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RESTRUCTURING OF THE AZERBAIJAN RAILWAYS

LEGAL REPORT

(DRAFT)

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RESTRUCTURING OF AZERBAIJAN RAILWAYS - LEGAL CONSIDERATIONS

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RESTRUCTURING OF AZERBAIJAN RAILWAYS - LEGAL CONSIDERATIONS

1. Introduction

The task of the legal expert requires an assessment of the legislative environment and the provision of guidance on the drafting of a new railway law. The existing legal framework in Azerbaijan has been studied and guidance notes on a suggested draft law has been prepared; the latter have to do with essential components of a new railway law, and the draft prepared for Georgia is exhibited for illustration purposes.

2. Legal framework - summary

- 2.1 Railways in Azerbaijan are part of the network developed by the former Soviet Union and were regulated accordingly. With independence an entirely new situation arises; based upon an examination of the legal instruments referred to below and interviews with personnel in the legal department of the railways administration including the head of the legal department the development since independence are described in outline in this report.
- 2.2 In the former USSR railways were divided into 27 separate administrations, which reported to the USSR Ministry of Railways in Moscow and were, in effect, sub-divisions of that Ministry. One of these railways administrations now constitutes Azerbaijan railways.
- 2.3 Following independence, Law No. 359 "On temporary validity of the juridical power of the laws of the former USSR on the territory of the Azerbaijan Republic" was enacted on the 28th October 1992. This continued on an interim basis a number of laws including the law "On railway transport" of the USSR of 1991. This continues to be the basic law concerning railways, to the extent that it does not conflict with the constitution of Azerbaijan or other laws. For example, Article 12 dealing with labour issues no longer applies.
- 2.4 It is understood that a railway law has been drafted some years ago but this draft has not been acted upon. The TRACECA model draft has also been furnished to the government.
- 2.5 A Ministry of Transport does not presently exist. By decree of the President dated 5th August 1998 a Ministry of Transport is required to be established and given, inter alia, responsibility for railway transport. It is anticipated that the Ministry will be established following the October Presidential election. It would normally be expected that this Ministry will take some time to determine its structure and functions. The decree was made by the President pursuant to his powers under Article 109.7 of the constitution of Azerbaijan.

2.6. To date the railway administration has come within the functions of the Cabinet of Ministers. By decree of the Cabinet of Ministers No. 171 dated the 8th August 1995 the charter/regulations of the Azerbaijan state railways was established. The main provisions are -

- Azerbaijan state railway is a state owned enterprise under the Cabinet of Ministers.
- Azerbaijan state railway operates having regard to the law "On enterprises", is a legal entity, may conclude contracts and exercise property and non property rights and duties, sue and be sued.
- It has a separate balance sheet and operates on a self supporting and self financing basis.
- It represents railway interests nationally and internationally and may enter into joint ventures.
- It has its own legal personality.
- Its objectives are essentially railway orientated but also include social matters for the benefit of employees.
- Its property belongs to the state; Azerbaijan state railways exercises the property rights.
- Azerbaijan state railways is not responsible for government obligations and *vice versa*.
- The budget of the railways is independent of the state; profits remain at the disposal of the railway.
- The head of the railways is appointed by the Cabinet of Ministers with the agreement of the President. The Deputies are similarly appointed but are subordinated to the head of the railways. The departmental heads are appointed by the head of railways.
- The head of railways with the deputy heads and other senior staff, workers and other employees form the Board of Azerbaijan state railways; the number and membership is subject to the approval of the Cabinet of Ministers.
- The head of railways, in case of disagreement, implements his own decisions and must report the disagreement to the Cabinet of Ministers. The members of the Board may separately express their opinion to the Cabinet of Ministers.

