cn*, June 21, 2017, at: http://english.gov.cn/premier/news/2017/06/21/content_281475693296222.htm.

³³ Li Keqiang, Report on the Work of the Government, March 5, 2018, at: <http://en.people.cn/n3/2018/0403/c90000-9445262.html>. The NDRC work report to the NPC called for guiding and regulating the sharing economy so that it develops in a positive/benign and healthy way and to set up a number of demonstration platforms for the sharing economy [引导和规范共享经济良性健康发展，建设一批共享经济示范平台]. National Development and

Central government sets the framework

The Opinions foresee that the sharing economy will improve the efficient use of social resources, facilitate the people's livelihood, and advance new economic development momentum. Accordingly, they seek to foster an environment for continued innovation and entrepreneurship under a sharing economy development model in which “everyone participates and everyone benefits.” They promise that sharing economy participants will enjoy easier market access, greater policy transparency, and better protection of legitimate rights for platform companies, resource providers, and consumers alike. At the same time, the Opinions also identify risks that need to be addressed and suggest experimenting with new regulatory approaches.

The Opinions adopt the popularized “sharing economy” terminology,³⁴ while recognizing that innovation is creating many new peer-to-peer and business-to-consumer formats that suggest other names that are being used, such as the “platform economy” or “collaborative consumption.” Accordingly, the Opinions define “sharing economy” broadly to mean a new type of economic model that uses information technology to optimize the efficient allocation of dispersed resources through Internet platforms. Subsectors of the sharing economy are to be managed differently under sectoral and local government rules, as well as through industry self-regulation. Market and geographic entry barriers are to be abolished or relaxed. However, strict entry conditions, including licensing, will still be utilized in sectors where the safety of life and property, social stability, cultural security, and financial risk are involved.

The Opinions direct that central and local authorities prioritize several issue areas. These include taxation, liability, and insurance, as well as ensuring fair competition among platform companies and with traditional businesses. Developing trust mechanisms to encourage strangers to do business over the platform is another focus. Companies are encouraged to connect and share data with government-run credit information platforms and work with credit reporting agencies to develop and manage information about resource providers and consumers, becoming an integral part of China’s data-driven, evolving social credit system.³⁵ Protecting consumer and personal information rights is another priority, as is safeguarding workers’ rights and interests and providing employment social insurance.

Collaborative governance and other new regulatory models promoted

Refrain from using old methods to regulate new business models, exhort the Opinions. One regulatory model they endorse is “collaborative governance” (*xietong zhili*). This concept,

Reform Commission Report on the Implementation of the 2017 Plan for National Economic and Social Development and on the 2018 Draft Plan for National Economic and Social Development, March 5, 2018, at: http://online.wsj.com/public/resources/documents/NPC2018_NDRC_English.pdf

³⁴ The Opinions use the Chinese term *fenxiang jingji*, but *gongxiang jingji* is also used in some government documents, including in one place in the Opinions.

³⁵ Clifford Coonan, “China builds ‘glorious trustworthiness’ with new social credit system,” *The Irish Times*, June 26, 2017, at: <https://www.irishtimes.com/news/world/asia-pacific/china-builds-glorious-trustworthiness-with-new-social-credit-system-1.3133028>.

which appears in other recent government documents,³⁶ advocates that government, rather than following its customary command-and-control mode, is to collaborate with industry associations, platform companies, resource providers, and consumers to address issues that arise from the sharing economy. Along these lines, the Opinions require soliciting public opinion, consultation, and evaluation whenever government agencies propose new market access and regulatory measures that impact the sharing economy. The Opinions themselves went through two rounds of public notice and comment. While some degree of public participation in rulemaking³⁷ and policy decisions is already required under Chinese laws and regulations, improved consultation between the government and stakeholders may help produce more effective solutions. Moreover, the Opinions encourage the government to contract for services from sharing economy companies, making government itself an active consumer of and participant in this new business model.

