

Rail Transport

Contributing editor
Matthew J Warren



2019

GETTING THE
DEAL THROUGH 

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Contributing editor
Matthew J Warren
Sidley Austin LLP

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Preface

Rail Transport 2019

First edition

Getting the Deal Through is delighted to publish the first edition of *Rail Transport*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

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 **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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.gettingthedealthrough.com.

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.

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 Matthew J Warren of Sidley Austin LLP, the contributing editor, for his assistance in devising and editing this volume.

GETTING THE 
DEAL THROUGH 

London
September 2018

Singapore

Adrian Wong, Joseph Yeo and Christopher Kang

CMS Cameron McKenna Nabarro Olswang (Singapore) LLP

General

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

The public rail transport industry in Singapore consists of a metro system known as the mass rapid transit (MRT) system as well as various light rail transit (LRT) lines (collectively, the Rapid Transit Systems).

In 2016, the Land Transport Authority (LTA) announced the conclusion of discussions with SMRT Trains Limited on the transition of the North-South and East-West lines, the Circle Line and the Bukit Panjang LRT to the New Rail Financing Framework (NRFF), which provided for the transfer of all rail operating assets (including trains, signalling systems and maintenance equipment) for these lines to the LTA.

In February 2018, the LTA announced the conclusion of discussions with SBS Transit Limited (SBS Transit) on the transition of the North East Line, Sengkang LRT and Punggol LRT to the NRFF. The rail operating assets for these lines transferred to the LTA on 1 April 2018.

Together with the Downtown Line, which began to be developed under the NRFF in 2011, the entire rail network has been transferred to the NRFF and the LTA owns all rail operating assets.

Prior to the NRFF, rail operators owned the operating assets and were responsible for building up, replacing and upgrading these operating assets.

Operation of the rail assets and systems, however, are undertaken by private transport operators SMRT Corporation Limited (SMRT) and SBS Transit under licences issued by the LTA. The operators are also responsible for the maintenance of these assets.

In addition, there is a shuttle train service that links the Woodlands Train Checkpoint in Singapore with Johor Bahru Sentral in Malaysia (the KTM Line). Keretapi Tanah Melayu (KTM) owns and operates the KTM Line. KTM is owned by the government of Malaysia.

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 government owns (through its sovereign wealth fund Temasek Holdings) a 100 per cent interest in SMRT. As at the date of writing, SBS Transit is privately owned.

As described in question 1, under the NRFF, the government (through the LTA) now owns all rail operating assets relating to the Rapid Transit Systems.

The LTA is also 'operator of last resort' as it is required under the Rapid Transit Systems Act (Chapter 263A) (the RTS Act) to operate any rapid transit system in the event there is, for any reason, no licensee to operate the system. A rapid transit system is defined under the RTS Act as any railway line, or a combination of two or more railway lines, and any part thereof comprised in that line or those lines set up or intended to be set up under the RTS Act to meet the transport requirements of the public.

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

To the best of our knowledge, there are currently no freight rail operations in Singapore.

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

The LTA is the key regulatory body for rail transport in Singapore.

The main statutes governing rail transport are the RTS Act, the Railways Act (Chapter 263) (the Railways Act) and the Public Transport Council Act (Chapter 259B) (the PTC Act), and their relevant subsidiary legislation.

The Railways Act does not apply to the LTA or any railway covered under the RTS Act. The Rapid Transit Systems are railways under the RTS Act.

Market entry

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

The RTS Act prohibits the operation of any rapid transit system (subject to the RTS Act) by any person (other than the LTA) unless that person is licensed by the LTA to do so.

Interested applicants will typically have to participate in an invitation to tender conducted by the LTA for the right to operate a rapid transit system. An applicant shall be required to state the amount that it is willing to pay for the grant of a licence (cash bid). The cash bid shall be payable if the applicant is granted a licence (the operator licence).

The LTA will then grant the selected company an operator licence to operate the relevant rapid transit system for the period specified in the licence unless the licence has been revoked, cancelled or suspended.

