

Rail Transport 2021

Contributing editor
Matthew J Warren



Publisher

Tom Barnes
tom.barnes@lbresearch.com

Subscriptions

Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager

Adam Sargent
adam.sargent@gettingthedealthrough.com

Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between July and August 2020. Be advised that this is a developing area.

© Law Business Research Ltd 2020
No photocopying without a CLA licence.
First published 2018
Third edition
ISBN 978-1-83862-393-7

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



Rail Transport 2021

Contributing editor

Matthew J Warren

Sidley Austin LLP

Lexology Getting The Deal Through is delighted to publish the third edition of *Rail Transport*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on the European Union and Singapore.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Matthew J Warren of Sidley Austin LLP, for his continued assistance with this volume.



London
August 2020

Reproduced with permission from Law Business Research Ltd
This article was first published in September 2020
For further information please contact editorial@gettingthedealthrough.com

Contents

Global overview	3	Mexico	48
Matthew J Warren Sidley Austin LLP		Eduardo Bravo Senderos, Jorge Guadarrama-Yañez, Luis Amado, Mario Facio Salazar and Pamela Lemus Baker McKenzie	
Belgium	5	Netherlands	56
Michael Jürgen Werner Norton Rose Fulbright		V J A (Viola) Sütő LegalRail	
Canada	12	Poland	63
Douglas Hodson QC, Kristen MacDonald, Ryan Lepage and Marek Coutu MLT Aikins LLP		Marcin Bejm and Mikołaj Markiewicz CMS Cameron McKenna Nabarro Olswang LLP	
European Union	19	Russia	68
Tom Marshall, John Williams, Patrick Mitchell, Oliver Grabowski, Tim Briggs and Max Kaufman Herbert Smith Freehills LLP		Karina Chichkanova and Valentin Yurchik Dentons	
Germany	26	Singapore	75
Michael Jürgen Werner Norton Rose Fulbright		Adrian Wong and Jacob Quek CMS Holborn Asia	
India	34	United Kingdom	81
Ashish Suman, Kartikeya GS and Vishnu Sudarsan J Sagar Associates		Martin Watt, Jonathan Smith, Rebecca Owen-Howes and Zara Skelton Dentons	
Japan	41	United States	91
Naoki Iguchi Nagashima Ohno & Tsunematsu		Matthew J Warren, Donald H Smith, Marc A Korman and Morgan Lindsay Sidley Austin LLP	

Japan

Naoki Iguchi

Nagashima Ohno & Tsunematsu

GENERAL

Industry structure

1 | How is the rail transport industry generally structured in your country?

The Ministry of Land, Infrastructure, Transport and Tourism (MLIT), sector-specific regulator, usually classifies the rail transport industry into four categories from historic and economic backgrounds: (1) Japan Railway (JR) companies, that is, seven JR companies (six rail carriers for passenger transport and one for freight); (2) major private railways; (3) local private railways; and (4) local government's public transport.

The first category, JR companies, have common roots in the former Japan National Railway (JNR), nation-owned rail transport carrier. In 1987, the JNR was privatised and split into seven joint-stock companies that, at that time, were established under the Act in 1987 by the Act on the Rail Companies for Passengers and Japan Freight Railway Company (Act No. 88 of 1986, the JR Companies Act). At the beginning, the government owned all of the shares of JR companies through the Japan Railway Construction, Transport and Technology Agency (JRTT), a government-controlled entity. Thereafter, initial public offers for shares of four out of six carriers for passengers were successful, and the JR Companies Act is no longer applicable to them. The shares of the remaining three companies, JR Hokkaido, JR Shikoku and JR Freight, are still owned by the JRTT.

The second category, major private railways, has its origin in interurban and commuter rail transport commenced in the early 20th century in Tokyo, Osaka, Nagoya and Fukuoka, the most urbanised areas in Japan. From the beginning, they diversified their businesses in real estate development for commercial and residential properties, restaurants, hotels, department stores, travel agencies and other services, which have been successful, and some formed robust regional company groups.

From a technology perspective, the Japanese government adopted a 'narrow gauge' of 1,067mm at the time of the first introduction of a railway system in 1872, which is still dominant in all rail transport systems (except some major private railways). However, to build a high-speed rail in 1964, the JNR adopted a 'standard gauge' of 1,435mm for the Shinkansen (bullet train) project. All the Shinkansen systems operated now by JR companies use this standard gauge, which enables them to operate trains with a maximum speed of 320km/hour.

