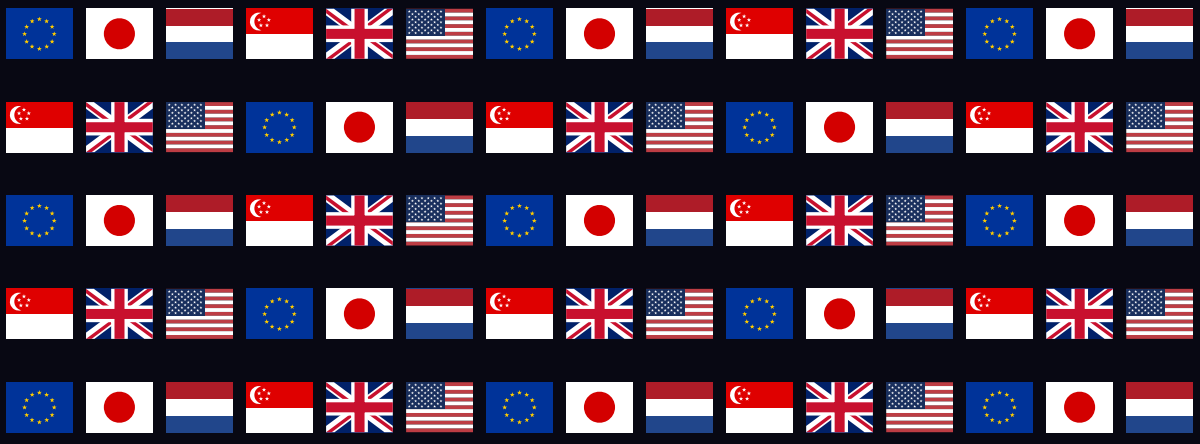
RAIL TRANSPORT

Japan



LEXOLOGY
Getting The Deal Through

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Quick reference guide enabling side-by-side comparison of local insights into industry structure and regulatory bodies: market entry; market exit; competition law; price regulation; network access; service standards; safety regulation; financial support; labour regulation; environmental regulation; and recent trends.

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Japan

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GENERAL

Industry structure

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

The Ministry of Land, Infrastructure, Transport and Tourism (MLIT), the 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 transport providers for passenger transport and one for freight); (2) major private railways; (3) local private railways; and (4) local public-private joint ventures (or 'semi-public sector companies').

The first category, JR companies, have common roots in the former Japan National Railway (JNR), the nation-owned rail transport provider both for passenger transport and freight. In 1987, the JNR was privatised and split into seven joint-stock companies that, at that time, were established 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 affiliate organisation. Thereafter, initial public offers for shares of four out of six companies for passenger transport were successful, and the JR Companies Act is no longer applicable to JR East, JR West, JR Central and JR Kyushu. The shares of the remaining three companies, JR Hokkaido, JR Shikoku and JR Freight, are still owned by the JRTT. While JR companies still keep their mutual extension operations, they are not independent of each other.

The second category, major private railways, has its origin in interurban and commuter rail transport providers that commenced services 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. Before 1987 the JNR was prohibited from diversifying its businesses like private railway companies. Now, the JR Companies have become strong competitors to major private railways; not only in passenger transport services but also in associated business activities.

The third and fourth categories are smaller in scale. Most of them are struggling with fewer passengers or freight service demands in local areas. Central and local governments are supporting them through various subsidy mechanisms.

From a technology perspective, a narrower gauge of 1,067mm was adopted nationwide from the first introduction of a railway system in 1872, even in main routes. Because of this, the train speeds were limited to 120 to 130km per hour. To overcome this speed-limit, the high-speed rail system, as known as 'Shinkansen', adopted a wider gauge of 1,435mm from 1964, which now enables the trains to run with a maximum speed of 320km per hour. JR East is now testing the train running with a maximum speed of 360km per hour. Furthermore, separate from the existing high-speed rail, JR Central commenced construction of the Maglev line between Tokyo and Nagoya (and subsequently being extended to Osaka), planning to operate the passenger transport service with a maximum speed of 505km per 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, in 2019. In the covid years, ie, 2020 and 2021, the number of passengers had fallen sharply, and the rail transport sector is seriously impacted.