The granting of an operator licence is discretionary. The LTA will have regard to the financial standing of the applicant and its ability to maintain an adequate, satisfactory, safe and efficient service.

The proposed licensee will also have to pay:

- a licence fee, which is prescribed under the Rapid Transit Systems (Fees) Regulations; and
- a licence charge, which is determined by the LTA and specified in the licence after taking the following into account:
 - the relative viability of operating and maintaining the relevant rapid transit system in the network of rapid transit systems;
 - the long-term operational and maintenance needs of the railway network and the long-term sustainability of each rapid transit system comprised in the network; and
 - the benefits and burdens that the operation and maintenance of the relevant rapid transit system are likely to bring to and impose on the network.

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

In relation to the Rapid Transit Systems, this will depend on the conditions imposed in the relevant operator licence.

The RTS Act entitles the LTA to impose (as part of the relevant operator licence) conditions relating to the control and restriction, directly or indirectly, on the creation, holding and disposal of shares in the licensee or of interests in the undertaking of the licensee.

Separately, the RTS Act also prohibits the transfer or assignment of any operator licence unless the licence contains a condition authorising the transfer or assignment and the LTA consents in writing to the transfer or assignment.

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

There are no express prohibitions against the ownership of interests by foreign entities in rail transport companies.

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

Generally, the construction of new railway lines for the Rapid Transit Systems is undertaken by the LTA (through its subcontractors).

The LTA is entitled to prepare plans and maps to delineate areas of land that may be acquired for the purposes of and incidental to any railway (including the construction of new railways). These will be prepared in accordance with the Planning Act (Chapter 232).

The RTS Act further entitles the LTA (or any person authorised by the LTA) to the following:

- in relation to state land, at any reasonable time, to enter upon and subject to the approval of the Collector of Land Revenue, lay, construct and operate a railway on, under or over such state land; and
- in relation to land that is not state land but is within or adjoining the railway area, to enter upon and take possession of any land to lay and construct a railway. The LTA is, however, required to give a minimum of two months' notice (to the relevant owner and occupier of the relevant land) of its intention to exercise such right.

The construction of new railways that are not part of the Rapid Transit Systems will be governed by the Railways Act, which will require the approval of the President of Singapore.

Market exit

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

Regarding the discontinuation of services for the Rapid Transit Systems, this is likely to be dealt with in the conditions of the operator licence that is issued to the relevant rail transport company.

The RTS Act prohibits the surrendering of any operator licence without the consent in writing of the LTA, and any surrender or purported surrender of a licence shall be void if the consent is not obtained.

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 RTS Act prescribes the grounds on which the LTA may, by notice in writing (the notice), suspend or cancel an operator licence. These grounds include if the licensee:

- contravenes or fails to comply with, or fails to secure the compliance of its employees, agents or contractors with, any conditions of its licence to operate any rapid transit system or with any provision of the RTS Act that is applicable to the licensee and for which no criminal penalty is prescribed for a contravention of the provision;
- is convicted of any offence under the RTS Act;
- in the opinion of the LTA, fails or is likely to fail to provide and maintain an adequate, safe and satisfactory service;
- fails to comply with any code of practice issued or approved by the LTA;
- fails to comply with any direction given by the LTA;
- goes into compulsory or voluntary liquidation other than for the purpose of reconstruction or amalgamation; or
- makes any assignment to, or composition with, its creditors.

In the event the licensee is aggrieved by the LTA's decision to suspend or cancel the operator licence, it may appeal to the Minister of Transport (the Minister) within 14 days of receipt of the notice.

The Minister may then confirm, vary or reverse any decision of the LTA or amend any licence condition, code of practice or direction affecting the licensee. Such a decision in any appeal is final.

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?

General insolvency rules under law will continue to apply to rail transport providers (subject to the RTS Act) to the extent that they are not excluded or varied by the provisions of the RTS Act.