- Executive authority resides with the head of railways.
- 2.7 The existing railways administration is capable of functioning with a high degree of autonomy; nevertheless in order to operate commercially certain changes are indicated, which are dealt with in the recommendations below.
 - 2.8 The law "On enterprises" (at Article 1) provides that an enterprise is ".....an independent economic unit producing and selling products, carrying out works and rendering services to satisfy public needs and to gain profit". The reference to this law in the charter of Azerbaijan state railways is indicative of an intention on the part of the Cabinet of Ministers that the railways shall be allowed commercial freedom.

International traffic is dealt with on the basis of international agreements dating from 1951 and updated in January 1998. Within the countries the USSR regulations still operate.

3. Monopoly and Price Control Issues.

- 3.1 Article 34 of the law "On enterprises" allows for free prices and tariffs, for prices and tariffs to be fixed by agreement, and in the cases envisaged by legislation - for the State to fix prices and tariffs.
- 3.2 Article 7 of the 1991 law on railways provides that tariffs in respect of passengers and freight are determined by the government having regard to economic considerations. Additional works and services requested by freight customers are based on agreement between the parties.
- 3.3 The 1991 law at Article 1 recognises railways as a centralised monopoly.

4. Recommendations

- 4.1 It is recommended that the charter of Azerbaijan state railways should be changed to accommodate the organisational structure, accounting and reporting procedures contained in the management re-organisation proposals listed in the restructuring study.
- 4.2 Consideration should be given to the future incorporation of Azerbaijan state railways as a joint stock company, with the railway infrastructure remaining the state property made available to all railway operators including Azerbaijan state railways.
- 4.3 A railway law should be enacted to replace the 1991 law, and should address the following issues.
 - 4.3.1 The code should legislate for railway transport as a system of transport rather than as a state monopoly.

- 4.3.2 In the case of Azerbaijan state railways it should provide that management, within the context of a performance agreement, shall be independent in the direction, management and administration of its enterprise and from the administrative and economic control and internal accounting of the state, and managed according to the principles which apply to commercial companies.
- 4.3.3 It should provide for a definition of what constitutes “railway infrastructure”; railway infrastructure should be owned by the State; management of the infrastructure should in future be undertaken on behalf of the State by Azerbaijan state railways on the basis of a commercially orientated contract, to be interlinked with the performance agreement referred to below.

In this way the State will be fully informed of where the money is being spent and on the physical state of the infrastructure and participate in the planning process in accordance with the objectives for railway transport.

- 4.3.4 It should require that the accounting system of Azerbaijan state railways and any other railway enterprise clearly it separates infrastructure matters from other activity, that separate accounts are maintained in respect of freight transport and passenger transport and in respect of public service obligations, thus ensuring transparency and financial matters.
- 4.3.5 It should require a formal business planning process on a “rolling” 5 year basis.
- 4.3.6 It should guarantee freedom of tariff setting and freight transport except to the extent that monopoly situations need to be addressed.
- 4.3.7 It should recognise that where the government imposes any non commercial obligations to operate loss making services or to offer uneconomic discounted tariffs to particular groups of customers then the government should observe the principle that financial compensation ought to be paid in respect of such services.
- 4.3.8 The stripping out of social services from the railways should be facilitated.
- 4.3.9 Private sector participation and investment should be encouraged.
- 4.3.10 Environmental protection laws should be applied to the railway.

4.3.11 A system of licensing of the competence of railway operators and their rolling stock should be provided, to apply to international as well as to international operators. All licensed operators should be eventually entitled as of right to access to the railway infrastructure on non discriminatory terms.

4.3.12 It should provide for State supervision of railway safety through the appointment of inspectors and the making of regulations. This function should be a Ministry function rather than a function of Azerbaijan state railways.

5. *Draft Railway Law*

5.1 The draft prepared in Azerbaijan some years ago has not been made available to the consultant; it would appear that it has been overtaken by developments since it was first prepared.

5.2 The TRACECA model railway code drafted by Scott Wilson Kirkpatrick ("SWK") has been made available to the government for consideration. This has a number of shortcomings:

The Scott Wilson Kirkpatrick ("SWK") model Rail Transport Code is one of a series of model laws developed for use in the TRACECA countries. As SWK acknowledges, the models do not have to be slavishly followed and will require adaptation in order to suit national policy. The draft now under consideration for enactment in Georgia is an adaptation of the model.