Law stated - 28 July 2022

Ownership and control

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 the newly built Shinkansen lines. 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 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.

The unique feature of the Shinkansen Construction Act is that, if a new Shinkansen line is built and completed, it will allow JR companies to stop operations on the corresponding old lines. It is highly likely that the areas where new Shinkansen lines are built usually have a sparse population. Because of this, JR companies that undertake Shinkansen line operations usually desire to avoid over-supply of rail passenger services. If a JR company gives up the old commuter line, a local government establishes public-private joint ventures to take over the commuter services of the old lines. Recently, some local governments have opposed this system and refused to raise funding for the new Shinkansen lines, which has caused political frictions between neighbouring local governments, particularly in the West-Kyushu Shinkansen project.

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.

Law stated - 28 July 2022

Are freight and passenger operations typically controlled by separate companies?

Generally, rail transport services for passengers and freight are provided by different companies, with some exceptions. Among the JR companies, the land, facilities and equipment for the rail network are generally owned by six JR companies for passenger transport. JR Freight purchases the transportation capacity from these six JR companies, and in some part, from local public-private joint venture companies for passenger services. The central government provides adjustment funds to fill the gaps between the required capacity fees and the amount that the JR Freight can afford.

Exceptions are some local rail transport providers for freight, most of which are owned and operated by public-private joint ventures. Some of them also provide local commuter services for passengers in addition to the freight transport services.

Law stated - 28 July 2022

Regulatory bodies

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) (RBA), the Light-Rail Act (Act No. 76 of 1921) and the Railway Operation Act (Act No. 65 of 1999) (ROA).

In addition, the Japan Transport Safety Board (JTSB), an independent administration committee established under the JSTB Establishment Act (Act No. 113 of 1973) (the JTSB Act), has given the authority to investigate traffic accidents, including rail traffic accidents. The JSTB's mission is to investigate the cause of accidents and to give recommendations or advice to the providers as well as the regulators.

Law stated - 28 July 2022

MARKET ENTRY

Regulatory approval

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 must prepare an application form, including a '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 the MLIT has to review the following requirements (RBA, article 5):

1. the appropriateness of the plan from a business perspective;
2. the appropriateness of the plan from a safety perspective;
3. how effective the plan will be for conducting business if it fulfils requirements other than (1) and (2); and

4. the applicant's ability to properly conduct the business by itself.

Law stated - 28 July 2022

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 acquiring control of the rail transport operation or business.

With regard to the transfer of a rail transport operation, or a merger or company split, MLIT approval is necessary (RBA, article 26). The applicants, both parties to the transaction, must submit applications with supporting documents. The MLIT will grant approval based on the standards for the rail transport operation or business approval (RBA, articles 5 and 6). The only exception is a case where an existing rail transport provider merges with a non-rail transport provider (RBA, article 26(2)).

With regard to acquiring the controlling shares of an existing rail transport provider, MLIT approval is not necessary; however, if a purchaser of the shares is a foreign investor, the Foreign Exchange and Foreign Trade Control Act (Act No. 228 of 1949) will apply.

Law stated - 28 July 2022

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

There is no special requirement for foreign entities under the RBA. However, the Foreign Exchange and Foreign Trade Act (Act No. 228 of 1949) (FEFTA) and its subordinate regulation, the Cabinet Ordinance on Inward Direct (the Direct Investment Ordinance) apply as part of the general rules for investment by foreign entities.

An investment in a rail transport operation or business is categorised as business relating to national security, which is known as the core business (Direct Investment Ordinance, article 3(2)[3]). Although the Direct Investment Ordinance provides complicated schemes for requirements and exemptions, it generally requires that a foreign entity that plans to (1) acquire no less than 10 per cent of the shares of the listed rail transport providers or (2) acquire the shares of the unlisted rail transport providers, shall file a 'report' to the Minister of Finance and the Minister of the 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) 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.

