

THE 2001 CAPE TOWN CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT



INSIDE TRACK



“Inside Track” keeps RWG members and colleagues up to date on the progress of the Luxembourg Protocol. You can be added onto the mailing list by clicking on “subscribe” at the bottom of the newsletter.

- [Swedish government gives the green light for ratification](#)
- [Hungary looking at adopting the Rail Protocol](#)
- [Topic of the month: The title reservation agreement – more than it seems](#)
- [Middle East Rail Conference 2018 - special rates for RWG members](#)
- [RWG supporting AfricaRail 2018 - special rates for RWG members](#)
- [Official Commentary - special deal for RWG members](#)

[Swedish government gives the green light for ratification](#)

The Swedish Government has taken a decision to recommend the adoption of the Luxembourg Rail Protocol by sending its proposal: “Better opportunities for financing railway rolling stock” to the Council on Legislation. The document formally proposes that Sweden should accede to the Protocol and that the necessary amendments to existing legislation should be made. Following the opinion from the Council on Legislation the government will then move on to prepare a bill to present to the Parliament, hopefully during spring, which means that, absent any unforeseen delay, Sweden would ratify during 2018 and possibly before the scheduled general election in the autumn.

Hungary looking at adopting the Rail Protocol

An intragovernmental working group has been set up by the Ministry of Justice of Hungary to evaluate adopting the Cape Town Convention and various protocols. Dr. Zoltán Nemessányi, Deputy State Secretary for Cooperation in International Justice Affairs announced this important step forward at a Conference on the Rail and MAC Protocols, held at the Faculty of Law, ELTE University, Budapest on November 22nd, 2017. He said “the Working Group includes almost every ministry as well as interested private sector industries”. The work will include an impact study, due in 2018.

The conference at ELTE University included presentations and contributions from Dr. Habil. Réka Somssich, Deputy-Dean, ELTE University, Faculty of Law; Prof. Miklós Király, ELTE University, Faculty of Law, Member of the UNIDROIT GC; Prof. Anna Veneziano, Secretary-General a.i., UNIDROIT; Ms. Elizabeth Hirst, Registrar designate of the International Rail Registry; Prof. Attila Harmathy, ELTE University, Faculty of Law; Mr. William Brydie-Watson, Legal Officer, UNIDROIT; Prof. Dr. Benjamin von Bodungen, German Graduate School of Management and Law; Dr. Zoltán Nemessányi, Deputy-State Secretary, Ministry of Justice, Hungary; Dr. József Vági, Partner, Kajtár Takács Hegymegi-Barakonyi Baker & McKenzie.

Topic of the month: The title reservation agreement – more than it seems

The Cape Town Convention, applied to railway rolling stock through the Luxembourg Rail Protocol, creates new additional security for creditors in three types of agreement, namely a lease agreement, the security agreement where an asset is pledged or charged to the creditor and a title reservation agreement (or TRA) where the vendor sells the equipment but there is a deferred transfer of title. This last type of contract is sometimes referred to as a conditional sale agreement. When drafting the Convention, the focus was, for TRAs, on the classic conditional sale where, for example, a manufacturer sells equipment but provides its customer with credit. The customer pays by instalments and title only passes when the final instalment is made. But take a look at the definition of the TRA. It is much broader than that and has some interesting implications in sale transactions.

Under Article 1 of the Convention a TRA is defined as “*an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement*”. Sounds familiar? Except possibly for internal transactions, where perhaps the buyer and seller, being related, are not too fussy about the sale contract, the definition accurately describes every agreement for sale of rolling stock. A classic sale agreement will set out conditions for the sale of the equipment when title will

pass, usually at a closing, upon fulfilment of those conditions. So that agreement is a TRA. Intriguingly, this means that the agreement is registerable as an international interest as long as it fulfils the basic requirements in Article 7 of the Convention (for example that it is in writing and relates to an object of which the conditional seller has power to dispose) and the provisions for identification, as set out in Article V of the Protocol. Of course the “debtor” being the conditional buyer must have its principal place of business in a contracting state – a country which has adopted the Luxembourg Rail Protocol – for the Protocol to apply. Bearing in mind that there is no system in the rail community for registering agreements for sale of rolling stock on a national basis, let alone internationally, this presents a new opportunity for parties to a sale agreement to register their interests in an international registry in the public domain giving, particularly the purchaser, the ability to defend its position against third parties asserting rights over the asset.

Unlike the Aircraft Protocol, the Rail Protocol does not create a provision for registration of sales. However it does allow for the filing of a notice of sale on the International Registry without giving the buyer or the seller rights under the Convention. But the use of the (public) International Registry may well provide remedies under applicable domestic law. So the TRA, if registered, will protect the buyer, effectively, from third party purchasers purporting to acquire superior title rights in the equipment during the period from the execution of the sale contract and closing and then, once the sale completes, the purchaser will also be protected in many cases under domestic law because the sale is notified in the registry.

Middle East Rail Conference 2018 - special rates for RWG members



12 – 13 March 2018 - Dubai International Convention & Exhibition Centre, UAE

The largest Rail Conference and Exhibition across the Middle East, North Africa, South Asia & Central Asia takes place in Dubai in March. *RWG Chairman Howard Rosen will chair part of the conference as well as deliver a paper entitled “The Luxembourg Rail Protocol: unlocking the region’s potential”. The RWG has negotiated a 15% discount for its members and RWG members should mention their membership when applying for tickets. For more on the programme click [here](#).*



RWG supporting AfricaRail 2018 - special rates for RWG members

The 21st AfricaRail 2018 conference will take place on 12th/13th June 2018 in Johannesburg, South Africa. *The RWG is an official media partner and RWG Chairman Howard Rosen will chair and present a paper at one of the streams at the conference. The RWG has negotiated a 15% discount for its members and RWG members should mention their membership when applying for tickets.*

See programme [here](#)

Official Commentary - special deal for RWG members

Rail Working Group members are entitled to purchase Professor Goode's official commentary on the Luxembourg Protocol at a 15% discount. If you wish to use this facility, please use the official form which you can find [here](#).

For copies of past newsletters click [here](#).

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