The Opinions also advocate regulation through industry self-governance. Business associations and other social organizations are encouraged to set service standards and self-disciplinary codes for their sectors, as well as accept public oversight of their behavior. Platform companies are to strengthen internal governance, shoulder social responsibility, and establish consumer complaint and dispute resolution mechanisms. Business associations are also encouraged to set up third-party platforms to receive consumer complaints and assist with rights protection, including specifically the protection of personal information and intellectual property. In what may be a related move, a recent policy co-issued by the All-China Federation of Industry and Commerce and the Ministry of Justice promotes the development of people's mediation capacity in chambers of commerce to facilitate the resolution of civil disputes involving the 25 million private firms and more than 60 million self-employed people across China.³⁸

The Opinions also designate the "Internet-Plus" Action Inter-Ministerial Joint Conference³⁹ to strengthen the overall coordination and policy interpretation of the sharing economy development. In December 2015, the Internet Society of China⁴⁰ and the founders of

³⁶The term translated as collaborative is 协同, was used in 2002 E-Government Opinions in the context of 业务协同、信息共享 [business collaboration and information sharing], http://www.cac.gov.cn/2002-08/06/c_1112139134.htm; 2011 CCP-State Council Opinions on Further Promoting Open Government Affairs and Enhancing Government Services, https://law.yale.edu/sites/default/files/documents/pdf/Intellectual_Life/CL-OGI-Opinions_Further_Promo-English.pdf; http://www.gov.cn/jrzq/2011-08/02/content_1918496.htm; the 2014 State Council Social Credit System Planning Outline, <https://chinacopyrightandmedia.wordpress.com/2014/06/14/planning-outline-for-the-construction-of-a-social-credit-system-2014-2020/>; and the November 2014 State Council Guiding Opinions Promoting Coordinated Development of E-Government, <http://www.echinagov.com/info/52966>.

³⁷Jamie P. Horsley, "China Implements More Participatory Rulemaking Under Communist Party," *The Regulatory Review*, March 15, 2018, at: <https://www.theregreview.org/2018/03/15/horsley-china-implements-participatory-rulemaking/>.

³⁸"China explores mediation in business disputes," *Global Times*, April 2018, at: <http://www.globaltimes.cn/content/1098496.shtml>; 全国工商联, 司法部关于推进商会人民调解工作的意见, issued April 17, 2018, at: http://www.moj.gov.cn/government_public/content/2018-04/17/tzwj_18299.html.

³⁹The "Internet-Plus" action plan, introduced by Premier Li Keqiang in March 2015, aims to integrate the Internet with traditional industries, and fuel economic growth. I could not find anything about the Inter-Ministerial Conference. See, "China unveils Internet Plus action plan to fuel growth," *Xinhua*, June 4, 2017, at: http://english.gov.cn/policies/latest_releases/2015/07/04/content_281475140165588.htm.

⁴⁰ISC, founded in 2001, is a voluntary organization under the purview of the Ministry of Industry and Information and Technology, has more than 1,000 member companies, research institutes, academic associations, universities

various traditional and sharing economy companies launched the Committee on the Sharing Economy in China (CSEC), a quasi-official business association.⁴¹ Its membership includes not only Chinese pioneers like ride-hailing app Didi, Internet giant Tencent, and tech manufacturer Lenovo, but also U.S.-based Airbnb and LinkedIn China.⁴² CSEC co-authored three sharing economy reports covering developments in 2015-2017, including the one mentioned at the beginning of this paper, and held a conference in San Francisco in June 2016 to tap expertise from U.S. academics and companies.⁴³ While this organization does not appear to be very active (at least based on its reported activities), it could serve as a model for the kind of collaborative governance envisioned by the Opinions.

The Opinions also announced plans to establish a Sharing Economy Experts Advisory Committee “when conditions are ripe.” In the meantime, media reports indicate that Chinese sharing economy companies are meeting frequently with regulators at different levels of government to discuss industry regulations and business issues.

Rolling out sectoral policies and regulations

The Opinions leave regulatory details to be determined sector by sector at both the central and local government levels. The State Council issued the nation’s first sectoral policy on the sharing economy in July 2016. As part of taxi industry reform, it called for ride-hailing services like Uber and Didi to be brought under the same legal framework as the traditional taxi industry.⁴⁴ Also in July 2016, China’s Ministry of Transportation (**MOT**) joined with other regulators to issue the first national trial measures to regulate online taxi-booking services (the “**Online Taxi Measures**”).⁴⁵ The Online Taxi Measures essentially treat private cars registered with platform companies as taxis. They establish a national licensing requirement for the vehicles, drivers, and platform operators; require operators to sign contracts with drivers stipulating the rights and obligations of both parties; and set minimum conditions for oversight, safety, pricing, taxation, insurance, data, and personal information security. Conforming revisions were made to two additional MOT rules, including to add “cruise” before “taxi” in the

and other organizations engaged in Internet-related activities, with the mission to promote development of Internet in China and make efforts to construct an advanced information society. See, “About Internet Society of China,” 2013, at: http://www.isc.org.cn/english/About_Us/Introduction/listinfo-15315.html.; more up-to-date information in Chinese at: <http://www.isc.org.cn/xhgg/>. As of 2014, its members included some foreign companies such as Cisco, Microsoft and IBM. See, <http://www.isc.org.cn/english/Member/listinfo-15319.html>.