The model developed by SWK is loosely based on that for French railways (SNCF) with the addition of much of the COTIF/CIM provisions coupled with substantial elements from the previous Georgian Railways statutes.

By way of preliminary comments:

- a model based on that for French railways SNCF is unlikely to sit easily with what is needed in the TRACECA countries. SNCF is probably the most technically advanced railway in the world, it consumes a vast quantity of investment funds and enjoys the support of the population as representing the excellence of French scientific and technical development. This, rather than any particular attractive quality of French Railway Law, is the reason for its success. In the case of the TRACECA countries, a model based on the legislation enacted in Germany after unification to deal with the railways of the former East German state might be more appropriate;

- international conventions such as COTIF consist of a set of rules subscribed to and supported in national legislation by the authorities of the countries concerned, following development by representatives of

railway transport in those countries, often at the prompting of international agencies. The need for legislation arises because without legislation, the railway enterprises of a small number or even one of the countries might disregard the terms. Legislation is therefore needed to promote confidence in the convention. Where national rather than international considerations apply, this is not necessary, or even desirable, since it leads to rigidity and inflexibility, and can result in a conflict of laws within the national jurisdiction. It is better by far for the Civil Law to apply in contractual matters, with the railway enterprises also free to develop suitable contractual regimes with customers, subject to control by the State, where necessary, to curb abuse of monopoly or dominant positions;

- while overnight change from the practices of the former Soviet Union is not possible, only to the extent that a country sees it to be necessary is it advisable to continue with elements of Georgian Railways statutes.
- as a general principle, laws should not be any longer than necessary;
- in a developing situation, it is a better approach to provide a framework permitting transition and development at a pace which is sustainable. If the law is too elaborate, it will not be fully observed, for reasons of practicality, and this will tend to undermine the law as a whole.

5.3 Amendment of the model code, if it is to be used, is therefore indicated. As an alternative, regard might be had to the draft law prepared for Georgia, which is annexed to this report. This draft consists of amending the existing law, and follows the principle currently being applied or proposed within the countries of the European Union, and allows for the implementation of the recommendation in this report. Amendment to allow for the local differences could be undertaken by the Ministry of Transport as one of its initial projects following its establishment. It is strongly recommended that a framework approach should be adopted allowing flexibility that will enable the development without legal impediment of a successful railway transport system.

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31st October 1998

ANNEX 1

What follows is a draft law and commentary prepared for Georgia; it is included for illustrative purposes only - the principles identified in the commentary are recommended for incorporation in a new railway law for Azerbaijan. This should be done as a matter of priority when the Ministry of Transport is established.

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LAW OF GEORGIA "ON RAILWAY TRANSPORT"

The Law "On Railway Transport" determines the economical, legal and organisational basis of railway transport activity, its place and role in the national economy and regulates its relations with passengers, consignees and consignors.

Chapter I

Scope and Definitions

Article 1. Railway Transport in the National Economy

Railway transport is part of a single transport system, that satisfies the needs of the population, enterprises and organisations of the governmental and non-governmental sectors concerning transportation and transit and other services in national and international conveyance, and also carries out military transit based on the charter on railway transport military transit which is confirmed by the President of Georgia.

Private legal persons may implement passengers, consignees and consignors services under rules regulated by legislation.