The total length of the rail transport network is approximately 27,000km. As at 2019, approximately 25 billion passenger-kilometres and 45 billion ton-kilometres of cargo used rail transport. Approximately 200,000 employees work in the rail transport sector and the whole business sector earned approximately ¥7.6 trillion revenue, of which ¥6.9 trillion (91 per cent of the total revenue) is from passenger transportation services.

Ownership and control

2 | Does the government of your country have an ownership interest in any rail transport companies or another direct role in providing rail transport services?

The central government does not have direct ownership in any railway nor does it take a direct role in providing rail transport services. One exception is newly built Shinkansens. Since JR companies cannot afford the construction costs of new Shinkansen lines, the government enacted the Act on Construction of Nationwide Shinkansen Network (Act No. 71 of 1970, the Shinkansen Construction Act) to let the JRTT to construct and own the new lines. Construction costs will be borne by the central and local governments. The government designates an operating company from one of the JR companies that operated the existing lines. Shinkansen operating JR companies pay rent to the JRTT.

Some local governments directly own and operate, or own and lease rail transport systems. Underground rail transport services are provided by the city governments of Yokohama, Nagoya, Sapporo and six other big city governments. Tokyo Metro and Osaka Metro were transformed into a form of joint-stock company, and planned to offer their shares to the public, but this has not yet been done. Until the initial public offering, the shares are owned by central and local governments. Another type of local government ownership of shares is found in public-private joint ventures for local or regional rail transport.

3 | Are freight and passenger operations typically controlled by separate companies?

Generally, freight and passenger operations are controlled by separate companies. Since the JNR network was divided into six passenger carriers, the land and equipment (except some locomotives and freight cars) are generally owned by them. The JR Freight purchases the transportation capacity from other JR companies that own the land and rail equipment. Exceptions are some local rail for freight, most of which are owned and operated by public-private joint ventures, which sometimes provide services for freight and passengers.

Regulatory bodies

4 | Which bodies regulate rail transport in your country, and under what basic laws?

The Railway Bureau of the MLIT regulates all rail transport operations under the Railway Business Act (Act No. 92 of 1986, the RBA), the Light-Rail Act (Act No. 76 of 1921) and the Railway Operation Act (Act No. 65 of 1999 (the ROA)).

In addition, the Japan Transport Safety Board (JTSB), an outer office of the MLIT established under the JSTB Establishment Act (Act No. 113 of 1973, the JTSB Act), is given the authority to investigate traffic accidents, including rail traffic accidents. The JSTB's mission is

to investigate the cause of the accidents and to give recommendations or advice to the providers.

MARKET ENTRY

Regulatory approval

5 | Is regulatory approval necessary to enter the market as a rail transport provider? What is the procedure for obtaining approval?

Yes, regulatory approval is necessary to be a rail transport provider. The Railway Business Act (RBA) sets out three types of approval for rail transport providers (RBA, article 2):

- Category I: businesses that provide transport services by using their own railway facilities;
- Category II: businesses that provide transport services by using facilities owned by third parties (ie, a Category I railway business provider or a Category III railway business provider); and
- Category III: businesses that construct railway facilities for the purpose of transferring the business to a Category I railway business provider, and businesses that construct and maintain railway facilities for the purpose of leasing them to a Category II railway business provider.

A party that plans to be a rail transport provider must apply to the Minister of the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) for its approval (RBA, article 4). Applicants have to prepare an application form including 'Basic Business Plan' (RBA, article 4(1)[6]), at least, with the following supporting documents stipulated in the Regulations of Enforcement of the Railway Business Act (Ministry of Transportation Ordinance No. 6 of 1987, the RBA Regulation) (articles 2 and 6, not exhaustive):

- a revenue estimate;
- a construction cost estimate;
- initial capital cost and its finance;
- a planned date of commencement of operation;
- drawings of the planned railway line;
- drawings and documents of the existing railway line;
- a photocopy of conveyance or lease agreement of railway line; and
- a basic business plan, which includes description of rail assets and equipment, maximum speed, maximum planned passing tonnage, planned transport supply capacity, locations and names of stations, etc.

To grant the licence for a railway business, the Minister of MLIT has to review the following requirements (RBA, article 5):

- the appropriateness of the plan from a business perspective;
- the appropriateness of the plan from a safety perspective;
- how effective the plan will be for conducting business if it fulfils requirements other than (1) and (2); and
- the applicant's ability to properly conduct the business by itself.

6 | Is regulatory approval necessary to acquire control of an existing rail transport provider? What is the procedure for obtaining approval?

