Nuts and bolts of bike-sharing deposits

Are these deposits debits or funds held in trust for users? The legal nature matters. Clearer regulation can help protect such funds in future.

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For The Straits Times

No one likes to see a contract, not even lawyers, and certainly not those with no experience or a quick idea. When things go wrong, all that is needed is to rent a bicycle with a push of a button. However, contracts and their terms may soon become an area of concern for the bicycle-sharing sector in Singapore. On Monday, Singapore-based bicycle-sharing company ofo announced that it was pulling out of the Singapore market, citing new regulations imposed by the Land Transport Authority (LTA) that, in its opinion, had implications for the viability of its business model.

Since then, frustrated ofo users have been trying to get refund of their deposits. The LTA advised affected users facing issues with obtaining a refund of their deposits to bring the matter up with the Consumers Association of Singapore.

On Tuesday, talk of ofo’s liquidation was in the news, ofo’s co-founder Edward Chan was quoted as saying that he left his former “local team and also the legal team and the liquidation agency.”

Lawyers have also commented that ofo’s users, as unsecured creditors ranking last in the list of the liquidated entity’s assets, may not get their deposits back.

However, a question that seems to have gone unnoticed is, what happens to users’ deposits placed with ofo and other bicycle-sharing companies? Are the deposits really unsecured creditors? If the deposits have property rights in the deposits, in the sense that the deposits are held in trust for them, then these property rights may be protected by the liquidators in the insolvency of the company. The question of how regulation may prevent future problems.

DEPOSITS

Some bike-sharing companies like ofo require users to make a deposit before they can use the shared bicycles. Others, like oBike, do not.

Generally, these deposits separate from the funds that are charged for using the bicycles. Both homeowners and lawyers use the word “deposit” to distinguish it from “lost.”

And some confusion may be avoided if the term “deposit” is used in the deposit we are concerned with here.

Money in a bank account, which is held on account, is a debt that the bank owes to the customer. There is also a deposit in the sense of “current money” — generally shown in the balance sheet about the bank’s assets that are not in the trust for them, then these property rights may be protected by the liquidators in the insolvency of the company. The question of how regulation may prevent future problems.

REGULATION OF DEPOSITS

Some users of bicycle who have been unable to get their deposits refunded have expressed hope that the government would do something about it. Users of other bicycle-sharing services would also welcome appropriate government intervention in the market. But what kind of intervention?

For example, regulations that bicycle-sharing services in what the city of Sydney has done, within the guidelines released guidelines for bike-sharing operators. These guidelines were derived from Sydney councils, and are not minimum standards and expectations relating to, among other things, customer safety, vehicle placement, and data sharing. Nothing much is said about the fees or charges for using the bicycles, which one might argue in proportion to the price of the use of the service and the operator. The LTA is a regulatory body to consider the operator’s ability to safeguard users’ interests, especially through the implementation of appropriate provisions for deposits, if the operators choose to raise and hold deposits.

One option might consider a requirement for bicycle-sharing operators to maintain deposits in segregated bank accounts. This would reduce the risk of operators misusing funds. The LTA has noted that the relevant NAC in imposing a requirement for deposits to be placed in a segregated bank account. Such a requirement could be imposed by the government to ensure that funds are held with a reputable financial institution. This could be the means for ensuring that there is an adequate level of service and protection for consumers.

The LTA has also indicated that it will take regulatory action against operators who breach service and financial conditions and standards, which include the deposit requirements and the reduction of fees, costs, financial penalties for each instance of non-compliance, and suspension or revocation of licence. Such penalties may serve as an effective means for companies to opt to adjust their consumer protection mechanisms.

Such stronger regulations will likely have an impact on the business model of bicycle-sharing companies, specifically their ability to invest some deposit. This is clearly something that the regulator will have to take forward with the relevant stakeholders.

In a statement issued yesterday, the LTA indicated that the licensing of bicycle-sharing operators is not meant to be a “kick-away” for the companies to invest adequate consumer protection mechanisms.

Indeed, balancing consumer protection with the legitimate interests of operators requires a careful analysis. Such a move would likely increase the costs for consumers, but may also encourage operators to improve their service quality and avoid disputes with users. The LTA has extended a grace period to operators to ensure that they meet the regulatory requirements. The LTA will consider extending the grace period if the industry demonstrates a commitment to addressing the concerns.

The LTA has acknowledged that it will consider several factors when assessing applications for licence, including safety and the ability to maintain a high level of service.