

# DRIVING CHANGE @ UBER: ALUMNI MATTERS 2019

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**Uber has been in business for just 10 years. In that time, it has grown to become a huge company, valued at US\$82 billion when it listed the company's shares on the NY Stock Exchange in May 2019. As one of the biggest market disruptors in modern history, Uber's entrepreneurialism is at the root of a business that attracts people to work for it, including for two Herbert Smith Freehills alumni, Fiona McKenzie and Hon Ng.**

Uber is ubiquitous. In July 2019 Uber reported a performance best, reaching over 100 million active users per month across all Uber platforms. What started as a way to tap a button to get a ride has led to billions of moments of human connection as people around the world go to all kinds of places in all kinds of ways with the help of Uber's technology. Just as Google became synonymous with internet search engines, and a verb in its own right, so too has Uber - where drastic market disruption is often referred to as "uberisation".

In addition to helping you get from point A to point B (which now includes Uber's electric scooters and bikes called "JUMP"), Uber's vision is to bring the future closer with self-driving technology (Advanced Technologies Group) and urban air transport (Elevate), helping people order food quickly and affordably (Uber Eats), removing barriers to healthcare (Uber Health), creating new freight-booking solutions (Uber Freight), and helping companies provide a seamless employee travel experience (Uber for Business).

The rise of the business has been swift and breathtaking. But, as with any market disruptor, it has not been without its challenges and controversies. Top of the areas of contention is the issue of whether Uber is a technology platform connecting users with providers or an operator of the underlying services (like transport), which some others have at times maintained. The company has faced legal challenges from regulators, drivers, passengers and competitors relating to intellectual property, employee classification, passenger accessibility, competition law and safety.

All of which makes for a highly stimulating environment for the company's in-house lawyers, and which is what drew two Herbert Smith Freehills alumni to work for the company. Based in Hong Kong, Hon Ng is head of transactions for Uber covering the Asia Pacific region. Fiona McKenzie is associate counsel, UK & Ireland, working in the London office. Both trained with Herbert Smith Freehills in London, Fiona qualifying into the firm's Technology, Media and Telecommunications department where she worked for three years, and Hon leaving on qualification to join, in succession, two US law firms, including working in the Middle East.



For Fiona, moving to Uber was a logical development of her career and, in particular, the experience she gained from secondments to clients. "Having done several secondments, with Sky, LOVE Productions, and Tabcorp, the Australian betting company, that gave me a taste of being in-house. I enjoyed getting under the skin of a business."



She continues: "I was particularly drawn to Uber for two reasons: the fact that it is an exciting technology business that moves people from A to B, and the timing. This was the end of 2017, when Uber was under pressure on several fronts. I felt this was an opportunity because many of the issues were legal or regulatory, where the legal input is absolutely critical."

For Hon, what also appealed about joining a small, but growing department at Uber was the opportunity to build a business. He had previously helped to set up a new office for a US law firm in Doha. "I enjoyed the thrill - and sometimes the chaos - of entrepreneurialism. Uber is the sort of company that allows its employees the ability to work unconventionally."

Many might be daunted by the fact that, as Fiona puts it, “the law often trails behind technological developments, which makes for uncertainty, something lawyers tend not to like.”

Since joining, they have had to contend with any number of legal issues – not always ones they might expect. In Hon’s case, he landed in a police station in Macau, the former Portuguese colony near Hong Kong, after intervening on behalf of Uber’s driver-partners in the face of questionable law enforcement tactics after a press briefing to the Macau press. Fiona’s challenges have been somewhat more conventional, including dealing with the Mayor of London, Sadiq Khan, to ensure renewal of Uber’s licence to operate in what is one of its most important markets internationally.

Hon is currently responsible for all commercial transactions in the Asia Pacific region (excluding India), of which there have been many since he joined in 2015. In 2016, Uber merged with Didi Chuxing, the Chinese car-hailing service. In Singapore, Uber started a car rental company, Lion City Rentals, then collaborated with Singapore’s largest taxi company, ComfortDelGro, before eventually selling off the car rental business. And then in 2018, Uber merged its Southeast Asian business to Grab, a car-sharing competitor, in which it remains the largest shareholder.