Yes, but it depends on a form of 'acquisition'.

First, in relation to the transfer of the railway business, approvals from the MLIT are required for the transferor and the transferee (RBA, article 26(1)). Both parties shall submit the application for transfer to the transport bureau, together with a copy of the transfer agreement of the railway business in question, statements of the transfer price for the transferor and transferee, etc.

Second, regarding mergers and company splits, approval is required for both a merger between railway business providers and the splitting up of a railway business provider (RBA, article 26(2)(4)). As regards a merger, both parties must submit the applications for merger to the transport bureau, together with a copy of the merger agreement of the railway business in question, explanatory materials of the method and conditions of the merger, etc. With respect to a company split, the parties to the company split agreement of the railway business in question shall submit applications for the company split to the transport bureau, together with a copy of the company split agreement, explanatory materials of the method and conditions of the split, etc.

Lastly, if an acquisition is a simpler purchase of existing company's shares, regulatory approval is not necessary.

7 | Is special approval required for rail transport companies to be owned or controlled by foreign entities?

No. Special approval is not required for rail transport companies to be owned or controlled by foreign entities. However, the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949) (FEFTA) general rule for the investment by foreign entities is applicable. Since an investment to railway business is considered as a business relating to national security (the Core Business) (the Cabinet Ordinance on Inward Direct Investment, article 3(2)[3]), an entity that plans to (1) acquire not less than 10 per cent of the shares of the listed rail transport operating company or (2) acquire the shares of the unlisted rail transport operating company shall file a 'report' to the Minister of Finance and the Minister of MLIT in advance.

As a result of the Ministers' review, it may be recommended that the investment plan be changed or cancelled if (1) national security is impaired, (2) the maintenance of public order is disturbed or the protection of public safety is hindered or (3) the smooth management of the Japanese economy will be significantly adversely affected.

8 | Is regulatory approval necessary to construct a new rail line? What is the procedure for obtaining approval?

Yes, regulatory approval for construction of a new rail line is necessary. Even an entity that plans to be a Category III railway business provider shall file an application for approval to the Minister of MLIT. This application must meet the requirements for approval of railway business. Furthermore, such a railway business provider shall apply for a separate approval on commencement of the construction works (RBA, article 8), and have its rail transport assets and equipment inspected upon the completion of construction (RBA, articles 10 and 11). Any changes to the construction plan or rail transport assets and equipment have to be reported and approved by the Minister of MLIT (RBA, articles 9 and 11).

MARKET EXIT

Discontinuing a service

9 | What laws govern a rail transport company's ability to voluntarily discontinue service or to remove rail infrastructure over a particular route?

The RBA governs a rail transport company's ability to voluntarily discontinue service or to remove rail infrastructures. In principle, a rail transport provider need not to obtain an approval from the authority. But the process and required time-period differ as to discontinuation:

- In relation to suspension, the railway business provider shall submit the report of suspension to the Ministry of Land, Infrastructure, Transport and Tourism (MLIT). The period of suspension cannot exceed one year (Railway Business Act (RBA), article 28).

- In relation to abolition of a railway service for passengers, the railway business provider shall submit the abolition report to the MLIT one year prior to the date of abolition. The Minister hears the opinions of the relevant local municipalities and the stakeholders on whether the public will be inconvenienced if the service is abolished, and if the Minister finds that there is no risk of this happening, the railway service provider will be notified of the decision (RBA, article 28-2(1) to (5)).
- In relation to the abolition of a railway service for freight, the railway business provider shall, in principle, submit the abolition report to the MLIT six months prior to the date of the service being abolished (RBA, article 28-2(6)).

In the case of abolition, it is up to the owner to remove rail infrastructures; usually, in urban areas, the lands are redeveloped to become public road, residential or commercial properties; in rural areas, the lands are transferred to municipal government. Furthermore, although no MLIT's approval is necessary, the MLIT will set up a hearing of the related parties (ie, local governments) and give notice to the applicant (article 28-2(2)(3)). As an effect of receiving notice, an applicant may change the discontinuation date earlier than originally scheduled, with a prior notice to the MLIT (article 28-2(4)). For freight services, the prior report period is half a year (article 28-2(6)). In practice, to avoid reputation decline, most rail transport providers take gradual steps, sometimes a much longer time than legally required period, to discontinue rail transport services.

- 10 | On what grounds, and what is the procedure, for the government or a third party to force a rail transport provider to discontinue service over a particular route or to withdraw a rail transport provider's authorisation to operate? What measures are available for the authorisation holder to challenge the withdrawal of its authorisation to operate?