⁴¹ “China’s sharing economy gets its own industry body,” December 16, 2015, at: <https://www.tnooz.com/article/China-sharing-economy-industry-body>.

⁴² Hugh Harsono, “Embracing the sharing economy for growth in China,” *TechCrunch*, April 10, 2016, at: <https://techcrunch.com/2016/04/10/embracing-the-sharing-economy-for-growth-in-china/>.

⁴³ “First Sino-US Sharing Economy Industry Conference Held in San Francisco,” June 8, 2016, at: <http://www.fenxiangji.org.cn/DetailPage.aspx?id=32&MenuId=10007&BaseMenuId=10006>.

⁴⁴ “State Council issues guideline for taxi industry development,” English.gov.cn, July 28, 2016, at: http://english.gov.cn/policies/latest_releases/2016/07/28/content_281475403598690.htm.

⁴⁵ John Russel, “China issues guidelines to legalize ride-hailing apps like Uber and Didi Chuxing,” *TechCrunch*, July 28, 2016, at: <https://techcrunch.com/2016/07/28/china-issues-guidelines-to-legalize-ride-hailing-apps-like-uber-and-didi-chuxing/>; Interim Measures for the Administration of Online Taxi Booking Business Operations and Services, issued August 25, 2016, by the Ministry of Transportation, etc., http://www.gov.cn/xinwen/2016-07/28/content_5095584.htm.

Provisions on Administering Taxi Operating Services,⁴⁶ and to cover cruising and online-booking taxi drivers under the Provisions on Administering Qualifications of Taxi Drivers.⁴⁷

However, the Online Taxi Measures leave registration details, operational standards, and oversight duties to local government regulators. Several local governments have issued their own regulations that, in some cases, are stricter than those imposed on traditional taxis.⁴⁸ For instance, Shanghai and Beijing have adopted regulations requiring drivers to possess a local *hukou* (household registration) and a local license plate, in order to control for congestion, pollution, and migration. Didi, which commanded more than 80 percent of China’s private car-hailing market at the end of 2016, said that these restrictions decimated its workforce of some 15 million drivers, and spurred it to introduce other business models to make up for lost revenue.⁴⁹

In August 2017, the MOT and the Ministry of Housing and Urban and Rural Development jointly issued policy guidance that included car-sharing as part of the traditional car rental industry (the “**Car Rental Opinions**”).⁵⁰ China’s relatively new car-sharing industry already boasts an estimated 30-40,000 cars, more than 95 percent of which are new energy vehicles, a classification subsidized by the Chinese government that includes electric cars, plug-in hybrids and fuel-cell cars.⁵¹⁵² As of August 2017, 37 rental car-sharing companies in China operated about 6,000 electric vehicles in Beijing, Shanghai and Guangzhou, and another 6,000 car rental companies had begun offering their own car-sharing services.⁵³ The Car Rental Opinions seek to strengthen public safety requirements for all car rentals, including collection and reporting of identification and license information for customers and business operators. They also advocate that customers’ credit information be used in lieu of rental deposits. In practice, customers of Ant Financial’s Sesame Credit, part of the Alibaba Group, with a score of 600 or higher can enjoy deposit-free car rental services.⁵⁴

⁴⁶ Decision of the Ministry of Transport on Amending the Provisions on the Administration of Taxi Operating Services (2016), Chinese text at: http://zizhan.mot.gov.cn/zfxxgk/bnssj/zcfgs/201609/t20160909_2085260.html.

⁴⁷ Decision of the Ministry of Transport on Amending the Provisions on the Administration of Qualifications of Taxi Drivers (2016), in Chinese at: http://zizhan.mot.gov.cn/zfxxgk/bnssj/zcfgs/201609/t20160909_2085223.html.

⁴⁸ Wei Huang, Bei Yin and Wen Zhou, “The Competition and Regulation Issues of the Sharing Economy – An Analysis Based on China’s Ride-hailing Service Regulations, April 2017, at: <https://www.competitionpolicyinternational.com/the-competition-and-regulation-issues-of-the-sharing-economy-an-analysis-based-on-chinas-ride-hailing-service-regulations/>; in **Tab 6 of your Briefing Book**.