The Grab deal was handled almost exclusively by the in-house legal team and, to give an idea of the complexity, involved reviewing 20,000 contracts, transferring assets, negotiating with many different companies, managing contract disputes and all the while dealing with regulators in all eight countries working towards an extremely tight timeline. And aspects of the Grab deal continues to rumble on: Uber has appealed a decision by Singapore’s Competition and Consumer Commission that the Grab-Uber transaction breached competition laws.

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Hon now leads a team of nine. Operating on the principle of doing more with less, the team focuses on efficiency and endeavouring, as far as possible, to speed up the contract review process by focusing on the most important commercial matters that are pivotal to the success of a deal. “While, as lawyers, we are often caught up in the detail, at Uber we know that speed of execution is just as important as getting the law right,” Hon says. “Our lawyers are trained, from the very beginning, to think like the business and focus on what the key parts of the deal are.”

Hon feels he has landed his dream job, drawing on both his professional skills as a lawyer and his personal experience to make life easier for everyone. “What excited me at the beginning, and what continues to excite me, is the impact that we are making on people’s lives. I remember the days of taking the night bus or negotiating a fare with one of the unlicensed night taxis in London after an evening out and that is now a distant memory as we make point-to-point ride-sharing more affordable and safer across the world. Added to that, many drivers are driving on the platform to supplement a living and we are making a huge impact on the ability of ordinary people to pursue their goals and to earn a living. I believe it is changing the nature of people’s lives and the way that they live.”

Hon cites yet more benefits of Uber. “We are impacting communities that were previously under-served neighbourhoods by public transport, opening them up to new commercial possibilities. We are helping governments manage traffic flow to ease congestion. We continue to engage to change the way this sector is regulated. And finally, we continue to break new frontiers in food delivery, e-bikes and e-scooters, freight, elevated ride-sharing, pooled trips and more.”

Fiona also focuses on strategic partnerships for the company, in her case covering the UK and Ireland. She negotiates contracts and, increasingly, deals with privacy issues and new products. Almost everything is breaking new ground, she explains. “It is a fast-paced business and it is constantly innovating, so there is not a bank of precedents we can draw on. We are creating our own know-how, pretty much every day.”

The company’s approach is to use the in-house legal teams as much as they can, but Uber will use external counsel in disputes or where they have specialist sector knowledge such as in technology or transport. A good example of this might be freight, a potential new area of business for Uber. Herbert Smith Freehills has also been engaged to advise on complex antitrust issues in Europe and elsewhere (including Uber’s two major transactions with Yandex Taxi in Russia and Careem in the Middle East), as well as for general consumer advice. Outside lawyers may also be used to reaffirm the work done in-house, if necessary. “Sometimes, it helps to have an external pair of eyes,” says Hon.

Both Hon and Fiona believe they have made great strides in their legal knowledge and practice since joining the company. “There is a premium on problem-solving,” says Fiona. “We are often asked as lawyers to come up with solutions to problems set by the businesses, who are always testing limits. You really have to think laterally but also practically to recognise what is achievable. There is great satisfaction in working with our business colleagues to come up with a resolution together.”

Uber’s lawyers are trained in the RAPID school of decision making, which defines at the outset of every project who is going to take decisions. “You certainly have to be adaptable to change if you work here,” Fiona adds.

Uber's flexible and rewarding culture is something both Hon and Fiona value. Fiona particularly applauds the fact that the company's parental leave policy is completely gender-neutral. "This sets an example that all companies should be following," says Fiona, "it is the key to gender equality in the workplace. Why do most company's leave policies still make childcare the woman's lot?" Both also mentioned Uber's additional employee incentives to perform, including being issued with Uber shares as part of their compensation. While the temptation is there to monitor the share price at all times, the share ownership scheme has an impact on behaviour. As Hon says, "Being issued with shares is empowering as well as concentrating the mind. If you know that the decisions you take have consequences for the business, you go that extra distance to make sure they are good ones. I also feel that it helps create a level playing field for everyone, no matter how senior or junior. Everyone is encouraged to join in the discussion. It really changes people's behaviour - and for the better."

Each of Fiona and Hon is looking forward to the next stage of their career with Uber. Fiona is increasingly focusing on privacy issues, including making sure new products incorporate privacy by design. Hon plans to continue to build out his legal team that is challenging the status quo and helping a dynamic business continue to grow and achieve goals. "We are only just getting started having impacted less than 5 per cent of the ground transportation," he says. "Imagine a world of autonomous vehicles, flying vehicles and no-car ownership? That is some prospect, and what's not to be excited about?"