

Transport and Rail sector legislation under review

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The current legislation governing the transport and rail sector is under review with a proposed Single Transport Economic Regulation (STER) Bill. The decision to establish STER will integrate economic regulation for the rail, road, maritime and aviation sectors. Currently, at the time of drafting this alert, the Bill is in its final consultation phase with internal stakeholders, thereafter it will be published for public comment.

History of legislation

South Africa's transport sector, specifically the rail sector, currently has a variety of legislative and policy documents, with various rail initiatives. These have been launched over the years by different stakeholders, often leading to uncoordinated objectives in the utilisation of rail infrastructure. As a result, the rail sector has existed in the absence of an overarching rail policy.

Historically, road and rail based passenger services in South Africa were provided by the South African Transport Services (SATS), a state-owned entity. SATS was empowered to, among others control, manage, maintain and exploit certain transport services throughout South Africa, including rail. The Legal Succession to the South African Transport Services Act replaced the SATS dispensation in 1989.

As from April 1990 onwards, these functions became the responsibility of Transnet Limited and the South African Rail Commuter Corporation Limited (subsequently PRASA), with the former responsible for long-distance freight rail services and the latter taking care of commuter rail services. The overall effect was that rail components were transferred from SATS to different government entities and the rail sector existed in the absence of a unified rail policy.

This has ultimately led to the need to coordinate the rail policy framework in South Africa. South Africa is currently undergoing a regulatory 'restructuring' evidenced by the various policies and draft Bills which have been or are in the process of being promulgated.

Recent developments in transport policy and regulation

The first significant policy promulgated for purposes of regulating the transport industry was the White Paper on National Transport Policy 1996 (White Paper). The White Paper, among other things, emphasises the importance of the rail sector for both freight and passenger transport. It focuses on the customer as the priority for public transport policy development and stipulates that issues of rail safety, affordability, quality and the provision of improved service levels should feature prominently in the policy formulation process. The White Paper is a key transport policy document in South Africa and provides guidance for all transport legislation and planning.

A further legislative development and recent means of restructuring the transport sector has been the introduction of the proposed Single Transport Economic Regulation Bill 2015 (STER Bill). The STER Bill amongst others seeks to consolidate the economic regulation of the transport sector within a single framework and policy through establishing the Single Transport Economic Regulator (STER) and the Transport Economic Council. It is envisaged that the STER's functions will be executed independently of all operators and service providers in the transport sector. The STER will be directly accountable to the Minister of Transport, to which it will be obliged to provide reports periodically on the status and performance of, among others, the railway sector.

Various other strategies and policy documents have also been implemented with the aim of guiding the development of the transport sector (such as the National Freight Logistics Strategy, Moving South Africa, the National Rail Plan, the National Land Transport Strategic Framework and the Public Transport Strategy). Although, until recently, there existed no clear consolidated directive that examines how rail specifically will be regulated and taken forward in South Africa.

Developments in policy and regulation of rail

From a policy perspective, while aspects relating to the regulation of the rail sector were captured in the White Paper, the Green Paper on National Rail Policy has been published on 22 September 2015 (Green Paper) for the rail sector. The Green Paper's principal aim is to revitalise the rail industry and focus on how to make rail networks in South Africa fit for future generations, recognising the importance of sustainability and innovation. One of the salient features of the Green Paper is the proposal of various policy recommendations designed to address the key challenges faced by the rail industry.

In order to achieve a revitalisation of the rail industry and to re-position the rail sector as a preferred means of land transport, the Green Paper acknowledges that the current rail challenges first have to be resolved. The Green Paper highlights the global repositioning and 'renaissance' of railways in other countries, the lessons that can be learned as well as highlighting the current rail challenges for South Africa. The Green Paper therefore highlights the National Rail Policy's (envisaged by the Green Paper) fundamentals and policy positions. Importantly, the recommended policy position on regulation recognises that multiple stakeholders pursuing different interests in the rail industry will require economic regulation to ensure the fairness and long-term sustainability of the rail sector. As such, a Ministerial Task Team was established to develop economic regulatory capacity for the rail sector.

Data will be collected from rail operators and analysed over the next two years to determine what economic regulatory interventions will be required for the rail sector. The forthcoming STER, as a permanent initiative, will regulate the rail sector specifically as a subdivision of regulating all transport types. Importantly, the Green Paper states that the Railway Safety Regulator and the STER will work closely together through a memorandum of understanding as their responsibilities will be separate.

Lastly, the Green Paper alludes to the way forward for the South Africa rail sector and proceeds to outline the recommended policy positions to be discussed and debated during the Green and White paper consultation phases. Subsequent to such stakeholder consultation, the White Paper will be submitted for approval and the Department of Transport will commence with developing the National Rail Act, thereby making some of the policy positions legally binding on the rail sector.

The South African government is currently moving towards major rail recapitalisation and is simultaneously undergoing a policy and regulatory development process. The introduction of the Green Paper could potentially lead to the formalisation of the government's position on policy and will provide an overarching governance framework for the rail sector. The successful implementation of the National Rail Policy is crucial to ensuring the revitalisation and resurgence of the South African railway sector.

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