Article 2. Definitions and Interpretation

In this law:

- a) "Railway enterprises" are enterprises which provide railway transport services and/or manage a railway infrastructure.
- b) "Transport services" comprise the carriage of passengers or goods on a railway infrastructure.

c) Managing a railway infrastructure includes the building, operation and maintenance of railway track and infrastructure and signalling as well as the management of traffic and security systems.

d) "Railway infrastructure" is the territory of railway transport and includes all routes, rails, signalling, telecommunication and fixed installations necessary for the circulation and safety of traffic and includes also buildings which serve the administration of the railway infrastructure, passenger and goods platforms and buildings in which are found sales and dispatch facilities for the transport of goods and passengers as well as movable and non-movable sales, dispatch and loading facilities provided that they are available to every railway enterprise. Railway infrastructure does not include private sidings.

e) "Private sidings" means railway tracks and associated equipment and buildings used for loading and unloading of freight which belong to the managers of the sidings.

f) "Public service obligations" means obligations which the railway enterprise, if considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions and consist of the obligation to operate, the obligation to carry and tariff or fare obligations.

g) "Railway joint stock company" means the joint stock company required to be established by Article 3 of this Law.

Chapter II

Reorganisation of the present railway administration.

Article 3. Transitional provisions.

- 3.1 The present railway administration, immediately upon the enactment of this law, shall become a structural unit within the Ministry of Transport under the competence of the Minister for Transport, and shall then be established as a joint stock company ("the railway joint stock company").
- 3.2 Until the railway joint stock company is established, the provisions of the Law of Georgia "On the Structure and Activities of State Power shall apply; the railway enterprise shall also be managed in accordance with the principles of Article 8.1 of this Law.
- 3.3 The railway joint stock company shall be established by the Minister for Transport under the Law of Georgia "On Entrepreneurs" at the earliest moment and in any event not later than six months after this Law comes into force.

- 3.4 The balance sheet of the railway joint stock company shall not include the railway infrastructure, which shall belong to the State in perpetuity.
- 3.5 The functions described in this law as functions of the Ministry shall not be functions of the railway joint stock company. The Ministry may retain in its own employment such staff of the present railway administration as it needs for the purpose of discharging any of its railway functions.
- 3.6 The present railway administration under the supervision of the Ministry of Transport shall establish subsidiaries and transfer to these subsidiaries social and non-profit making activities and the staff concerned with these activities.

The balance sheets of these subsidiaries shall include the assets associated with the activities, unless these assets are required for railway operations, in which case monetary compensation representing the value taken by the railway enterprise shall be included in these assets.

These subsidiaries shall then cease to be the responsibility of the railway enterprise, they shall be the responsibility of and belong to the appropriate Ministries, and in the case of doubt as to the Ministry responsible, shall be the responsibility of and belong to the Ministry of Transport until this issue is resolved.

Article 4. Organisation of the railway joint stock company.

- 4.1 The railway joint stock company shall be formed and shall be regulated under the provisions of the Law "On Entrepreneurs" and shall also observe the requirements of this Law. The charter and regulations of the railway joint stock company shall be determined by the Ministry of Transport and approved in accordance with the relevant procedures.
- 4.2 The Ministry of Transport shall have the power of management over all of the State owned shares in the railway joint stock company.
- 4.3 The directors of the railway joint stock company who are concerned with the technical operation of railway transport services or the technical maintenance of railway infrastructure shall possess the relevant qualifications and competence for their areas of activity.
- 4.4 Activities of the railway joint stock company not concerned with providing railway transport services or managing railway infrastructure shall be re-organised. Separate subsidiary entities, which may be joint stock companies owned by the railway joint stock company, but which must have their own separate balance sheet and accounting, shall be established for these activities by the railway joint stock company. This process must be completed within twelve months from the date of the establishment of the railway joint stock company. These subsidiaries may be privatised.

- 4.5 The railway joint stock company may also establish subsidiary joint stock companies for specific transport services or for managing railway infrastructure; it may do so either on its own account or in joint venture with private investors. These subsidiaries may be privatised, subject to the approval of the Government of Georgia.
- 4.6 The railway joint stock company including its subsidiaries shall be managed and shall conduct its business planning in accordance with the principles set out in Article 8 of this Law.

Chapter III

Management of Railways

Article 5. Legislation in the sphere of railway transport.

The legislation in the sphere of railway transport consists of the Constitution of Georgia, contracts and agreements of Georgia in the international sphere, provisions of the Ministry of Transport of Georgia and other normative acts.

