

Train Times

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Enabling rail transportation around the world

Welcome to the fifth edition of Clyde & Co's Rail Newsletter, written by our legal experts who have a particular focus on the rail industry. We have a diverse edition this month looking at the current situation in Libya, opportunities in South East Asia and High Speed 2.

Libya currently has no functioning railway and although developing a railway is probably not the government's top priority it is certainly on their agenda. Two significant rail projects were underway prior to the revolution and although these are currently on hold (for obvious reasons) elements of these schemes may be resumed and there is talk of other rail developments too. With its enormous wealth and a desire to transform itself, Libya is certainly a rail market to watch in the shorter rather than the longer term.

Another market to watch is South East Asia which is showing signs of a significant amount of development in the rail sector, especially in Indonesia. Public Private Partnerships appear to be in vogue in South East Asia so it will be interesting to see whether the various rail authorities are successful in developing significant and complicated projects using these structures. It clearly can be done but it is not straightforward.

Finally we look at the current state of play regarding High Speed 2 in the UK. This is attracting a lot of attention, particularly from those who are opposed to it. The project has been in planning for some time now and it will be interesting to see whether those who lead rail projects in Libya and South East Asia are able to implement rail projects more quickly than HS2 (and possibly whether Britain has anything to learn).

We hope that you find our newsletter informative. If you would like to discuss any of the issues raised, please feel free to contact one of our experts or email us at infrastructure@clydeco.com.

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Libya – Challenges and Opportunities

At present Libya has no operational railway system and lags behind its neighbouring countries such as Tunisia and Egypt. The overall infrastructure in Libya is not well developed and has been severely damaged as part of the revolution.

Libyan decision makers recognise that a functioning and well developed transportation system is key to creating an environment which attracts investment (both foreign and local). It is not surprising, therefore, that despite the many challenges faced by post-revolution Libya the establishment or the re-establishment of a functional transportation system is a key priority.

Libya had plans for a 3,170 km national rail network. This was shelved following the revolution but recent reports in the Libyan press refer to the potential resumption of the US\$4.5 billion project to link Benghazi and Sirte with a 554 km railway line. Other proposed developments such as improvements to the airport and sea ports and the creation of a railway system and a metro that connects to the existing international airport indicates that other parts of the wider rail network project may also be resumed or commenced.

Given that Libya has the largest oil reserves in Africa and that oil production is back to its pre-revolution levels, it has the necessary funds to translate the vision of a modern infrastructure into reality, thus presenting potential opportunities for foreign specialized contractors and consultants. Given the UK's early support of the revolution, there is an element of goodwill towards UK companies doing business in Libya (both generally and in respect of infrastructure projects).

Even though UK companies are very well placed to get involved in infrastructure and railway projects in Libya, there are a number of challenges that companies wishing to do business in Libya are likely to face such as:

- Uncertainty in respect of continuance of historic contracts
- Uncertainty as to Libya's budget
- Uncertainty as to when actual decisions relating to infrastructure projects will be made
- Evolving and very fluid and hence uncertain legal environment
- Security

Historically, Russian and Chinese contractors have profited from infrastructure contracts but as a result of the revolution the majority of contractors utilized force majeure provisions and the fate of contracts that are currently suspended remains uncertain. There are reports that estimate that a total of approximately 11,000 contracts are currently under review by the authorities in Libya to assess whether these were duly awarded at the time. It is unknown to what extent infrastructure contracts fall within this figure and the time line for completing this review is equally uncertain.

The finalization of a budget has been imminent for quite some time and it will be interesting to analyze the budget, once finalized, to assess the amounts earmarked for infrastructure projects. This, again, makes it difficult to assess or quantify the opportunities that may exist in respect of railway and related projects.

As is the case with other emerging markets, to carry out business in Libya and to mobilise the man-power required successfully to complete large infrastructure projects is not straightforward. Recent changes in the law have made it more difficult for foreign companies to enter the Libyan market by, for example, introducing foreign ownership restrictions which do not allow foreign companies to hold more than 49% of the shares in a local Libyan company.

Given our presence on the ground, Clyde & Co has its finger firmly on the pulse in Libya and we are exceptionally well placed to engage in dialogue with the relevant decision makers in respect of the tendering of infrastructure projects and any associated developments. In addition Clyde & Co has been advising companies in jurisdictions in which foreign ownership restrictions are commonplace for over 20 years and we are well versed in putting appropriate structures in place to ensure, as far as possible, that a foreign investor's economic benefit exceeds that of its legal shareholding.

In conclusion, Libya has the vision and funds to create modern transportation infrastructure and is likely to require foreign expertise to implement it. There are challenges in operating in any emerging market but through our team on the ground in Tripoli and our experience in other emerging markets we are exceptionally well placed to assist our clients with managing the challenges inherent with the local market thus enabling our clients to position themselves in Libya in anticipation of award of contracts ahead of their competitors.