⁴⁹ Yuan Yang and Xinning Liu, “China’s Didi shakes up car-hailing app business,” *Financial Times*, February 18, 2017, at: <https://www.ft.com/content/8cf56960-f4e5-11e6-8758-6876151821a6>.

⁵⁰ 交通运输部, 住房和城乡建设部 《关于促进小微型客车租赁健康发展的指导意见》, August 8, 2017, at: http://news.xinhuanet.com/politics/2017-08/08/c_1121446937.htm.

⁵¹ Sara Dai, “China’s Didi targets US\$287 billion car-sharing business with new rental network alliance,” *South China Morning Post*, February 7, 2018 at: <http://www.scmp.com/business/companies/article/2132455/chinas-didi-targets-us287-billion-car-sharing-business-new-rental>.

⁵² “Majority support bicycle, car sharing in China,” *Xinhua*, June 27, 2017, at: http://news.xinhuanet.com/english/2017-06/27/c_136399061.htm.

⁵³ Emily Feng and Xinning Liu, “China strives to bring order to unruly car-sharing sector,” *Financial Times*, August 8, 2017, at: <https://www.ft.com/content/6a25078c-7beb-11e7-9108-edda0bc928>.

⁵⁴ “Quick Guide to China’s Sesame Credit,” November 22, 2017, at: <https://angrymoo.com/sesame-credit-summary>.

In August 2017, MOT also issued national guidance on the bike-sharing sector (the “**Bike Opinions**”),⁵⁵ in which cyclists use mobile apps to rent bikes. This business model has exploded since its launch in 2016 and included at its height as many as 120 companies with millions of brightly colored bikes competing for business across the country, as well as overseas.⁵⁶ Like the Taxi Measures, the Bike Opinions also give primary regulatory authority to municipal governments, while providing detailed admonitions on a long list of matters similar to those covered for the online taxi and car-sharing industries, as well as other issues more specific to biking. China’s “dockless” model allows riders to leave rented bikes—equipped with GPS and electronic locks—anywhere. Although this innovation gives riders greater flexibility, it also gives rise to theft, vandalism, and bike-clogged roads and sidewalks.⁵⁷

The Opinions encourage “civilized” bike use in response to unruly cyclist behavior, require local governments to ensure that bicycles are distributed rationally across cities, and encourage companies to set up electronic fences to manage where bikes are parked. They also advocate a participatory governance system whereby companies, industry associations and alliances, and members of the public collaborate to improve bike-sharing services. In view of this guidance, several municipalities have moved in recent months to limit the number of shared bikes and impose parking restrictions.⁵⁸ Bike-share companies are also taking their own measures. Mobike introduced a policy that links riders’ platform-generated credit scores, which take into account their parking behavior, with pricing: riders with a credit score below average will be charged two to three times the regular price.⁵⁹ Ofo similarly takes 10 points off its riders’ credit scores if they leave a bike in a parking-restricted area.⁶⁰

Home-sharing is also taking off in China. According to the 2017 Sharing Economy Report, the Chinese home-sharing market grew by 70.6 percent in 2017, and Xiaozhu CEO Chen Chi observed at April’s Boao Forum that, “After more than five years of development, house sharing has taken deep root in China, while it is also penetrating rapidly to lower tier cities and the countryside.”⁶¹ China’s largest home-sharing company Tujia reports it provides services for 130,000 landlords and operators, of which 80,000 operate more than one shared home.⁶² Due to a variety of factors, China has millions of vacant homes across the country, and is only now beginning to focus on its implications for affordable housing, among other concerns.

⁵⁵ 交通运输部, 中央宣传部, 中央网信办, 国家发展改革委, 工业和信息化部, 公安部, 住房城乡建设部, 人民银行, 质检总局 国家旅游局《关于鼓励和规范互联网租赁自行车发展的指导意见》, August 1, 2017, at: http://zizhan.mot.gov.cn/zfxgk/bnssj/dlyss/201708/t20170802_2803351.html. The Chinese term for bike-sharing is *gongxiang danche*.

⁵⁶ Denise Jia and Chen Mengfan, “Beijing Puts Brakes on Shared Bikes,” *Caixin English*, September 7, 2017, at: <http://www.caixinglobal.com/2017-09-08/101142146.html>.