Article 6. Property of railway transport.

The railway infrastructure shall always be the property of the State, and shall be managed in accordance with contracts entered into between the Ministry of Transport and railway enterprises.

The equipment associated with the railway infrastructure may not be transferred to other organisations without the consent of the Ministry of Transport.

Where required by the national interest, the Ministry of Transport may make regulations restricting the disposal by State owned railway enterprises of locomotives, rolling stock, equipment for loading and unloading and other essential equipment.

Article 7. Territory of the railway infrastructure, zones for protection and protection of the environment.

In accordance with the legislation of Georgia, the territory of railway infrastructure is the territory in its usage.

The territory of the railway infrastructure is allotted for the rails and stations (including the right of way) as well as for constructions, buildings and other objects which are necessary for the development and exploitation of the railway infrastructure. "Right of way" is territory adjoining the railway, the sizes of which are determined by confirming norms and documentation, but no more than 20 metres on each side of the outlying rail is allowed.

For the provision of normal exploitation of rails, equipment and other objects of the railway infrastructure, located in places of natural calamity, protective zones are regulated.

The rule on the determination of protective zones, their sizes and the regime of using the territory which is allotted for this purpose is determined by the legislation of Georgia.

Railway enterprises are obliged to make provision for the effective use of natural resources and to safeguard the environment from contamination. Railway enterprises are obliged to make reconstructions and make compensation for damage of an ecological character in order to eliminate the results of accidents, collisions and other cases, caused by them. The legislation of Georgia concerning the protection of the environment shall apply to all railway enterprises.

Article 8. Railway Management.

- 8.1 Railway enterprises must be independent in direction, management and administration as well as from the administrative and economic control and internal accounting of the State. Their assets, budget and accounting shall be separated from those of the State.

They shall be managed according to the principles which apply to commercial companies; this shall also apply to their public service obligations and to contracts concluded in respect of these obligations.

Railway enterprises which provide railway transport services as well as managing a railway infrastructure must separate these areas in their management and accounting procedures.

Separate cost and revenue accounts must be kept for freight, passenger and infrastructure activities. Where public service obligations are undertaken, the operating accounts shall be separate. The transfer of subventions from one area to another is not permitted.

The compliance with these legal requirements must be shown in the accounting of these areas. This obligation shall apply to all State owned railway enterprises as well as to privately owned railway enterprises.

- 8.2 The Ministry of Transport acting on behalf of the State shall enter into a contract for a period of five years with the railway joint stock company.

The contract shall specify the activities (including the investment and financing program) to be undertaken by the railway joint stock company and the funds to be provided by the State as subvention, as payment in respect of public service obligations and as investment.

The railway joint stock company shall be required under the contract to produce to the Ministry for Transport a five year business plan setting out its strategy and development programme and corresponding operational and financial targets, projected over a five year period, and encompassing the infrastructure management, freight business, passenger business, the financial payments sought from the Government budget for public service obligations, corporate functions and ancillary activities and business plans.

At the end of the first year, the railway joint stock company shall be required to report on the details of the extent of achievement measured against these targets. The contract shall then be revised having regard to this, and extended for a further year, with the requirement that the business plan also be extended for a further year.

This process shall be repeated on an annual basis, with the intention also that the business plan shall always be projected five years forward and shall continue without limitation for so long as the railway joint stock company remains in the majority ownership of the State.

The terms of the contract shall at all times follow good commercial practice.

Article 9. Public Service Obligations and non-commercial services

- 9.1 The Ministry of Transport may require railway enterprises to undertake public service obligations.
- 9.2 Such public service obligations may be included in contracts entered into between the Ministry of Transport and railway enterprises or may be specified by order. Orders or contracts shall specify the level of services which are to be operated, the level of passenger fares and the extent of concessionary fares given to particular passenger classes.
- 9.3 Compensation for public service obligations, social, military transit and any other non-commercial services required by the Government shall be paid to railway enterprises out of the annual State budget.
- 9.4 The amount of the compensation shall be not less than the cost saving which would be possible if the non-commercial services were terminated, taking into account all relevant matters.
- 9.5 Under no circumstances shall cross-subsidisation of loss-making passenger services from freight services be permitted.
- 9.6 Where there is doubt as to which Ministry or Government agency is liable to pay compensation under this Article, it shall be paid to the railway enterprise by the Ministry of Transport, which shall in turn be entitled to be re-imbursed by the party that is liable.