As at 2020, it seems that foreign investors own minor percentages of the shares of the listed Japan Railway companies. In contrast, it seems that foreign investors have more percentages of shares in the holding companies of major private rail transport providers, such as Tokyu Corporation and Hankyu-Hanshin Holdings, Inc, according to their website information. They are well known as successful business models that have diversified their business categories, although they were rail transport providers at the beginning and they still own rail transport provider companies as their subsidiaries.

Law stated - 28 July 2022

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

Yes, regulatory approval is necessary for the construction of a new rail line.

A party that plans to become a transport provider in any category (Category I, II or III) shall submit an application for approval to the Minister of the MLIT. This application must meet the requirements for approval of rail transport providers as set out in the RBA (articles 5 and 6).

A rail transport provider must apply for a separate approval upon commencement of the construction work (RBA, article 8). The applicant must ask for the MLIT's specific approval if there are any changes, including those to the planned completion time, except de minimus changes (RBA, article 9(1)(2)). De minimus changes shall be reported to the MLIT (RBA, article 9(3)). Upon completion of such construction work, the applicant shall ask for the MLIT's inspection on the completed work (RBA, article 10).

The RBA specifically requests that the applicant apply for inspection of facilities and equipment by the MLIT upon the completion of such facilities (RBA, articles 11). Likewise, the applicant shall ask for the MLIT's approval if there are any changes, except de minimus changes (RBA, article 12).

Further, if the applicant is a Category I or II rail transport provider, the RBA requests that it apply for the MLIT's confirmation on the rolling stocks (RBA, article 13(1)). The MLIT will scrutinise the design of the rolling stocks, with reference to the technical standards issued by the MLIT. Any changes to the design of the rolling stocks shall be reported for the MLIT's confirmation (RBA, article 13(2)).

Law stated - 28 July 2022

MARKET EXIT

Discontinuing a service

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

The Railway Business Act (RBA) governs a rail service provider's ability to suspend or to voluntarily discontinue services or to remove rail infrastructures. In principle, a rail service provider need not obtain approval from the authority. The RBA provides slightly different processes and necessary time periods for services for passengers and freight as follows:

- Suspensions: the rail transport provider shall submit a report of suspension to the Ministry of Land, Infrastructure, Transport and Tourism (MLIT). The period of suspension cannot exceed one year (RBA, article 28).
- Discontinuation of rail transport service for passengers: the railway business provider shall submit an 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 Minister's decision. The rail service provider may advance the date of abolition upon receipt of the Minister's notice (RBA, article 28-2(1) to (5)).
- Abolition of a railway service for freight: the railway business provider shall, in principle, submit an abolition report to the MLIT six months prior to the date of the service being abolished (RBA, article 28-2(6)).

In practice, rail service providers indicate the possible discontinuation of a particular route or line several years prior to the possible date of discontinuation, considering possible utilisation promotion plans as well as the local government's financial support. If the utilisation is not improved even after such promotion and support, the providers then propose an alternative transport service such as bus transit services. Although MLIT approval is not required, the MLIT will set up a hearing for 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 reporting period is six months (article 28-2(6)). In practice, to avoid reputation decline, most rail transport providers take gradual steps, which sometimes takes a lot longer than the legally required period, to discontinue rail transport services.

Law stated - 28 July 2022

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

- if the railway business breaches the RBA, 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 RBA;
- if the railway business does not receive approval to commence construction under article 8.1 of the RBA;
- 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.

Other 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).

Law stated - 28 July 2022

Insolvency

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 providers. However, bankruptcy is a reason for disqualification (RBA, article 6[3]). Other insolvency procedures will not directly affect the rail transport provider's legal status. Furthermore, if a rail transport provider is a legal corporation, it must obtain approval from the Minister of the MLIT before it begins the process of dissolution (RBA, article 29).

Law stated - 28 July 2022

COMPETITION LAW

Competition rules

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 rail transport providers. The Antitrust Act regulates against the following types of business activities or organisations: private monopolisation (article 2(5)); unreasonable restraint of trade (ie, cartel) (article 2(6)); unfair trade practices (article 2(7)); and business associations (article 8). In the Antitrust Act, there is no exemption applicable to rail transport providers.