The Minister of MLIT has the power to order suspension of services or cancel approval if the following grounds are found (RBA, article 30):

- if the railway business breaches the Railway Business Act, an order based on the Act or an administrative decision that directly forms or decides the rights and obligations of the people, or breaches the conditions of the approval or the licence;
- if the railway business fails to perform the action approved or licensed without any reasonable ground;
- if the railway business performs any action that falls under the reasons for disqualification in article 6 (excluding item (ii) thereof) of the Railway Business Act;
- if the railway business does not receive approval to commence construction under article 8.1 of the Railway Business Act;
- for a Category I railway business provider, abolition of the railway business or cancellation of approval for the licence granted to the Category III railway business provider that is the counterparty of the assignee of the rail line in relation to the railway business in question, for the route relating to that line;
- for a Category II railway business provider, abolition of the railway business or cancellation of approval for the licence granted to the Category III railway business provider, who is the granter of the use of the rail line in relation to the railway business in question, on the route relating to that line; and
- for a Category III railway business provider, abolition of the railway business or cancellation of approval for the licence granted to:
 - the Category I railway business provider that is the counterparty of the assignee of the rail line in relation to the railway business in question; or

- all of the Category II railway business providers that are users of the rail line in relation to the railway business in question, on the route relating to that line.

Third parties are not expressly entitled to force a railway business to discontinue services or cancel the licence.

If the licence holder would like to challenge the validity of the cancellation or suspension of the licence, two options are available: (1) an administrative procedure in accordance with the Administrative Appeal Act (Act No. 68 of 2014); or (2) he or she can bring a lawsuit against the government in a judicial procedure in accordance with the Administrative Case Litigation Act (Act No. 139 of 1962). It is possible for a licence holder to start (2) after failure to win in procedure (1).

Insolvency

- 11 | Are there sector-specific rules that govern the insolvency of rail transport providers, or do general insolvency rules apply? Must a rail transport provider continue providing service during insolvency?

There are no sector-specific insolvency rules applicable to rail transport business. However, 'bankruptcy' is a reason for disqualification (RBA, article 6(2)). Other insolvency procedures will not affect the rail transport provider's approval. Furthermore, if a railway business is a legal incorporation, it must obtain approval from the Minister of MLIT before it puts the dissolution of incorporation into effect.

COMPETITION LAW

Competition rules

- 12 | Do general and sector-specific competition rules apply to rail transport?

As for general competition rules, the Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Act No. 54 of 1947, the Antitrust Act) applies to railway business. The Antitrust Act regulates against several types of business activities or organisations: (1) private monopolisation (Antitrust Act, article 2(5)) (2) unreasonable restraint of trade (ie, cartel) (Antitrust Act, article 2(6)), (3) unfair trade practices (Antitrust Act, article 2(7)) and (4) business associations (Antitrust Act, article 8). In the Antitrust Act, there is no exemption applicable to rail transport providers. The Antitrust Act is applicable to railway businesses, as well as non-rail businesses that rail transport carriers operate.

As for sector-specific competition rules, there is no statutes or regulations. The only exception is the Fair Trade Commission's 'Designation of Unfair Trade Practices', which contains a category of 'Special Designation: Logistics'. In short, this special designation plans to protect subcontractors in the logistics industries. Although not specific to rail transport, this designation is applicable to the freight service providers that retain subcontractors for combined transport.

In addition to the above, some rules in the Railway Business Act (RBA) have similar nature and purpose as general competition rules have.

Regulator competition responsibilities

- 13 | Does the sector-specific regulator have any responsibility for enforcing competition law?

The MLIT, as sector-specific regulator, has a responsibility to enforce the RBA and Railway Operation Act, but not the general rules, the Antitrust Act and its subordinate regulations and rules. The Antitrust Act is enforced by the Fair Trade Commission (FTC).

Competition assessments

14 | What are the main standards for assessing the competitive effect of a transaction involving rail transport companies?

Standard for assessment of the competitive effect of a transaction is not generally set out in the Antitrust Act. However, the FTC published several guidelines for particular forms of transaction, where the FTC refers to some factors to be considered in assessing the competitive effect. In addition, as for unfair trade practices, the FTC also published the General Designations (FTC Publication No. 15 of 1982) and Special Designations (for the transactions of newspapers, logistics and large-scale retail) as prohibited forms of practices.

PRICE REGULATION

Types of regulation

15 | Are the prices charged by rail carriers for freight transport regulated? How?