Article 10. Tariffs

- 10.1 Tariffs for international transit including the countries of the former Soviet Union are determined on the basis of international contracts and agreements.
- 10.2 All railway enterprises, both privately and State owned (including the present railway administration and the railway joint stock company) shall be free to set their own tariffs for freight, which shall be published by these enterprises, except where control is necessary for traffic where railway transport has a natural monopoly.
- 10.3 Where tariffs are controlled in a monopoly situation, the tariffs are determined by the Ministry of Transport with the agreement of the Ministry of Finance and subject to the approval of Parliament. These tariffs must respect the commercial principles under which railway enterprises operate.
- 10.4 In all situations, it shall be permissible for the contract with the customer to provide for additional payment for work and services not envisaged in the tariff.

Article 11. Management and operation of the Railway Infrastructure.

- 11.1 The Ministry for Transport has responsibility for the management and operation of the railway infrastructure. This responsibility shall be discharged on the basis of contracts entered into between the Ministry of Transport and railway enterprises. One or more contracts may be entered into, and they may be with the railway joint stock company and with other railway enterprises.

The contracts shall require that such railway enterprises shall plan operations so as to maximise the amount of traffic which may be carried on the railway infrastructure and in such a way that shall best facilitate the plans and requirements of all railway enterprises intending to use it.

- 11.2. The Ministry for Transport shall establish a charge for the use of the railway infrastructure to railway enterprises that provide transport services. The charges shall be collected by the railway enterprise managing the railway infrastructure and shall be used to meet the operating costs and investment costs as agreed with the Ministry in the management contract. Any surplus shall be retained in a fund for re-investment in the railway infrastructure. The charges shall be calculated by the railway enterprise managing the infrastructure, with the approval of the Ministry of Transport and Ministry of Finance and shall be reviewed when circumstances change. The charges shall not discriminate between different railway enterprises and shall also be paid by the railway enterprise managing the railway infrastructure if that railway enterprise also provides transport services.

- 11.3 No railway enterprise shall be permitted to use the railway infrastructure unless it has been granted a licence for this purpose, except where the provisions of international agreements permit such use.
- 11.4 Licences to use the railway infrastructure shall be issued in accordance with the law and the Ministry of Transport shall make and publish regulations on standards concerning these licences. In all cases the applicant railway enterprise must be able to meet standards relating to good repute, financial fitness, professional competence and cover for civil liability.
- 11.5 The Ministry of Transport may, by order, require the railway joint stock company to provide traction to other railway enterprises that intend to use the railway infrastructure, on commercial terms.
- 11.6 Owners and users of private sidings shall comply with the rules of the railway enterprise managing the railway infrastructure and of the Ministry of Transport concerning the movement of their own rolling stock on the railway infrastructure. They are responsible for the safe movement of the rolling stock on the private sidings, and shall maintain the technical equipment and the rolling stock to the appropriate standard.

Chapter IV

Safety and Security

12. Safety of Railway enterprises and Railway Infrastructure

- 12.1 The Ministry of Transport shall exercise State control over railway transport. It shall appoint inspectors, who shall be entitled to enter upon the railway infrastructure and upon the property of railway enterprises for the purpose of supervising and checking the same and reporting their findings to the Ministry of Transport.
- 12.2 Regulations on the technical exploitation of railway infrastructure and railway transport services are the responsibility of the Ministry of Transport
- 12.3 Railway enterprises managing the railway infrastructure are obliged to make safe provision for the safe movement of trains.