⁵⁷ Liu Chin and Zheng Chun, “Bike-Sharing Schemes: Flourishing or Running Riot?,” *ChinaDialogue*, June 15, 2017, at: <http://www.chinafile.com/reporting-opinion/environment/bike-sharing-schemes-flourishing-or-running-riot>.

⁵⁸ Denise Jia and Chen Mengfan, *supra* note 56.

⁵⁹ 共享单车企业发布新规 信用差骑 30 分钟 100 元? , February 27, 2018, at: <http://www.iimedia.cn/60712.html>.

⁶⁰ “共享单车出新招! 骑半小时要付 100 元, 电子围栏也来了, 专门对付这种人, February 24, 2018, at: http://www.sohu.com/a/223835736_404519.

⁶¹ Brett, “2018 shaping up as the critical year in China’s home-sharing sector,” *Travel Daily*, April 18, 2018, at: <http://www.traveldaily.com/critical-year-chinas-home-sharing-sector>.

⁶² Mason Hinsdale, “China’s Real Estate Woes Are Good News for Home-sharing Firms,” *Jing travel*, April 20, 2018, at: <https://jingtravel.com/fast-growth-china-sharing-economy-underscoring-real-estate-market>.

However, the sector is just starting to be regulated. China's 2013 Tourism Law endorsed the short-term rental of homes for tourism purposes. The practice has been reaffirmed in a series of central policy documents since then. Beijing appears to be the first locality to regulate this sector. The city's Tourism Regulations, adopted in May 2017, treat homeowners who rent to tourists as tourism operators and subject them to business licensing, liability insurance, and various requirements related to public security, environmental protection, sanitation, fire safety, and food safety.⁶³ Moreover, China's police require that homeowners-turned-tourism operators submit copies of identification cards from their renters. The Ministry of Public Security reportedly is drafting regulations on public safety standards for short-term rental housing.⁶⁴

Regulations are also taking shape in other areas of the sharing economy. In August 2016, China's banking regulator and the Ministry of Industry and Information Technology moved to rein in the scandal-ridden but booming online peer-to-peer (P2P) lending market, seeking to restrict P2P platforms to serving solely as information intermediators between lenders and borrowers.⁶⁵ This has been followed up by additional anti-risk policies and oversight of P2P lending.⁶⁶

In November 2017, the China Food and Drug Administration issued regulations on online catering services that essentially closed down the popular home-cooked meal-sharing business by requiring that only licensed restaurants with physical sites could offer meals online.⁶⁷

Data-sharing issues

Platform companies collect a massive amount of data.⁶⁸ As elsewhere, statistics on usage and consumption patterns can help Chinese platform companies develop and market products and services, as well as allocate resources like bikes and cars in response to changing demand and integrate their operations with urban transport systems, providing "first-and-last-kilometer" connecting service. The Chinese government can also analyze large datasets to understand traffic

⁶³ Xu Lin, "Rules focus on homeowners who rent to tourists," *China Daily*, July 10, 2017, at: http://www.chinadaily.com.cn/china/2017-07/10/content_30052304.htm; 北京市旅游条例 {Beijing Municipal Tourism Regulations}, adopted by the Beijing Municipal People's Congress Standing Committee on May 26, 2017, at: <http://zhengce.beijing.gov.cn/library/192/33/50/438650/233911/index.html>.

⁶⁴ Ping Yingying, "Regulatory authorities drawing lines for online short-term rental platforms [在线短租平台待监管部门划线], *Legal Weekly* [*Fazhi zhouwei*], July 4, 2017, at: http://www.legalweekly.cn/article_show.jsp?f_article_id=13899.

⁶⁵ Gabriel Wildau, "China P2P lending regulations target hucksters and risk-takers," *Financial Times*, August 24, 2016, at: <https://www.ft.com/content/5b179264-69e0-11e6-a0b1-d87a9fea034f>.

⁶⁶ See, e.g., Notice of the Office of the Leading Group for the Special Campaign against Internet Financial Risks and the Office of the Leading Group for the Special Campaign against Peer-to-peer Lending Risks on the Regulation and Rectification of the "Cash Loan" Business (in Chinese), December 1, 2017, at: http://www.gov.cn/xinwen/2017-12/02/content_5243940.htm.