As for sector-specific competition rules, there are no statutes or regulations. The only exception is the Fair Trade Commission's (FTC) 'Designation of Unfair Trade Practices', which designates 'Logistics' as one of the categories of 'Special Designation'. In summary, this special designation plans to protect subcontractors in the logistics industry. Although not specific to rail transport, this designation is applicable to the freight service providers that retain subcontractors for combined transport.

Law stated - 28 July 2022

Regulator competition responsibilities

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

The MLIT, as the sector-specific regulator, is responsible for enforcing the RBA and the Railway Operation Act.

The Antitrust Act and its subordinate regulations and rules are enforced by the FTC.

Law stated - 28 July 2022

Competition assessments

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

No standards for assessment of the competitive effect of a transaction are set out in the Antitrust Act. However, the FTC published several guidelines for particular forms of transactions, which refer to 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.

Law stated - 28 July 2022

PRICE REGULATION

Types of regulation

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

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

Rail transport for freight accounts for approximately 1 per cent of the volume of shares in the domestic freight transportation industry. If the conveying distance is included, this increases to 5 per cent. Generally, rail transport for freight is not seen as having dominant power in the industry. For domestic freight transportation, coastal shipping and truck transportation are very competitive generally due to Japan's geographic and geocentric position.

Law stated - 28 July 2022

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

Yes, the upper limits of the fares and surcharges charged by rail carriers for passenger transport must be approved (Railway Business Act (RBA), article 16(1)). The Ministry of Land, Infrastructure, Transport and Tourism (MLIT) will scrutinise such upper limits and approve or reject them.

Rail transport providers will determine the actual fares and surcharges within such upper limits, and report the determined prices to the MLIT. If the actual fares and surcharges are changed, rail transport providers must report this to the MLIT (RBA, article 16(3)).

Rail transport providers may set out special surcharges for special luxury services in addition to the fares and regular surcharges, beyond the upper limits. If such special surcharges are determined, or thereafter changed, rail transport providers must report this to the MLIT (RBA, article 16(4)).

Moreover, the MLIT may order a rail transport provider to change the fares and regular or special surcharges for passengers if specific passengers are treated in a discriminatory manner or the fare or surcharges may cause unreasonable competition with other rail transport providers (RBA, article 16(5)).

In addition, any increase to the fares and surcharges must be published seven days prior to the enforcement date (Railway Operation Act, article 3).

Law stated - 28 July 2022

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; however, the two cases that have attempted this thus far have been unsuccessful.

The first was a case where a user of one of the major private rail transport providers challenged the level of surcharge for limited express services (judgment of the Supreme Court on 13 April 1989, Kintetsu case). The second was a case where commuter train users of another public-private joint-venture rail transport provider challenged the level of regular

fares that were comparatively higher than other commuter rail transport providers in neighbouring areas (judgment of the Supreme Court on 21 April 2015, Hokuso Railway case).

Since the plaintiffs challenged the MLIT's approval, these two cases were heard as administrative litigation cases. The Supreme Court dismissed the challenges due to the plaintiffs' lack of standing. It is not 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 extraordinarily 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 possible grounds for business-to-business transaction disputes. But no cases have been reported publicly as to rail transport providers.

Law stated - 28 July 2022

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)).

Law stated - 28 July 2022

NETWORK ACCESS

Sharing access with other companies

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

Entities controlling rail infrastructures do not have specific obligations to grant network access to other rail transport providers. It is each entity's business decision whether or not to grant access to the other rail transport providers.

Among the three categories of rail transport providers, many of the Category III providers will lease the rail facilities to the Category II providers for their operation. The terms and conditions of the lease and operation agreement or arrangement need to be approved by the Ministry of Land, Infrastructure, Transport and Tourism (MLIT), upon the rail transport providers' application (Railway Business Act (RBA), article 15).

In practice, there are many 'mutual accesses' between commuter rail transports providers. A typical example of mutual access services is between intercity commuter transport and downtown metro and underground transport, by which users' benefits are significantly improved. For these mutual accesses, rail transport provides shall report and submit a copy of a mutual access agreement to the MLIT (RBA, article 18). If they make any changes to it, the same applies. Although the parties to such agreement may agree to the detailed terms and conditions, the MLIT ordinance sets out necessary issues and items to be agreed upon for the party's report to the MLIT.