No, the prices charged by rail carriers for freight is not regulated. The former regulation scheme was abolished in 2003 because the freight carrier service market seems to be very competitive.

16 | Are the prices charged by rail carriers for passenger transport regulated? How?

Yes, the prices charged by rail carriers for passenger transport need to be approved, but only on the upper limit of fares and surcharges for Shinkansen (bullet train) (Railway Business Act (RBA), article 16(1)). The passenger rail business must decide the upper limit of fares and surcharges and must obtain approval for this from the Minister of the Ministry of Land, Infrastructure, Transport and Tourism (MLIT). The same rule applies to changing the upper limit. Within these upper limits, the railway business for passengers may change the price but it must file a prior report of the change to the MLIT (RBA, article 16(2)). Other kinds of surcharges for luxury services do not need an upper limit and are only required to file a prior report to the MLIT. As regards the process of approval, the MLIT will review whether the upper limit exceeds the amount of the appropriate costs and the appropriate profit under efficient management (RBA, article 16(3)). Moreover, the MLIT may order a railway business provider to change the fares for passengers if specific passengers are treated in a discriminatory manner or the fare may cause unreasonable competition with other railway business providers (RBA, article 16(5)).

In addition, any upward changes to the fares and surcharges have to be announced to the public seven days prior to the enforcement date (Railway Operation Act, article 3).

17 | Is there a procedure for freight shippers or passengers to challenge price levels? Who adjudicates those challenges, and what rules apply?

Theoretically, there are several legal measures and procedures by which shippers or passengers may sue rail transport providers, but there has been no successful case where passengers directly challenged the price levels. The first one was a case where a user of one of the major private railways challenged the level of surcharge for express services that was approved by the authority (Judgment of the Supreme Court on 13 April 1989, Kintetsu case). The second is a case where commuter train users of another public-private joint-venture company challenged the level of regular fares, which was within the approved upper limit but comparatively higher than other commuter railways, including the parent company in a neighbouring area (Judgment of the

Supreme Court on 21 April 2015, Hokuso Railway case). Since the plaintiffs challenged the authority's approval, these two cases were heard as administrative litigation cases. The Supreme Court dismissed the challenges owing to the plaintiff's lack of standing. It is unlikely to be easy for the general public to challenge the level of prices or their upper limit by administrative litigation.

If a particular shipper or passenger is treated in an extraordinary unfair or unreasonable manner with respect to the prices, the Antitrust Act, the Consumer Contract Act (Act No. 61 of 2000) and the Civil Code (Act No. 89 of 1896), which also sets out a basis for contract and tort claims, may be applicable. Among others, abuse of dominant position, which is stipulated in the FTC's General Designation, may be one of the possible ground for B-to-B transaction disputes. But no cases have been reported publicly as to rail transport businesses.

18 | Must rail transport companies charge similar prices to all shippers and passengers who are requesting similar service?

For rail transport for freight, there is no express rule in the RBA by which the company must charge similar prices to all shippers. For rail transport for passengers, if specific passengers are treated in a discriminatory manner, the MLIT may order a change in price level from the railway companies (RBA, article 16(5)).

NETWORK ACCESS

Sharing access with other companies

19 | Must entities controlling rail infrastructure grant network access to other rail transport companies? Are there exceptions or restrictions?

Entities controlling rail infrastructures do not owe an obligation to grant network access to other rail transport companies. It is each business's decision whether or not to grant access to the other carriers. In practice, there are many 'mutual accesses' between commuter rail transports. A typical example of mutual access services is between suburban commuter services and downtown metro services, by which both companies enjoy an increase in passengers and convenience of rolling stock operations. If a rail transport business enters into a mutual transportation agreement with other carriers, it has to file a report to the MLIT (Railway Business Act, article 18). If it makes any changes to it, the same applies.

Access pricing

20 | Are the prices for granting of network access regulated? How?

No, there is no specific price mechanism or regulation for the prices for granting network access. In the case of mutual access, it is a usual method that the parties get access to the other party's line to the same extent (ie, using an index of the number of rolling stocks multiplied by the operating distance).

Competitor access

21 | Is there a declared policy on allowing new market entrants network access or increasing competition in rail transport? What is it?