⁶⁷ "China bans online catering without off-line operations," *Xinhua*, November 10, 2017, at: http://www.xinhuanet.com/english/2017-11/10/c_136743352.htm; "Beijing to strengthen regulation of online catering," *Xinhua*, March 15, 2017, at: http://news.xinhuanet.com/english/2017-03/15/c_136130899.htm.

⁶⁸ Louise Lucas, "Sharing economy takes mercantile twist in China," *Financial Times*, May 29, 2017, at: <https://www.ft.com/content/4d060364-41b6-11e7-9d56-25f963e998b2?mhq5j=e3>.

patterns and address congestion and safety issues, make decisions on urban planning, and formulate more effective policy.

The Sharing Economy Opinions encourage government data-sharing and making more data resources available publicly, as well as using Big Data and statistical surveys to improve the sharing economy and its contribution to overall economic development. However, the Opinions do not specifically address the question of government requirements for data-sharing by platform companies, except in the context of credit-related information. On the other hand, some of the sector-specific regulations issued to date do require platform companies to share data.

For instance, the 2016 Online Taxi Measures⁶⁹ oblige platform companies to maintain their servers in China, connect their platforms and databases to the local taxi department, and make them available for retrieval and search by the supervisory authorities, including the Cyber Administration of China. Data collected in China is to be stored for at least two years and used in China. Platform companies must record information about vehicles, drivers, passengers, order logs, internet access logs, online transaction logs, and travel tracking logs and share with the taxi administration basic information about vehicles and drivers, service quality, and passenger evaluations.

The Bike Opinions similarly require operating companies to report and share information with local departments on the number of bicycles released by district, to keep their servers in China, and to save and use data they generate within China. They further stipulate that companies should not collect information on users beyond what is needed to provide bike-sharing services. This provision seems to reflect the experience of Mobike's Xia Yiping, who reported that the government in asking data to be shared with it, is not looking for personal information, but instead for information that will be useful in urban planning, such as riders' route information.⁷⁰ The Car Rental Opinions do not contain this kind of specific language, but they do require operators to follow relevant cybersecurity and information protection laws.

While no comprehensive rules yet exist for the home-sharing sector, Airbnb reported that it started in 2016 to store data regarding its China operations on local servers, not due to concerns over sharing economy regulations but rather to comply with anticipated requirements under China's Cyber Security Law, which took effect June 1, 2017 and requires private user data to be stored locally.⁷¹ Airbnb established a China subsidiary to comply with those requirements.⁷² Moreover, Airbnb further announced March 2018 that it would start sharing user data with Chinese government agencies, to comply with requirements that all hotels must report

⁶⁹ *Supra* note 45.

⁷⁰ Anthony Kuhn, "A Remote Chinese Province Uses Its Climate To Grow A Big-Data Industry," *NPR*, July 3, 2017, at: <http://www.npr.org/sections/alltechconsidered/2017/07/03/535369266/a-remote-chinese-province-uses-its-climate-to-grow-a-big-data-industry>.

⁷¹ David Ramli, and Olivia Zaleski, "Airbnb Appoints Head of China Operations After Long Search," *Bloomberg*, June 1, 2017, at: <https://www.bloomberg.com/news/articles/2017-06-01/airbnb-hires-hong-ge-to-run-china-operations-after-long-search>.

⁷² Reuters Staff, "Airbnb to start sharing Chinese host information with government," *Reuters*, March 28, 2018, at: <https://www.reuters.com/article/us-airbnb-china/airbnb-to-start-sharing-chinese-host-information-with-government-idUSKBN1H41JJ>.

guest information to the police, and that travelers staying in private homes are supposed to register that information within 24 hours of arriving in China.⁷³

Chinese platform companies are not necessarily eager to share their data, which is proprietary and might end up in the hands of competitors. According to Xia Yiping, co-founder of the bike-sharing firm Mobike, his company receives many government requests for data, but he is concerned about differing data security standards among government departments, which could lead to leakage of data.⁷⁴ Nonetheless, sharing economy companies may not have much choice. For example, the transportation department in scenic Hangzhou in Zhejiang province established a collective platform in 2017 to monitor the city's 883,000 shared bikes owned by seven bike-sharing companies, including Mobike and Ofo. Through this platform, data will be made available to transport, urban management and traffic police departments.⁷⁵ In January 2018, Ofo announced plans to share its big data platform with city administration authorities in 200 Chinese cities, to help manage traffic issues arising from the growth of shared bikes, and provide reliable data for planning city transport systems.⁷⁶

How the Chinese government chooses to deal with data acquired by platform companies to support smart government regulation, while minimizing the risks of leaking private and corporate business confidential information, will be important to the future of the sharing economy. Platform companies and their investors have tolerated poor returns due to their interest in the valuable data they collect. If that data is commandeered and not protected by government agencies, or if the government subjects companies to onerous real-time reporting requirements, the financial attractiveness of this model could decline.