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Rail opportunities in South East Asia

The market for rail in South East Asia is opening up, with many ambitious projects on the market and strong support for public private partnerships (PPPs) and private finance.

Indonesia, Philippines, Malaysia, Thailand, Vietnam and Myanmar, in particular, have some of the strongest rail pipelines in the region. The most active being Indonesia (13 rail projects proposed and in procurement), Philippines (five projects) and Malaysia (four projects), where rapid urbanisation has put pressure on existing infrastructure and the improvement of the transport sector is a priority. In the case of Indonesia, private and PPP-based finance is expected to finance up to 70 per cent of the cost of such improvements over the next five years.

The most common projects in the region – both in terms of PPPs and normal procurement – are freight railways and commuter rail systems such as light rail and high-speed lines. The most expensive projects are in Indonesia: the Jakarta to Bandung airport rail link (US\$6.1 billion) and the Bukit Asam Transpacific Railway connecting various coal mines to Lampung port (US\$4.8 billion) to name two. High-speed rail links are also planned between Thailand and China through Laos, and Malaysia and Singapore. The former could cost up to US\$25 billion.

A short summary on each of the countries is below.

Indonesia: Infrastructure development is high on the government's agenda and a number of large PPP projects have come to market, but none so far have reached financial close. Intra-governmental disputes and land acquisition problems have also been known to delay or stall projects. There is a relatively strong legal framework for PPPs and a dedicated PPP unit (Bappenas) which selects and oversees projects. As of April 2012, there were 12 tendered projects, 26 potential priority projects and 29 potential projects overall – most of these are in the transport and utilities sectors. Notable rail projects include the Kalimantan coal railway project (US\$2 billion), Soekarno Hatta Airport rail link (US\$1.1 billion), Jakarta-Bandung railway (US\$6.1 billion), PT MRT Jakarta and Jakarta Monorail.

Philippines: This is one of the most active countries for deals in the Asia Pacific region. The overall legal framework is good, as PPPs have been used in the water sector (in some form) since the late 1980s. Transport PPPs rank highly on the current government's strategy, as rapid urbanisation has put pressure on existing infrastructure. There is a pipeline of 31 deals across various sectors, with a few set to reach financial close by year end. The main rail projects are the Manila Light Rail Transport Line 1 (US\$1.5 billion), Light Rail Transit Line 1 (US\$46 million) and Metro Rail Transit Line 3 (US\$146 million).

Malaysia: PPP has existed in one form or another since the 1980s, when the world economic recession prompted the government to seek assistance from the private sector. There are a few rail projects under construction currently, including the Mass Rapid Transit in Kuala Lumpur which is expected to be completed by 2017, and the Electrified Double Track Ipoh-Padang Besar project. New projects were also proposed in the 10th Malaysia Plan 2011 – 2015. The main rail project is the Light Rail Transit extension in Kuala Lumpur, which is at advanced planning stage. There are also a number of projects at feasibility stage.

Thailand: PPPs have previously been used in the transport, communication, logistics and electricity generation sectors. Models are mostly BTO (build-transfer-operate), with some BOT (build-operate-transfer), BOO (build-own-operate) and AOT (acquire-transfer-operate) schemes. Under current PPP legislation, it can take up to four years to process PPP investments. However, new PPP legislation being enacted this year will hopefully resolve this. As of this year (2013), there are three potential projects in the transport sector – two rail and one motorway, including two high speed rail lines from Bangkok. There is also talk of a high speed railway line to link Thailand, Laos and China, for which feasibility studies have been undertaken.

Vietnam: This is an emerging PPP market, with an ambitious programme of projects in the power, transport and social infrastructure sectors. However, Vietnam's PPP programme is still very much in the early stages and PPP legislation is still being implemented. As of April 2012, 30 investment proposals were announced as potential PPPs, including roads, electricity, airports, hospitals, water, river ports and urban infrastructure development projects. One potential PPP rail project is the construction of train terminals in the country, though information on this is limited.

Myanmar: With Myanmar opening its doors to foreign investment, possibilities are emerging for many different types of infrastructure projects, including rail. However, as a newly emerged market, delays and other difficulties are sure to be encountered. There is a proposal to develop a railroad from Myanmar to Thailand as part of the US\$50 billion Dawei multi-sector infrastructure project.

As is the case in many other emerging economies, reliable sources of information can be hard to come by except where one has good contacts on the ground. A further risk to investors is that rail projects can, because of their cost, scope and politically sensitive nature, be prone to long lead in times and delays. Nevertheless, there is a clear political will for infrastructure investment in the region, and it should be seen as encouraging that most of these countries have either recently undergone or plan to undergo reform to allow for and strengthen the regulation of PPPs. These markets therefore hold a great deal of potential for private sector investors.



