

New regulatory framework for railways and its regulation

24.10.2022 2 min read

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The new regulatory framework for the railway sector, introduced by Federal Law number 14.273/2021¹, was recently regulated by the National Land Transport Agency - ANTT through Resolution Number 5,987, of September 1, 2022. The main change introduced by the Railways Law – as it became known – was to allow the construction of new railways through the authorization regime.

The authorization is distinguished from the concession contracts for railway services by the following characteristics: (i) it is independent of bidding; (ii) it has a private regime; (iii) presupposes freedom of pricing of services; (iv) waives payment of grant for the right of exploration (except in case of conflict between projects); (v) has a longer term, between 25 and 99 years, extendable; and (vi) leaves it at the discretion of the authorized party to share its use with other operators.

As it is less bureaucratic, the authorization was immediately attractive to the private sector, with ANTT (National Land Transportation Agency) having received dozens of requests for authorization to operate railway services even before regulating the matter.

In order to establish the rules necessary to formalize the authorization, ANTT (National Land Transportation Agency) held a Public Hearing to collect subsidies for the draft of the Adhesion Contract and edited the Resolution number 5.987/2022, disciplining the authorization requirement of new railways².

The regulation details the documents that must be attached to the authorization application, also providing for a procedure for the applicant to present an alternative technical solution when there is a locational incompatibility or technical-operational reason that represents an obstacle to the authorization.

One of the most controversial topics in the resolution is the rules applicable to cases in which there is a potential conflict between projects. The resolution provides for a procedure to be followed in these cases, according to which the applicants themselves may present an alternative technical solution to make the two projects viable. If this is not possible, applicants must submit layout studies and grant payment proposals, and ANTT will select the project with the highest offer.

The resolution also provides that the authorized railroads must use technology that allows interoperability with adjacent railroads, operated under public or private regime.

Although there are still some doubts, Resolution Number 5,987/2022 provides greater clarity on the procedure to be followed by authorization

requirements for the construction of new railways under the private regime. It also outlines ways to face technical bottlenecks and potential conflicts between projects. The expectation is that the Resolution can unlock some of the requirements already formulated and in progress with the ANTT, in addition to encouraging new requests.

NOTES:

¹ Resulting from the conversion of Provisional Measure Number 1065/2021.

² As well as new rail yards and other ancillary facilities.

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