Law stated - 28 July 2022

Access pricing

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

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

Law stated - 28 July 2022

Competitor access

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, for high-speed rail (Shinkansen), intercity rail transport and local commuter rail transport, the government does not seem to recognise that rail transport has dominant power among all the transportation service providers, such as airlines, expressway and local bus transit services.

Second, for commuter rail transport in metropolitan areas, the central and local governments focus more on the promotion of network and the service level of existing and newly built rail transport. Particularly in the downtown area, owing to high construction costs and lack of capacity, even existing rail transport providers cannot construct new lines by themselves and have to collaborate with central and local governments to prepare long-term construction plans for new routes or rehabilitation of existing routes. 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's access has rarely been raised in Japan so far.

Law stated - 28 July 2022

SERVICE STANDARDS

Service delivery

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).

More generally, the Act on Promotion of Smooth Transit of Elderly and Handicapped Persons (Act No 91 of 2006) also applies to rail transport. Under this Act, for example, a station that has more than 5,000 users per day needs to

eliminate large steps by installing escalators or elevators. In practice, for smaller stations, many rail transport providers in urban areas dispatch assistance staff for users' prior requests, but this depends on the service standard of each rail transport providers.

Law stated - 28 July 2022

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.

Law stated - 28 July 2022

Challenging service

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 Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade, 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.

Additionally, abuse of a dominant position, which is stipulated in the Fair Trade Commission'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.

Law stated - 28 July 2022

SAFETY REGULATION

Types of regulation

How is rail safety regulated?

Rail transport providers must stipulate their own Safety Rules and report them to the Ministry of Land, Infrastructure, Transport and Tourism (MLIT). If there are any changes to them, the same applies (Railway Business Act (RBA), article 18-3(1)).

Safety Rules must contain several statutory issues, including safety management organisation, safety management methods and the appointment of a safety manager or a transport operation manager, among others.

The MLIT may order that the proposed Safety Rules be changed if it finds them not in compliance with the statute (RBA, article 18-3(2)[1] to [6]). The MLIT may order the rail transport provider to replace the safety manager or the transport operation manager if it finds that the manager has failed to perform their mission and hinder the safety transport operation (RBA, article 18-3[7]).

Finally, if the MLIT finds that the rail transport provider breached or violated the statutory obligations under the RBA, it may rescind the approval, after consulting with the Transportation Council (Unyu-Shingikai) (RBA, article 30 and 64-2).

Law stated - 28 July 2022

Competent body

What body has responsibility for regulating rail safety?

The MLIT is responsible for regulating rail safety. In addition, the Japan Transport Safety Board (JTSB) has the authority to advise the parties involved in a railway accident and to publish an opinion relating to the accident.

Law stated - 28 July 2022

Manufacturing regulations

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 MLIT has stipulated several rules from a 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).

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

In addition to the ROA regulation framework, the RBA requests that the MLIT carries out the following to ensure that rail transport providers comply with the rules and standards:

- inspect completion of the works, namely buildings and civil works (RBA, article 10);
- inspect the railway facilities and equipment (RBA, article 11); and
- confirm the rolling stocks (RBA, article 13).

Law stated - 28 July 2022

Maintenance rules

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 has stipulated several rules from a 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 were historically developed by the JNR and other railway companies, which are now succeeded and accepted, with updates and revisions, by the JR companies 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.

Law stated - 28 July 2022

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 has stipulated several rules from a 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 were historically developed by the JNR and other railway companies, which are now succeeded and accepted, with updates and revisions, by the JR companies 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.

Law stated - 28 July 2022

Accident investigations

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

The JTSB has the authority to investigate rail accidents. Subject to the consent of both houses of parliament, the Minister of the MLIT appoints the chairperson and members of the JTSB (JTSB Act, article 8). The JTSB exercises its power independently (JTSB Act, article 6) but does not have the authority to punish or sanction 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.

Law stated - 28 July 2022

Accident liability

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

No, there are no special rules 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).