Can foreign companies participate?

The Opinions encourage Chinese sharing economy companies to “go abroad,” seeking business overseas and building international brands. Although they favor fostering foreign cooperation, the Opinions and most other policy documents and regulations issued to date do not specifically mention the reciprocal issue of foreign investment in China's sharing economy. However, various national and local regulations to date suggest that foreign companies will be welcome to participate, so long as they observe China's foreign investment requirements and its tightening cybersecurity rules.

Only the 2016 Taxi Measures expressly contemplate foreign involvement. They state that any foreign investors must comply with the requirements of relevant Chinese foreign investment laws and data regulations, as well as with the Online Taxi Measures. Uber, the U.S. ride-sharing pioneer, was squeezed out of the market in mid-2016 by its pre-established, dominant competitor Didi Chuxing, reportedly in part due to concerns over the impending national Online Taxi

⁷³ Abigail Abrams, “Airbnb Will Start Sharing Guest Data in China with Chinese Authorities,” *Time*, March 29, 2018, at: <http://time.com/5221666/airbnb-china-share-data-chinese-government>.

⁷⁴ Kuhn, *supra* note 70.

⁷⁵ “Govt platform to monitor bike sharing in Hangzhou,” *Xinhua*, December 9, 2017, at: <http://www.chinadaily.com.cn/a/201712/09/WS5a2b2781a310eefe3e99eff9.html>.

⁷⁶ “Ofo to share big data of bicycles with 200 Chinese cities,” *Xinhua*, January 18, 2018, at: http://www.xinhuanet.com/english/2018-01/18/c_136903348.htm.

Measures that, among other things, would have prohibited the ongoing price war between the two firms.⁷⁷

Foreign companies in other sectors seem to be having more success, particularly when they have been first or early into a market niche. This has been the case with the car-sharing market, for instance. Car2go entered Chongqing in April 2016, and reported more than 118,000 registered members there, which was a top 10 Car2go city as of February 2017.⁷⁸ General Motors launched a pilot car-sharing project with Shanghai Jiaotong University in Shanghai, as well as invested in a Chinese car-sharing company named Yi Wei Xing (Beijing) Technology Co. Ltd.⁷⁹

U.S. co-working space giant WeWork arrived China in 2016. After having established 16 co-working sites in China⁸⁰ and, in July 2017, a Chinese subsidiary, WeWork China,⁸¹ it is reported to be acquiring domestic competitor Naked Hub, which was founded by expats in Shanghai.⁸² Its business model, while utilizing the Internet, seems more akin to a traditional business that rents office space and related services. Thus, it may not be subject to any special sharing economy-related regulation. However, it faces stiff competition from domestic companies like Chinese unicorn UrWork, which changed its name to Ucommune after WeWork sued for trademark infringement.⁸³

Airbnb reports China as its fastest-growing “outbound” market due to the huge number of Chinese travelers booking rentals abroad.⁸⁴ Within China, reports estimate that Airbnb now offers 150,000 units.⁸⁵ As of March 2017, its Chinese subsidiary, Airbnb China, had introduced Airbnb’s “Trips” travel-service platform in Shanghai and announced plans to triple its staff in

⁷⁷ William Kirby, “The real reason Uber left China,” *Harvard Business Review*, August 2016, at: <https://hbr.org/2016/08/the-real-reason-uber-is-giving-up-in-china>; see, also, John Pollock, “How Uber crashed in China,” *China Policy Institute: Analysis*, August 2, 2016, at: <https://cpianalysis.org/2016/08/02/how-uber-crashed-in-china/>.

⁷⁸ “Car-sharing services taking the fast lane in China,” *Xinhua*, February 15, 2017, at: http://news.xinhuanet.com/english/2017-02/14/c_136056364.htm.

⁷⁹ Melissa Burden, “GM invests in China car-sharing tech company,” *Detroit News*, October 11, 2016, at: <http://www.detroitnews.com/story/business/autos/general-motors/2016/10/11/gm-china-car-sharing-invest/91910862/>.

