

Saudi's New Railways Law Further Enhances the Kingdom's Rail Infrastructure Projects

The law, which took effect in June, impacts developers, investors, lenders, operators, and suppliers in the Saudi railway sector.

As Saudi Arabia continues to make significant advances in urban development and mobility, the Kingdom's ambitious rail and metro projects (including the recent announcement to commence passenger services on the Riyadh Metro in 2024) are playing a leading role in a growth sector — transportation and logistics.

Railway offers a cost-effective, environmentally-friendly, reliable and safe means of transporting both freight and passengers — essential infrastructure given the many global events due to be hosted in the Kingdom in the next decade and the need to connect cities, reduce congestion, and improve liveability.

The Kingdom recently published its new Railways Law, which took effect this summer and is designed to support the large pipeline of cross-country, inner-city, and inter-city rail infrastructure projects. The Transport General Authority (TGA) is due to publish the implementing regulations to the new Railways Law imminently.

This Client Alert highlights the central features of the new Railways Law for developers, investors, lenders, operators, and suppliers in a growth sector.

Privatisation

The new Railways Law establishes the basis for rail privatisation through the formal introduction of different roles — ownership, management, and operation — each with different responsibilities for public railways:

Infrastructure Manager

A person licensed to manage railway infrastructure and provide associated management services whether or not that person owns the railway infrastructure.

An Infrastructure Manager may not act as an Operator unless it is the concession holder or the TGA Board of Directors otherwise approves.

Infrastructure Owner

A person owning railway infrastructure – all facilities, utilities, systems, and programmes necessary to safely operate the railway (including lands allocated to railway or their facilities, the areas designated for the railway, tunnels, bridges, electrical supply lines, equipment, and construction works supporting them or associated with them or their components; and excluding trains, locomotives, and wagons).

Operator

A person licensed to provide any railway services – services related to the operation and maintenance of the railway network and any of its facilities, passenger transportation services, freight transportation services, infrastructure management services, and maintenance of trains, locomotives, and wagons.

Operating Licences

Any person wishing to provide railway services or operate a railway network or facilities must first obtain a licence and a safety certificate from the TGA. The TGA may include (and amend) specific conditions in any operating licence, provided they do not contravene with other Railways Law provisions. The implementing regulations are expected to specify the conditions for applying for and renewing safety certificates. No licence is required for operating a private railway network, i.e., one within the boundaries of private facilities and that does not serve the public.

Passenger Fares

Public railways are costly projects and are often subsidised by the government. Indeed, the private sector is rarely (if at all) expected to bear revenue risk. Procurers should be aware the TGA is authorised to regulate passenger fares and may penalise operators or even revoke their licence if passengers are charged more than the TGA-approved fares.

Passenger fares (for inner-city and inter-city public railways) must be determined and approved in accordance with TGA's Fare Policy (2020 as amended). The policy aims to encourage the use of public transport by ensuring affordability for users and seeking to achieve an appropriate financial balance between affordability and costs, ticket revenue, and long-term government support.

The TGA is currently evaluating updates to its Fare Policy and an amended version is expected in Q1 2025.

Change of Control

The TGA may revoke an operating licence if an operator (licencee) undergoes a change in control. "Control" is defined as the ability to influence the actions or decisions of another person, directly or indirectly, individually or jointly with a subordinate, through owning a significant percentage of voting rights in the operator or the right to appoint all or some members of the operator's administrative staff.

Security Interests

Lenders and sponsors should be aware of the potential approval requirements with respect to enforcing security over railway infrastructure. Notably, neither the Infrastructure Manager nor a bankruptcy trustee appointed in respect of an Operator's bankruptcy or insolvency may transfer (or approve the transfer of) ownership of railway infrastructure assets (including buildings and facilities), create (or approve the creation of) security interests (and similar rights) over railway infrastructure assets (including buildings and facilities), or take any action to seize or dispose of railway infrastructure assets (including buildings

and facilities) without the prior approval of the TGA and the Infrastructure Owner, unless such actions are based on a final judicial ruling in favour of the Infrastructure Manager or such bankruptcy trustee.

Step-In Rights

Lender step-in rights under the financing agreements will be subject to the TGA's step-in rights under the Railways Law.

The TGA may direct an Infrastructure Owner to appoint another licensed operator or third party to operate a railway subject to the licence if: bankruptcy, insolvency, or liquidation proceedings have commenced in respect of the existing Operator; the TGA deems that such proceedings are likely to occur; the TGA cancels or suspends the Operator's licence; the Operator stops providing the services without the TGA's prior written approval, or if the TGA is certain of the Operator's intention to stop providing the services based on the results of an investigation by a committee composed of the Ministry of Transport and Logistics Services, the TGA and the Infrastructure Manager; or any other condition in the concession agreement that requires another licensee to replace the Operator.

Operators must notify the TGA immediately if they have commenced bankruptcy, insolvency, or liquidation proceedings. The TGA may request the competent court to appoint a bankruptcy trustee in accordance with the applicable laws. If an Operator is unable to continue providing the services, the TGA may transfer the services to one or more persons to ensure continuity of services.

Competitive Tendering

Concession contracts for the construction of public railways and the provision of public railway services (which includes network operation and maintenance, freight and passenger services, infrastructure management services, and maintenance of locomotives, trains, and wagons) must be competitively tendered.

Competition

Operators are prohibited from concluding any restrictive agreements or undertaking any act or practice that would prejudice or limit competition in railway operations and services without the TGA's prior written approval. The TGA may suspend operations if it believes any such restrictive agreements, actions, or practices are in effect.

Coordination of Public Utilities

Public utility authorities must coordinate with the Infrastructure Manager in the laying of any new utility lines.

Corridor Approval

The area on which a public railway is built, and the areas either side of that railway, must be approved by the TGA Board of Directors in coordination with the relevant entities according to the railway's operating needs, safety, and technical requirements.

Access, Audit, and Monitoring

The TGA may enter any property or related facility to verify compliance with licence conditions, safety certificate conditions, and to carry out inspections and audits of the Operator. The Operator must

cooperate with the TGA (or its appointed representative) and submit any information and documents requested by the TGA.

The TGA may instruct any licensee to take action to correct any non-compliance with the Railways Law and regulations.

Operating Standards

The Operator is responsible for ensuring trains, locomotives, wagons, and other equipment comply with both Saudi Arabia and internationally approved operating standards.

Passenger Rights and Obligations

Operators and passengers must comply with the regulations governing the rights and obligations of public transport users that establish statutory rights for passengers to be compensated by Operators for loss of, damage to or delay of baggage, and cancellation of or delay of services in accordance with TGA's policies; and statutory liability for the Operator with respect to damage sustained by passengers and third parties as a result of Operator error.

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