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HS2: ready for departure?

On 28 January 2012, the Secretary of State for Transport, Patrick McLoughlin, announced the go-ahead for HS2, a 331 mile high speed inter-city rail network that will connect major cities in England.

HS2 is one of the most significant, and controversial, improvements to Britain's rail infrastructure in over a century and follows a public consultation on the national strategy for high speed rail which ran from February to July 2011.

The two phases of the route planned so far will take on a "Y" shape. Phase 1 will connect London to the West Midlands and is intended to become operational in 2026, and phase 2 will connect the West Midlands to Leeds and Manchester and this is intending to become operational in 2032. The rolling stock for the route has not yet been confirmed although the Department for Transport (DfT) has confirmed the trains would have a maximum speed of at least 220 miles per hour (350 km/h) and length of 200 metres (660 ft).

The new high speed rail network will reduce journey times between Birmingham and Manchester to 41 minutes and will reduce journey times between London and Manchester from two hours and eight minutes to just 68 minutes. Leeds and Manchester will both have new terminals built alongside existing mainline stations in their city centres.

The need for effective solutions to overcome capacity constraints is a pressing concern for UK rail. Passenger journeys have increased by 92% since privatisation in 1995. By 2020, a further 400 million journeys will be made, with growth in demand especially pronounced in long distance travel. The DfT argues that HS2 will divert long distance services to the North, thereby freeing up paths on the West Coast Mainline for increased local and regional services as well as for more freight trains, where demand has also witnessed strong growth.

The DfT has put forward the economic case for HS2, arguing that it will support economic growth in the North, with significant benefits to cities such as Birmingham, Manchester and Leeds. The DfT claims that HS2 will generate £47 billion in user benefits to businesses when the entire network is completed, as well as between £6 billion and £12 billion in wider economic benefits, with a cost benefit ratio of £2 for every £1 invested. The basis for these

claims relies on the assumption that reducing journey times and increasing capacity will allow companies based in the North of England to compete for market share in the South and encourage labour mobility. The proposal also appears to have public support. Polling by the DfT suggests that 56% of adults agreed that high-speed rail would be better for the environment while 63% thought it would create jobs and growth.

Nevertheless, the proposal has encountered strong resistance with lobby groups such as HS2 Action Alliance and the Taxpayers Alliance arguing that the economic case and capacity improvements promised by HS2 have been overstated. Concerns have also been expressed that as HS2 will not connect to either Heathrow airport or the Eurostar terminus at St. Pancras, the benefits of the development will flow disproportionately to the South in giving better access to markets in the North and, perversely, compounding rather than reducing the North/South economic divide. The Greater London Authority has also expressed reservations that HS2's connection to Euston station will result in severe capacity constraints at the London terminus, requiring additional rail improvements, dubbed "Crossrail 2", to deal with increased passenger flows.

Two judicial reviews have been brought against the DfT by local councils and an anti-HS2 action group. They have challenged the process of public consultation for HS2, claiming that the government failed to carry out a proper strategic environmental assessment and that it provided inadequate information to the public during the public consultation. These were largely decided in favour of the Government so for the time being at least the project is back on-track.



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Rail at Clyde & Co

Clyde & Co is an international law firm with over 285 partners and 2,400 staff in 30 offices around the world. We have built our reputation by providing high quality, expert and sector-specific advice.

Our rail team comprises lawyers who have undertaken extended secondments within the rail industry and therefore have detailed knowledge of how the industry works. With the benefit of a worldwide network of offices we are able to deploy this experience anywhere in the world.

We have advised participants from across the rail sector including train operators, infrastructure managers, construction companies, infrastructure maintenance companies, lenders, insurers and reinsurers, regulatory bodies and central and local governments.

Our experience is international and includes advising on:

- Infrastructure projects, including PPP projects, project finance and construction issues
- Train operation, including concessions and rail franchising (bidding, mobilisation and transfer schemes as well as general advice) and access arrangements

- Privatisations, mergers and acquisitions, alliances and joint ventures, corporate restructuring and fund raising
- Economic and safety regulation
- Station development and redevelopment
- Rolling stock issues such as rolling stock acquisition and refurbishment
- Rail disputes, including disputes arising out of major derailments, civil cases and criminal investigations and prosecutions

In summary, we are able to offer a one stop shop advising on all issues arising in the rail industry wherever they may arise. This includes complimentary issues such as property and planning, competition, employment and pensions and health and safety.

For further information on our rail expertise please contact infrastructure@clydeco.com.

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Legal 500, 2012

“Clyde & Co offers a comprehensive service to its transportation clients.”

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