Locomotives, rolling stock, equipment and other technical means must correspond to the rules of railway exploitation, and requirements regulated by security, labour protection, ecological and State standards.

Railway stations and other locations where intensive movement of trains takes place and where shunting movements are carried out are zones of extended danger. Rules concerned with railway working, movements and crossing the rails are prepared by the railway enterprise managing the railway infrastructure and confirmed by the Ministry of Transport.

Placing objects which are radioactive, explosive, poisonous or toxic near buildings or rails of general use is prohibited. Such objects may not be transported to such locations or stored, loaded or unloaded there.

The minimum distance of separation from the rails as well as the points of intersection by pipes, communication and electronic lines is determined by appropriate constructive norms and rules prepared by the railway enterprise managing the railway infrastructure and approved by the Ministry of Transport.

All persons, organisations and enterprises that send and receive explosive, poisonous, radioactive and other kinds of dangerous freight and goods are obliged to make provision for their safe transportation based on the rules approved by the Ministry of Transport.

During the transportation process, protection of dangerous freight and goods is provided by the transport police.

Article 13. Protection of freight and other objects transported by rail.

During transportation, the protection of freight, luggage and mail is provided by the railway enterprise.

The most important objects and special freight transported by railway while in the railway stations and during the transportation are protected by transport police. The list of such objects and freight is confirmed by the Ministry of Transport, after consultation with railway enterprises.

The railway enterprise is materially responsible for its consignees and consignors.

The sale of freight and goods which lacks the appropriate documentation and cases of unprotected transportation are dealt with in the railway enterprises terms of contract.

Safeguard of public order, the struggle against criminality and fire control shall be provided by the transport police and its territorial subdivisions together with the railway enterprises.

Fire prevention prophylactic operations are implemented and fires are extinguished by a special division of the railway enterprise managing the railway infrastructure. In the case of emergency, this is done with the fire brigades of the Ministry of Internal Affairs.

Article 14 Organisation of Railway Transport operations in cases of emergency.

Railway enterprises shall take measures to eliminate the causes of all kinds of collisions, accidents and events of natural calamity that may be prevented in the future development of railway transport.

The transport police, territorial subdivisions of the police, troops and subdivisions of the Ministry of Defence shall assist in eliminating the results of collisions, accidents and events of natural calamity that may be hazardous to health, train movements or endanger freight and goods or its storage.

Local authorities shall, during natural calamity, carry out works required by the railway enterprise managing the railway infrastructure.

Chapter V

General

Article 15. Responsibility for damage to railways.

Responsibility of a person for damaging the technical means, prevention and obstruction of railway works is determined by the legislation of Georgia.

Article 16. Terms of employment of staff of railway enterprises.

- 16.1 The terms of employment of the staff of railway enterprises are regulated by the legislation of Georgia.
- 16.2 The Ministry of Transport may make regulations specifying categories of employees who are required to undergo specific training. These regulations may require that certificates of competence are required to be held by specific categories of employees, to be issued in accordance with the regulations.
- 16.3 The Ministry of Transport may make regulations requiring specific categories of Employees to comply with medical standards. The regulations shall specify the required medical standards.

Article 17. Language of Communication in Railway Transport.

All kinds of accounting, balance sheets, commercial, technical documentation, telecommunications, legal and technical information as well as internal staff communications in railway enterprises and organisations which are connected with train services, passenger transportation and freight and goods transit are implemented in the Georgian language.

Article 18. Railway time.

In the organisations and enterprises of railway transport, and which take part in traffic, the local time of Tbilisi shall be used, in order to provide central control of the traffic.

Article 19. Responsibility of Railway Enterprises.

Liability of railway enterprises for not meeting the freight delivery date as well as late delivery of freight to the destination and late delivery of passengers to appropriate stations is determined by terms of the contract, and the laws of Georgia.

Article 20. Insurance.

For the social maintenance of passengers and the members of their families, State obligatory insurance in respect of injuries to passengers is required for railway enterprises.