⁸⁰ WeWork China, <https://www.wework.com/l/china> (accessed April 22, 2018).

⁸¹ Leslie Hook, “Workspace start-up WeWork launches China unit,” *Financial Times*, July 27, 2017, at: <https://www.ft.com/content/d8bc81e0-727a-11e7-aca6-c6bd07df1a3c>.

⁸² Yingzhi Yang, Maggie Zhang and Daniel Ren “It’s a ‘merger’, says CEO as New York start-up WeWork makes play for China co-working crown with Naked Hub deal,” *South China Morning Post*, April 12, 2018, at: <http://www.scmp.com/business/companies/article/2141493/its-merger-says-ceo-new-york-start-wework-makes-play-china-co>.

⁸³ Bloomberg, “WeWork Is Diving Headfirst Into China With a Big New Buy,” *Fortune*, April 12, 2018, at: <http://fortune.com/2018/04/12/wework-naked-hub-china-buy/>; Reuters, “WeWork Files Name Infringement Lawsuit Against China’s UrWork,” *New York Times*, September 12, 2017, at: <https://www.nytimes.com/reuters/2017/09/12/business/12reuters-wework-lawsuit-urwork.html>.

⁸⁴ Julius Bar, “China is at the forefront of the sharing economy - here's why,” *The Guardian*, December 8, 2016, at: <https://www.theguardian.com/julius-baer-partner-zone/2016/dec/08/china-is-at-the-forefront-of-the-sharing-economy-heres-why> [paid advertisement no longer available].

⁸⁵ Abrams, *supra* note 73.

China and double its in-country investment.⁸⁶ Yet, it also faces competition from rapidly growing domestic companies. These include Tujia, which raised another \$300 million in October 2017, at which time it offered 345 destinations in China, and more than 1,000 overseas through foreign partnerships, for a total 650,000 listings;⁸⁷ and Xiaozhu, which was estimating up to 300,000 by the end of 2017 after raising \$120 million⁸⁸ and is likewise establishing foreign operations.

Whether or not foreign competition will be allowed to continue their forays into this new business environment remains unclear. However, recent policy documents⁸⁹ and leader statements,⁹⁰ as well as foreign company presence in the CSEC, suggest that China will permit, and perhaps even encourage, some degree of foreign participation to promote innovation in China's sharing economy.

Only time will tell whether the Chinese government will fulfill the promise of designing tolerant, prudent, and collaborative regulation that allows the sharing economy to flourish. In some cases, local governments around China have imposed even stricter requirements on sharing economy participants than for traditional competitors, such as for cars being used to provide shared transportation. Car-hailing and bike-sharing are encountering some restrictions on growth, home-cooked meals sharing was shut down on food safety grounds, and the question of government requirements for data-sharing by platform companies remain to be clarified. Nonetheless, China's sharing economy appears to be adapting to new regulation both at home and abroad and continues to thrive. Ideally, further innovations in the sharing economy will continue to prompt regulatory innovation and flexibility for both the traditional and the new Chinese economies.

⁸⁶ Jon Russell, "Airbnb doubles down in China," *TechCrunch*, March 21, 2017, at: <https://techcrunch.com/2017/03/21/airbnb-china>.

⁸⁷ Jon Russell, "Airbnb's major China rival Tujia raises \$300M more at a \$1.5 billion valuation," *TechCrunch*, October 10, 2017, at: <https://techcrunch.com/2017/10/10/tujia-raises-300-million>.

⁸⁸ Meng Jing, "Xiaozhu, China's Airbnb, a unicorn after US\$120m investment round led by Jack Ma-backed fund," *South China Morning Post*, November 1, 2017, at: <http://www.scmp.com/tech/start-ups/article/2117775/xiaozhu-chinas-airbnb-emerges-unicorn-after-us120-million-investment>.

⁸⁹ See, e.g., State Council Opinions on Strengthening the Implementation of the Innovation-driven Development Strategy and Making Further Progress in Mass Entrepreneurship and Innovation [国务院关于强化实施创新驱动发展战略进一步推进大众创业万众创新深入发展的意见], July 21, 2017, in Chinese at: http://www.gov.cn/zhengce/content/2017-07/27/content_5213735.htm.

⁹⁰ "China supports innovation efforts of both domestic and foreign enterprises: premier," *Xinhua*, June 2, 2017, at: http://news.xinhuanet.com/english/2017-06/02/c_136332496.htm.