No, there is no declared policy on allowing new market entrants network access or increasing competition in rail transport. First, as for Shinkansen, intercity services and local commuter services, the government does not seem to recognise that the rail transport has dominant power among the transportation service providers other than rail

transport (ie, airplanes services, expressway and local bus services). Second, as for commuter rail transport in metropolitan areas, the central and local governments focus more on the promotion of network and service level of existing and newly built lines. Particularly in the downtown area, owing to high construction costs and lack of capacity, even existing railway companies cannot construct new lines by themselves and have to collaborate with central and local governments to prepare long-term construction plans for new lines or rehabilitation of existing lines. Through this collaboration, an operating company for new or rehabilitated lines may be the company that had contributed to the project. Because of this, the issue of competitor access has rarely raised in Japan so far.

SERVICE STANDARDS

Service delivery

22 | Must rail transport providers serve all customers who request service? Are there exceptions or restrictions?

No. Rail transport providers do not have to serve customers:

- who are not in compliance with the laws and regulations on railway transport;
- who request a special condition for transport from the rail transport provider;
- whose transport would be against the public interest; and
- whose transport by rail would not be appropriate; or whose transport is inappropriate because of unavoidable circumstances, including but not limited to acts of God (Railway Operation Act (ROA), article 6).

23 | Are there legal or regulatory service standards that rail transport companies are required to meet?

Yes, the ROA and the Rail Transport Rules (Ordinance of the Ministry of Rail Transport No. 3 of 1942) together provide the minimum mandatory service standard for rail transport. Rail transport companies usually prepare their own rules, which are more friendly to shippers or passengers, and apply them.

Challenging service

24 | Is there a procedure for freight shippers or passengers to challenge the quality of service they receive? Who adjudicates those challenges, and what rules apply?

If a particular shipper or passenger is treated in an extraordinary, unfair or unreasonable manner with respect to the quality of services, the Antitrust Act, the Consumer Contract Act (Act No. 61 of 2000) and the Civil Code (Act No. 89 of 1896), which also sets out a basis for contract and tort claim, may be applicable. Among others, abuse of dominant position, which is stipulated in the FTC's General Designation, may be one of the possible grounds for business-to-business transaction disputes. But no cases have been reported publicly as to rail transport businesses. The ROA and the Rail Transport Rules do not directly entitle shippers and passengers to claim against rail transport providers; any breach thereof may be referred to in determining whether the level of a provider's services is in breach of rules or illicit.

SAFETY REGULATION

Types of regulation

25 | How is rail safety regulated?

The Ministry of Land, Infrastructure, Transport and Tourism has responsibility for regulating rail safety, based on the Railway Operation Act and Railway Business Act.

Competent body

26 | What body has responsibility for regulating rail safety?

The MLIT is responsible for regulating rail safety. In addition, the JTSC has the authority to advise the parties involved in a railway accident and to publish an opinion relating to the accident.

Manufacturing regulations

27 | What safety regulations apply to the manufacture of rail equipment?

The Railway Operation Act (ROA gives a basis for stipulating subordinate and technical rules on construction, equipment and operation of rail transport (ROA), article 1). Based on this, the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) stipulated several rules from safety perspective, such as (not exhaustive):

- the Ordinance on Railway Technology Standard (MLIT Ordinance No. 151 of 2001);
- the Notification on Periodical Inspection of Equipment and Rolling Stocks (MLIT Notification No. 1786 of 2001); and
- the Notification on Special Railway Technology Standard (MLIT Notification No. 1785 of 2001).

In addition to the above, many de facto standards for construction, manufacturing and maintenance was historically developed by the former Japan National Railway (JNR) and other railway companies, which are now succeeded to and accepted by Japan Railway (JR) and others. Some of them are published and available in the market. Details may differ widely to best suit for the systems and infrastructures the rail transport companies actually operate and maintain.

Maintenance rules

28 | What rules regulate the maintenance of track and other rail infrastructure?

The ROA gives a basis for stipulating subordinate and technical rules on construction, equipment and operation of rail transport (ROA, article 1). Based on this, the MLIT stipulated several rules from safety perspective, such as (not exhaustive):

- the Ordinance on Railway Technology Standard (MLIT Ordinance No. 151 of 2001);
- the Notification on Periodical Inspection of Equipment and Rolling Stocks (MLIT Notification No. 1786 of 2001); and
- the Notification on Special Railway Technology Standard (MLIT Notification No. 1785 of 2001).

In addition to the above, many de facto standards for construction, manufacturing and maintenance was historically developed by the JNR and other railway companies, which are now succeeded and accepted by the JR and others. Some of them are published and available in the market. Details may differ widely depending on the systems and infrastructures the rail transport companies currently operate and maintain.

29 | What specific rules regulate the maintenance of rail equipment?