Law stated - 28 July 2022

FINANCIAL SUPPORT

Government support

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):

- Japan Railway Construction, Transport and Technology Agency (JRTT) Act;
- Act on the Rail Companies for Passengers and Japan Freight Railway Company (Act No. 88 of 1986);
- Shinkansen (high-speed rail) Construction Act (Act No. 71 of 1970);
- Act on Promotion of Convenience of Urban Railway (Act No. 41 of 2005);
- Rail and Light Rail Construction Act (Tetsudo-Kido-Seibiho) (Act No. 169 of 1953);
- Special Measure Act on Promotion of Integrated Development of Residential Development and Railway Construction (Act No. 61 of 1989);
- Special Measure Act on Promotion of Construction of Certain Urban Railways (Act No. 41 of 1986); and
- Local Transportation Promotion and Rehabilitation Act (Act No. 59 of 2007).

Most popular government support is given to JR Hokkaido and JR Shikoku. At the time of the establishment of the JR companies, the government set up a fund to stabilise the operation of these two companies. These two companies may give loans to the JRTT by using this fund and received interest under the JRTT Act. However, these schemes have not been sufficient to set off two companies' deficit recently. The central government has given special support to these two companies as well as JR Freight.

In addition to them, some local private and public-private joint venture rail transport providers are struggling with consistent population decrease in rural areas. Local governments sometimes give financial support to them. The central government also gives support to them by using a scheme under the Rail and Light Rail Construction Act and Local Transportation Promotion and Rehabilitation Act. Typically, these schemes are used to fund the capital investment to reconstruct and rehabilitate the tracks, bridges and other rail transport facilities if they are severely damaged by natural disasters.

As for subsidies given from a city-planning perspective, any rail transport company that owns rail assets and equipment may receive subsidies for the integrated development of rail assets and city districts. For example, if the local government plans to build a new multi-level crossing over existing railways in a city, it 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.

Law stated - 28 July 2022

Requesting support

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?

Some acts, such as the Rail and Light Rail Construction Act and the Local Transportation Promotion and Rehabilitation Act, provide mechanisms of capital investment or special treatments to rail transport providers with certain requirements.

One of the sector-specific mechanisms is '(temporary) additional fares' in rail transport. Rail transport providers are allowed to charge additional fares on top of 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.

Law stated - 28 July 2022

LABOUR REGULATION

Applicable labour and employment laws

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 workers in the rail transport industry.

Law stated - 28 July 2022

ENVIRONMENTAL REGULATION

Applicable environmental laws

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

While general laws on the 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 rail transport in connection with environmental impact assessment.

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

One of the hot topics in the area of environmental regulation is the water-flow preservation request by Shizuoka governor against JR Central's Maglev Project. The governor refers to the River Act (Act No 167 of 1964) and holds the construction works in Shizuoka prefecture. It may need more time to resolve this difference of opinion.

Law stated - 28 July 2022

UPDATE AND TRENDS

Key developments of the past year

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

In 2021 and early 2022, rail transport services for passengers are still struggling with the decreases in the volume of passengers. Even though the number of commuters is gradually recovering, it has not recovered to pre covid-19 levels.

Concurrently, due to the nationwide population decrease (except the Tokyo Metropolitan area), local transportation sectors are suffering serious business deterioration. The JR East and West, which have many local routes in sparsely populated areas, announced and raised a problem in early 2022 that their local route networks needed to be restructured, including discontinuation of rail services and transformation to other modes of transportation, in most of the cases, bus transportation. This problem persistently existed even at the end of the 20th century, which emerged because JR companies are finding it difficult to continue cross-subsidisation between urban and local networks.

This problem evoked strong objections from some local governors. Furthermore, a high-ranking official indicated that JR needed to further communicate with the local government if it plans to discontinue rail services, although it is not expressly stipulated in the relevant statutes.

Law stated - 28 July 2022

Jurisdictions

European Union	Herbert Smith Freehills LLP
Japan	Nagashima Ohno & Tsunematsu
Netherlands	LegalRail
Singapore	CMS Cameron McKenna Nabarro Olswang LLP
United Kingdom	Dentons
USA	Sidley Austin LLP