Voluntary insurance of freight and luggage is also possible.

COMMENTARY ON THE GEORGIAN DRAFT RAILWAY LAW

Preamble.

The preamble in the existing law has been retained.

Article 1.

The existing Article 1 has been retained.

Article 2.

The new Article setting out definitions has been incorporated. This deals with railway as a system of transport allowing for a multiplicity of railway enterprises. Most importantly, it contains a definition of railway infrastructure - this is based upon the definition contained in EU Council Directive 91/440.

It also incorporates a definition of “public service obligations”.

Article 3.

This set out a number of transitional provisions. It envisages the railways being formally constituted as a structural unit within the Ministry of Transport for a transitional period, pending the incorporation of a joint stock company pursuant to the law “On Entrepreneurs” not later than 6 months after the enactment of the law. It envisages the preparation of ministerial functions from the functions of the railway joint stock company (Article 3.5) and the stripping out of non-transport social activities (Article 3.6).

Discussion following the preparation of this draft law suggests that it would be more appropriate for the transition to be achieved through an order of the President rather than through legislation - for parliament to legislate as envisaged in Article 3 of this draft might have constitutional implications. The draft was a suggestion on how the transition might be achieved; the important issue is that a transition of the kind envisaged will be necessary.

Article 4.

This provides that the Law on Entrepreneurs shall apply to the railway joint stock company; that the state owned shares in that company be under the power of management of the Ministry of Transport and allows for an ongoing and developing system of re-organisation on commercial principles.

Article 5.

This retains Article 3 of the present law.

Article 6.

This declares that the railway infrastructure shall always be the property of the state; it envisages the infrastructure being managed by a railway enterprise in accordance with a contract entered into with the Ministry of Transport. In the context of the present re-organisation, the contracting railway enterprise will be the present railway administration when established as a joint stock company.

Article 7.

This incorporates Article 5 of the present railway law.

Article 8.1.

This follows the principles enshrined in EU Council Directive 91/440 in providing independence in the direction management and administration of railways. It recognises the need for Georgian railways to be managed according to commercial principles and is transparent accounting in respect of infrastructure, passengers and freight.

Article 8.2.

This envisages a formal business planning process requiring Georgian Railways to operate on the basis of 5 years, "rolling" business plans.

Article 9.

This deals with public service obligations and non-commercial services imposed by the state. It recognises that the government should be made liable to pay compensation for the losses thus imposed.

Article 10.

This provides freedom to railway enterprises to set tariffs in respect of freight transport save only where protection is needed where monopoly situations arise.

Article 11.

This deals with the management and operation of the railway infrastructure; it sets out the functions of the Ministry of Transport, the system of management of the infrastructure on the basis of contracts entered into with railway enterprises and a regime of charging fees for the use of the enterprise. It provides for the licensing of railway operators and the provision of access to the infrastructure to railway operators on a non-discriminatory basis. By comparison, EU Council Directives 95/18 and 95/19 (as well as 91/440) adopt a like approach.

Article 12

This Article provides for the supervision of railway safety to be undertaken on behalf of the state by the Ministry of Transport. Arrangements made for the appointment of inspectors and for the making of regulations. This Article incorporates elements of the present railway law - for example, Article 7.

Article 13

This Article incorporates the provisions of Article 8 of the present railway law.

Article 14

This Article incorporates the provisions of Article 9 of the present railway law.

Article 15

This Article corresponds with Article 10 of the present railway law.

Article 16

This incorporates the provisions of Article 11 of the present railway law applying the legislation of Georgia to the terms of employment of staff. It also provides for the making of regulations by the Ministry concerned with the training of specific categories and employees and the certification of their competence and compliance with medical standards.

Article 17

This Article incorporates the provisions of Article 12 of the present railway law.

Article 18

This applies TBILISI time to railway activities.

Article 19

This deals with delay and follows the provisions of Article 15 of the present railway law.

Article 20

This deals with compulsory insurance in respect of injury to passengers and follows Article 16 of the present railway law.