The RTS Act provides for certain specific provisions that may apply to a rapid transit system licensee (which is a company) in cases relating to insolvency. For example, the RTS Act provides that:

- such licensee shall not be wound up voluntarily without the consent of the LTA;
- no judicial management order under the Companies Act (Chapter 50) (CA) may be made in relation to such licensee;
- no step shall be taken by any person to enforce any security over the licensee's property except where that person has served 14 days' notice of his or her intention to take that step on the LTA; and
- the LTA shall be a party to any proceedings under the CA relating to the winding up of the affairs of such licensee.

Additionally, the LTA may make an application to the Minister for a railway administration order to be made in relation to a licensee on (among others) the grounds that the licensee is or is likely to be unable to pay its debts.

The express purposes of such an order are broad-ranging and include, without limitation:

- ensuring the safety, security and continuity of the supply of railway passenger services and facilities;
- the survival of the licensee, or the whole or part of its undertaking as a going concern; and
- for the transfer to another person or two or more different persons, as a going concern, of so much of the licensee's undertaking as it is necessary to transfer in order to ensure that the functions that have been vested in the licensee may be properly carried out.

Competition law

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

The Competition Act (Chapter 50B) (the Competition Act) provides that the prohibitions relating to the following do not apply to rail services supplied by persons licensed and regulated under the RTS Act (rail specified activities):

- agreements, decisions or concerted practices having the object or effect of preventing, restricting or distorting competition within Singapore; and
- conduct that amounts to the abuse of a dominant position in any market in Singapore

Additionally, the Competition Act also provides that the prohibition against mergers that have resulted or may result in a substantial lessening of competition within any market in Singapore do not apply to any merger involving any company relating to rail specified activities.

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

There are no specific duties relating to competition law imposed on the LTA.

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

This is not applicable with respect to rail-specific activities.

With respect to non-rail-specific activities, the general principles set out in the Competition Act will apply.

Price regulation

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

Even though there are currently no rail carriers for freight transport in Singapore, the Railways Act provides for the ability of a railway administration (subject to the approval of the Minister) to make general rules

to fix the charges for the conveyance of, among other things, goods, animals and vehicles.

For the purposes of the Railways Act, railway administration means the person appointed by the governments of Singapore or Malaysia to manage the railway and in the case of a railway administered by a railway company, the railway company.

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

Fares and fare pricing policies for train services as part of the Rapid Transit Systems are set and approved by the Public Transport Council (the Council) established under the PTC Act.

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

There are no procedures under law for passengers or freight shippers to challenge price levels.

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

There are no express provisions under applicable legislation that prescribe that rail transport companies must charge similar prices to all shippers and passengers who are requesting similar services. In fact, a pricing policy that applies different pricing to different categories of passengers requesting a similar service is adopted in practice.

Applications are made to the Council for approval of the price of or the pricing policy for train fares to be charged. In considering any application for approval, the Council is required to take into account the need for fare concessions to address the interests of certain passengers, such as the elderly and students.

Network access

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

As stated in question 5, the right to operate any railway within the Rapid Transit Systems will require an operator licence issued by the LTA at its discretion.

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

As stated in question 5, the proposed licensee will have to pay a cash bid (which it will propose in its application for the operator licence), a licence fee (as prescribed under the Rapid Transit Systems (Fees) Regulations) and a licence charge (which is determined by the LTA depending on certain factors) for a licence to operate a rapid transit system.

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

We are not aware of any such policy. Currently, each of the railway lines within the Rapid Transit Systems is run by a single licensed operator.

Service standards

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

Generally, in relation to the Rapid Transit Systems, the operator licence is likely to contain conditions setting out the extent, hours and general level of services to be provided by a licensee. The LTA is also entitled (from time to time) to give directions to be observed by licensees in respect of these matters.

The Rapid Transit Systems Regulations (the RTS Regulations), however, provide a general discretion that allows the LTA and any licensee to refuse to admit any person onto the railway premises at any time, including opening or closing any entrance to or exit from any station or platform or any other part of the railway premises at such times as it considers expedient without incurring any liability to any person.

Additionally, the RTS Regulations provide that no person can enter or remain on the railway premises if he or she is in an intoxicated or

drugged state; is in an unfit or improper condition to travel by passenger train; or if his or her dress or clothing is in a condition liable to soil or damage the railway premises or the dress or clothing of any passenger, or to injure any passenger.

