

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.

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### [Transnational Teacher's Conference discusses the Cape Town Convention](#)

The 9th Transnational Commercial Law Teachers' Meeting will be specifically focusing on the Cape Town Convention at its meeting next month in Nijmegen. The conference will take place over two days, 2nd and 3rd November 2017 at Radboud University. RWG officers Benjamin von Bodungen and Howard Rosen be making presentations on the Convention, the Rail and draft MAC Protocols. The event is open to the public. More details and registration may be found [here](#).

### **RWG responds to the UK's Rail Supply Group consultation**

The RWG has recently responded to the invitation from the UK's Rail Supply Group (RSG) for industry views on the Rail Sector Deal that the RSG is looking to put into place on behalf of the UK rail industry with the UK government. One of the three pillars of the Rail Sector Deal is the championing of the rail sector and the provision of government support to drive sector growth in the UK and abroad. The RWG based its response (a copy of which can be found [here](#)) on the support that the Luxembourg Rail Protocol can give to this pillar.

Martin Fleetwood, the Chairman of the RWG's UK Contact Group commented "The benefits of the Luxembourg Rail Protocol not only provide creditors with greater security over railway rolling stock in the UK, but also make it easier to finance exports, which is of benefit to both the rolling stock suppliers and the UK's financial sector. Given the UK's need to generate additional export markets once it has left membership of the EU, the ratification of the Luxembourg Rail Protocol by the UK Government should be a priority. Our submission sets out the benefits of the Protocol and strongly encourages the RSG to make ratification of the Luxembourg Rail Protocol part of the Rail Sector Deal".

### **The Swedish Business Community welcomes the Protocol**

Swedish law firm Hamilton hosted a stakeholder seminar on 26<sup>th</sup> October in Stockholm on the Luxembourg Rail Protocol and its implications for Sweden. Professor Alberto Mazzoni the President of UNIDROIT opened the seminar and UNIDROIT Acting Secretary General, Professor Veneziano, RWG Chairman Howard Rosen and Registrar Designate Elizabeth Hirst each gave detailed presentations on the Cape Town Convention, the Rail Protocol and the operation of the international registry once the Protocol is in force. Professor Millqvist from the University of Stockholm outlined the various legal benefits the Protocol would bring in relation to future financing of rolling stock, Björn Westerberg for the Association of Swedish Train Operators strongly supported the Protocol and explained why the improved access of its 42 members to private finance would make a material difference to the rail sector in Sweden.

Louise Petrelius, from the Ministry of Justice, closed the event by explaining how Sweden was proceeding towards ratification. The key preparatory phases, the detailed report as well the consultation, were now complete. She reported that on the consultation there was unanimous support on submissions from 24 different parties and the Government was now working diligently on preparing implementing legislation with the expectation that the Protocol would be ratified by Sweden either in 2018 or in very early 2019.

### **Topic of the month: Modifications to Vehicles**

The definition of what constitutes an item of railway rolling stock for the purposes of the Luxembourg Rail Protocol is drafted extremely widely. This is helpful to creditors and owners as it is relatively easy to show that many vehicles (including dockside cranes, cable cars and rail-mounted road vehicles) fit within this description and thereby obtain the benefit of a Cape Town Registration.

But once a vehicle is registered, what happens if the operator needs to modify the vehicle? The design life of a locomotive or wagon may be 30 years while its operational life may, in some circumstances, be greatly in excess of that. During such a life, the use to which the rolling stock is placed may change and modifications may need to be made to the rolling stock to allow it to undertake its new role.

What is the object that is registered at the International registry? The definition of railway rolling stock is the vehicle itself together with “traction systems, engines, brakes, axels, bogies, pantographs, accessories and other components, equipment and parts in each case installed or incorporated in the vehicles”. Given that not all these parts will appear in a rail vehicle, it can be argued that the object which is subject to registration is therefore a basic “vehicle” capable of moving along fixed railway track or in connection with a guideway. In its most simple form, a rail vehicle would be a chassis with wheels attached to it. The additional parts which make it fit for its relevant purpose are not, as such, necessary for its registration and their removal would, equally, not affect the registration of the basic vehicle.

The International Registry is simply identifying the object in which an interest is created. It is not concerned about the use to which that object stock is put. Given the different uses of railway rolling stock, some of which are fairly general and some of which are specialist, it would be a near impossible task for the International Registry if it had to categorise the use of the vehicles it registered. Identification of the type or use of a vehicle is a matter for the national rail vehicle registries who look at the keeper of the rail vehicle and its operation. Such operational registries are complementary to the work of the International Registry.

Provided the “vehicle” continues to exist in an identifiable form, the International Registration is not affected by any modifications, even though these can potentially have a significant impact on the value of that asset. In the eyes of the Rail Protocol a passenger coach which has had all the seats taken out and the interior converted to accept palletised freight remains a validly registered vehicle. Equally the interests of the creditor and the owner remain, together with any relevant priority.

The protection that the creditor or the owner requires against unauthorised modifications should be set out in the leasing or financing documentation itself. This should stipulate the limit of any modifications and any default which would occur if modifications which have not been permitted are made. Where an unauthorised modification gives rise to a default, the creditor or owner can then exercise the default remedies under the Rail Protocol to try and preserve the value of the vehicle.

The Rail Protocol can provide a tool in the armoury of the creditor and the owner to help them to try and stop unauthorised modifications, but it is not the primary source for preventing such action. Equally it does not become a barrier or create any additional costs if the parties agree that modifications should be carried out.

#### **RWG supporting EastAfrica 2017 - special rates for RWG members**

The East AfricaRail 2017 conference will take place on 21<sup>st</sup>/22<sup>nd</sup> November in Nairobi, Kenya. The RWG is an official media partner and has negotiated a 20% discount for its members and RWG members should mention their membership when applying for tickets.



**21- 22 November 2017**  
Radisson Blu Hotel,  
Nairobi, Kenya  
[www.terrapinn.com/EArail](http://www.terrapinn.com/EArail)

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NOW**

Register [here](#).

### Special deal on Caspian & Central Asia Rail Conference

The Caspian & Central Asia Rail conference will be taking place on 6th/7th December 2017 in Azerbaijan. With an estimated \$200bn worth of projects currently in pipeline in the rail sector in the Caucasus region, Iran and Central Asia, this will be a critical growth area for the rail industry. Speakers and attendees at the conference will include key people from all of the major rail operators in the region. More about the conference [here](#).

The Rail Working Group has negotiated a special deal for its members for the conference. For more information contact us at: [info@railworkinggroup.org](mailto:info@railworkinggroup.org)



### 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](#).

For information about membership of the RWG click [here](#).

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