The ROA gives a basis for stipulating subordinate and technical rules on construction, equipment and operation of rail transport (ROA, article 1). Based on this, the MLIT stipulated several rules from safety perspective, such as (not exhaustive):

- the Ordinance on Railway Technology Standard (MLIT Ordinance No. 151 of 2001);

- the Notification on Periodical Inspection of Equipment and Rolling Stocks (MLIT Notification No. 1786 of 2001); and
- the Notification on Special Railway Technology Standard (MLIT Notification No. 1785 of 2001).

In addition to the above, many de facto standards for construction, manufacturing and maintenance was historically developed by the JNR and other railway companies, which are now succeeded and accepted by the JR and others. Some of them are published and available in the market. Details may differ widely depending on the systems and infrastructures the rail transport companies currently operate and maintain.

Accident investigations

30 | What systems and procedures are in place for the investigation of rail accidents?

The Japan Transport Safety Board (JTSB) has authority to investigate rail accidents. Subject to consent of both houses of parliament, the Minister of MLIT appoints the chairperson and members of the JTSB (JTSB Act, article 8). The JTSB exercise its power independently (JTSB Act, article 6) but does not have the authority to punish or sanction the parties. In relation to the railways, the JTSB investigates the following:

- accidents caused by collision of trains;
- accidents caused by derailment (except for those relating to working snowploughs);
- accidents caused by fire;
- any other types of accidents, which are limited to:
 - accidents that caused the death of a passenger, member of the train crew, etc;
 - accidents that caused a minimum of five casualties, including at least one death;
 - accidents that involved a death that might have been caused by rail staff, or disorder, damage or destruction of railway facilities;
 - accidents that involved a death at a railway crossing without a barrier; and
 - particularly abnormal accidents; and
- material incidents.

Accident liability

31 | Are there any special rules about the liability of rail transport companies for rail accidents, or does the ordinary liability regime apply?

No, there is no special rule about the liability of rail transport for rail accidents. The ordinary liability regime applies to rail accidents. The Civil Code governs the liability of private companies. In relation to the transportation services provided by the local government, the State Redress Act (Act No. 125 of 1947) may apply, although such cases seem to be very rare, because the provision of transportation series is not characterised under the 'exercise of public authority of a state or of a public entity' (State Redress Act, article 2).

FINANCIAL SUPPORT

Government support

32 | Does the government or government-controlled entities provide direct or indirect financial support to rail transport companies? What is the nature of such support (eg, loans, direct financial subsidies, or other forms of support)?

Yes, the government enacted many statutes that give a basis for giving subsidies or loans to rail transport providers. Such statutes are (not exhaustive):

- the Japan Railway Construction, Transport and Technology Agency (JRRTT) Act;
- the JR Companies Act
- the Shinkansen Construction Act;
- the Act on Promotion of Convenience of Urban Railway (Act No. 41 of 2005);
- the Special Measure Act on Promotion of Integrated Development of Residential Development and Railway Construction (Act No. 61 of 1989); and
- the Special Measure Act on Promotion of Construction of Certain Urban Railways (Act No. 41 of 1986).

The most popular government support is given to JR Hokkaido and JR Shikoku. At the time of establishment of JR companies, the government set up a fund to stabilise the operation of the two mentioned and JR Kyushu. Now, since JR Kyushu successfully privatised and exited from this support scheme, JR Hokkaido and JR Shikoku may give loans to the JRRTT by using this fund and received interests. The amount of interest has been strong enough to offset the deficit from rail transport operation.

As for subsidies given from a city-planning perspective, any rail transport company that owns rail assets and equipment may receive subsidies for an integrated development of rail assets and city district. For example, if the city government plans to build a new multi-level crossing over existing railways, the governments will bear a larger portion of the construction costs. The central government may give special treatment as long as the project meets the requirement under each act.

Requesting support

33 | Are there sector-specific rules governing financial support to rail transport companies and is there a formal process to request such support or to challenge a grant of financial support?

The acts that provide mechanism of capital investment or special treatments to rail transport related projects have their own requirements. Among the special mechanisms, a rail transport company may apply for the application of a temporary 'additional fares' mechanism. Rail transport companies are allowed to put 'additional fares' to regular fares. These additional fares are not deemed to be a permanent increase of regular fares, and the rail transport company needs to pool them into a fund to improve or expand transportation capacity. Although the government does not substantially give any subsidies, rail transport businesses can enjoy interest-free funds with government authorisation.

LABOUR REGULATION

Applicable labour and employment laws

34 | Are there specialised labour or employment laws that apply to workers in the rail transport industry, or do standard labour and employment laws apply?