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

In relation to the Rapid Transit Systems, under their existing operator licences, all operators are required to meet a set of mandatory operating performance standards issued by the LTA that establishes the performance required relating to service quality, safety and key equipment reliability, including the following:

- frequency of occurrence of train disruptions and severe service degradation incidents;
- reliability standards for key station equipment; and
- security standards.

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?

This is not applicable with respect to freight shippers.

There is no formal procedure (under legislation) for passengers to challenge the quality of rail services they receive.

However, in relation to the Rapid Transit Systems, members of the public are entitled to provide feedback to the LTA (via the LTA website) about issues of concern.

Safety regulation

25 How is rail safety regulated?

Generally, the safety of the Rapid Transit Systems is regulated by:

- the RTS Act;
- various subsidiary legislation under the RTS Act (namely the Rapid Transit Systems (Railway Protection, Restricted Activities)) Regulations and the Rapid Transit Systems (Development and Building Works in Railway Corridor and Railway Protection Zone) Regulations); and
- various codes of practice issued by the LTA.

The Railways Act contains certain provisions relating to rail safety but these do not apply to the Rapid Transit Systems.

26 What body has responsibility for regulating rail safety?

The main body responsible for regulating rail safety for the Rapid Transit Systems is the LTA.

In relation to railways that are not subject to the RTS Act, under the Railways Act, it is generally the Minister that has powers in relation to safety.

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

We are not aware of any specific safety regulations under law that relate to the manufacture of rail equipment.

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

In relation to the Rapid Transit Systems, the RTS Act provides that the LTA may do the following:

- impose conditions on the operator of a rapid transit system relating to the maintenance of the rapid transit system and the relevant railway;
- issue codes of practice in connection with the maintenance of rapid transit systems and any equipment relating thereto; and
- from time to time, issue directions to be observed in respect of the maintenance of rapid transit systems.

Some codes of practice and information issued by the LTA that may relate to maintenance of track and other rail infrastructure include the following:

- Code of Practice for Railway Protection (October 2004 edition);
- Handbook on Development & Building Works in Railway Protection Zone (January 2005 edition);

Update and trends

Kuala Lumpur–Singapore high-speed rail link

In 2013, the governments of Singapore and Malaysia announced plans for the development of an approximately 350km high-speed rail link (HSR) between the two countries. It was anticipated that the HSR would connect Jurong East in Singapore with Bandar Malaysia (Kuala Lumpur) in Malaysia with six stops along the way (Putrajaya, Seremban, Ayer Keroh, Muar, Batu Pahat and Iskandar Puteri).

In October 2017, as part of the arrangements for the HSR, the Ministry of Transport introduced the Cross Border Railways Bill to provide for, among other things, the 'construction, maintenance, operation and regulation of cross-border railways between Singapore and Malaysia in accordance with bilateral railway agreements'.

The Cross Border Railways Act 2018 was passed by Parliament on 19 March 2018 and assented to by the President on 11 April 2018. It is not yet in force.

In May 2018, the newly elected Malaysian Prime Minister Mahathir Mohamad announced plans to cancel the HSR project.

As at the date of writing, there has been no official notice of termination of the HSR project issued by the government of Malaysia.

Johor Bahru – Singapore rapid transit system

The governments of Singapore and Malaysia are also in the midst of discussing the development of a mass rapid transit system connecting Singapore to Johor Bahru (the RTS).

The RTS is currently envisioned as a two-station line with the Singapore terminus at Woodlands North and the Johor Bahru terminus at Bukit Chagar in Johor Bahru, Malaysia.

It is anticipated that the two stations will each have combined customs, immigration and quarantine facilities so that passengers can clear both countries' border controls before boarding the RTS train, and not require further customs clearance procedures upon arrival at the other station.

It is also intended that the KTM Line will cease operations within six months after the RTS commences operations in 2024.

- Guide to Carrying Out Restricted Activities within Railway Protection and Safety Zones (May 2009 edition); and
- LTA Circulars for Building Works and Restricted Activities in Railway Zones.