No. There are no specialised labour and employment laws applicable to the works in rail transport industry.

ENVIRONMENTAL REGULATION

Applicable environmental laws

35 | Are there specialised environmental laws that apply to rail transport companies, or do standard environmental laws apply?

While general laws on environment (ie, the Basic Act on Environment (Act No. 91 of 1993) and the Environment Impact Assessment Act (Act

No. 81 of 1997)) are applicable to the rail transport business, there are some guidelines specifically applicable to the rail transport in connection with environment impact assessment.

As for construction phase of the rail project, it is necessary to consider various factors such as other infrastructure projects.

UPDATE AND TRENDS

Key developments of the past year

36 | Are there any emerging trends or hot topics in your jurisdiction?

In the metropolitan area, several new lines are being constructed. They are expected to enhance passenger convenience by creating a shortcut to the existing detour route.

As for the maglev project between Tokyo and Nagoya, JR Central commenced construction work but a water source problem in the mountain area raised by a local government has become an obstacle to further construction works. Because of this problem, commencement of the maglev system's operation may be pushed back a year or more.

Coronavirus

37 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

To date, there is no emergency legislation nor are there relief programmes specifically applicable to rail transport. However, since the government announced a state of emergency under the New Influenza Special Measures Act (Act No. 31 of 2012) and encouraged people to stay home and not to travel, passenger rail transport has suffered a serious loss of revenue. It is reported that JR East is now considering a new variable fare system, which may be within the current legal scheme, to reduce the impact of covid-19. In any event, it may take more time for rail transport businesses to adapt the rail system in covid-19 circumstances.

NAGASHIMA OHNO & TSUNEMATSU

Naoki Iguchi

naoki_iguchi@noandt.com

JP Tower
2-7-2 Marunouchi
Chiyoda-ku
Tokyo 1007036
Japan
Tel: +81 3 6889 7000
www.noandt.com/en

Other titles available in this series

Acquisition Finance	Distribution & Agency	Investment Treaty Arbitration	Public M&A
Advertising & Marketing	Domains & Domain Names	Islamic Finance & Markets	Public Procurement
Agribusiness	Dominance	Joint Ventures	Public-Private Partnerships
Air Transport	Drone Regulation	Labour & Employment	Rail Transport
Anti-Corruption Regulation	e-Commerce	Legal Privilege & Professional Secrecy	Real Estate
Anti-Money Laundering	Electricity Regulation	Licensing	Real Estate M&A
Appeals	Energy Disputes	Life Sciences	Renewable Energy
Arbitration	Enforcement of Foreign Judgments	Litigation Funding	Restructuring & Insolvency
Art Law	Environment & Climate Regulation	Loans & Secured Financing	Right of Publicity
Asset Recovery	Equity Derivatives	Luxury & Fashion	Risk & Compliance Management
Automotive	Executive Compensation & Employee Benefits	M&A Litigation	Securities Finance
Aviation Finance & Leasing	Financial Services Compliance	Mediation	Securities Litigation
Aviation Liability	Financial Services Litigation	Merger Control	Shareholder Activism & Engagement
Banking Regulation	Fintech	Mining	Ship Finance
Business & Human Rights	Foreign Investment Review	Oil Regulation	Shipbuilding
Cartel Regulation	Franchise	Partnerships	Shipping
Class Actions	Fund Management	Patents	Sovereign Immunity
Cloud Computing	Gaming	Pensions & Retirement Plans	Sports Law
Commercial Contracts	Gas Regulation	Pharma & Medical Device Regulation	State Aid
Competition Compliance	Government Investigations	Pharmaceutical Antitrust	Structured Finance & Securitisation
Complex Commercial Litigation	Government Relations	Ports & Terminals	Tax Controversy
Construction	Healthcare Enforcement & Litigation	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Healthcare M&A	Private Banking & Wealth Management	Technology M&A
Corporate Governance	High-Yield Debt	Private Client	Telecoms & Media
Corporate Immigration	Initial Public Offerings	Private Equity	Trade & Customs
Corporate Reorganisations	Insurance & Reinsurance	Private M&A	Trademarks
Cybersecurity	Insurance Litigation	Product Liability	Transfer Pricing
Data Protection & Privacy	Intellectual Property & Antitrust	Product Recall	Vertical Agreements
Debt Capital Markets		Project Finance	
Defence & Security Procurement			
Dispute Resolution			

Also available digitally

[lexology.com/gtdt](https://www.lexology.com/gtdt)