Further, the RTS Act also grants broad discretion to the Minister in respect of defects. If, in the opinion of the Minister, the condition of any part of any railway (or any machinery, plant or equipment) is such as to cause (or to be likely to cause) a risk of injury to any person, the Minister may give directions to the LTA or the relevant licensee to take steps to ensure that the condition of the railway (or machinery, plant or equipment) in question will cease to constitute a risk.

29 What specific rules regulate the maintenance of rail equipment?

See question 28.

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

In relation to the Rapid Transit Systems, under the RTS Act, the Minister may appoint an inspector to, among other things, investigate an accident on any part of any railway when an inspector is directed to do so pursuant to any regulations made under the RTS Act.

The general powers of the inspector includes, among other things, the following:

- entering into the relevant premises at all reasonable times;
- carrying out on the premises, or on any machinery, plant or equipment, such tests and inspections as the inspector considers expedient; and
- requiring any person to provide the inspector with such information relating to any railway or any machinery, plant or equipment connected with the railway as the inspector may specify, and to answer any question or produce for inspection any document that is necessary for that purpose.

In relation to accidents on railways that are not covered by the RTS Act, generally, the Railways Act requires that:

- notice of the accident shall be given (to the police and to the Minister);
- a joint inquiry of the causes of the accident shall be made by a committee of railway officials; and
- the result of the inquiry shall then be reported to the Minister (which shall be accompanied by proposed actions to be taken with regard to responsible parties or for the revision of the rules or system of working).

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

The provisions in the RTS Act and the Railways Act relating to safety and accidents (if any) do not apply to the exclusion of the ordinary liability regime under law.

The Rapid Transit Systems

There are no specific provisions in the RTS Act that relate to the liability of rail transport companies for rail accidents.

It is possible, however, that the licence to operate a rapid transit system may contain conditions relating to the security and safety of persons using or engaged in work on the rapid transit system. The occurrence of a rail accident may therefore result in a breach of a condition.

The RTS Act does additionally provide for penal provisions relating to wilful acts or omissions that result in the safety of any person being endangered or the wilful removal, destruction or damage to any part of the railway.

A person who removes, destroys or damages any part of the railway (wilfully or otherwise) will, in addition to any penalty, be liable to pay compensation for the damage, which shall be recoverable by civil action.

Railways that are not subject to the RTS Act

The Railways Act prescribes certain penal provisions with respect to the failure of any railway company to comply with notice requirements and submission of a return of accidents.

The Railways Act also prescribes that the court or any person having authority to determine the claim may order that the relevant injured person be examined by a duly qualified medical practitioner and may make such order as to the costs of the examination.

Financial 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)?

We understand that the licence charge payable by SMRT to the LTA for the right to use the operating assets and operate the lines is structured such that the risks (and rewards) associated with uncertainties in relation to revenue from fare collection and fluctuations in operating costs is shared with the LTA through the fare revenue shortfall sharing scheme (FRSS scheme).

In order to share the revenue risk between SMRT and the LTA, a revenue collar mechanism was determined based on a set of projected revenue figures set by the LTA. SMRT and the LTA will then share in any shortfall or excess based on a tiered structure.

SMRT may apply to the LTA for a grant if it suffers a net reduction in operating revenue or a net increase in operating costs as a result of certain specified unanticipated events, such as enhancement of

operating standards or regulatory changes. The amount of the grant is determined at the LTA's discretion.

A similar structure applies to SBS Transit (including the applicability of the FRSS scheme).

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?

Not applicable.

Labour regulation

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?

There are no specialised labour and employment laws that apply to workers in the rail transport industry and the general employment laws will apply.

The First Schedule of the Employment Act (Chapter 91) provides that the definition of 'workmen' includes train drivers and train inspectors, and the definition of 'industrial undertaking' under the Employment Act includes private or public undertakings engaged in the transport of passengers or goods by rail.

Environmental regulation

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

There are no specialised environmental laws that apply to rail transport companies and the general environmental laws apply, which include the Environmental Protection and Management Act (Chapter 94A) and its subsidiary legislation.

C/M/S/

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