

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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[Sweden agrees to ratify the Protocol](#)

On 26th April the Swedish Parliament approved the Luxembourg Rail Protocol and the Protocol will therefore be formally ratified by the Swedish government in the coming weeks. Sweden will be the third state (plus the EU) to ratify. This approval comes after a detailed review and consultation process by the Swedish government where the Protocol was supported overwhelmingly by the rail sector.

[UN ECA supports the Protocol](#)

The UN Economic Commission for Africa has been working behind the scenes to support the adoption of the Luxembourg Rail Protocol across Africa. To that end, it has set up a

special seminar on rail financing and the Luxembourg Rail Protocol to take place in Addis Ababa on 13th May. Attendees will be finance, economic planning and some transport ministers from African states as well as senior African government and railway officials. RWG chairman Howard Rosen will take a session on the Luxembourg Rail Protocol.

Cape Town Convention Conference 2018

The annual conference in Oxford on the Cape Town Convention will take place on 12th and 13th September. RWG members regularly attend this conference. For further information contact info@railworkinggroup.org.

Topic of the month: Entry into force – practical considerations

It is looking increasingly likely that the Protocol will enter into force in the second half of 2019. What are the practical preparations being made for this?

As readers will know, the Protocol enters into force when two tests are satisfied. Firstly, the Protocol has to be ratified by at least 4 states (technically the test is fulfilled on the “first day of the month following the expiration of three months after the date of the deposit of the fourth instrument of ratification, acceptance, approval or accession”) and then the Secretariat to the Supervisory Authority, OTIF, has to certify that the Registry is ready to operate (Article XXIII (1) of the Protocol). This second test relates to the physical preparations that have to be made by Regulis SA, the SITA subsidiary which has agreed to run the International Registry in Luxembourg. Software programmes have to be put in place and tested, staff need to be recruited and trained, a secure website will be needed, disaster recovery arrangements put in place etc. Of course the security and integrity of the system, once it starts operations, will be absolutely vital. So the Protocol will not automatically enter to force on the fourth ratification being effective. But hopefully this will happen shortly thereafter.

There are however a number of other preparatory steps which will be taken in the next year or so.

Some while ago the first draft of the regulations, which govern the operation of the International Registry, were published. But the intention has always been to align these regulations with the comparable regulations applying to the International Aircraft Registry in Dublin, as much as possible, opening the way for the development of common software solutions (the Registrar in Dublin, Aviareto, is also a SITA subsidiary) and also making it easier for practitioners to understand and move seamlessly between the two registries. The draft regulations currently published were based on the 5th edition of the regulations applying to the International Aircraft Registry. We are currently working on a revised draft based on the 7th edition and this will be published for comment later in the year with the expectation that they will be adopted by the Preparatory Commission as the new working draft before the end of 2018. Separately, the Registry itself will draft procedures to apply

to the detailed logistics of how the Registry will operate and these will need to be approved by the Preparatory Commission and in due course published. Both the regulations and the procedures may well be updated one more time before the Protocol enters into force.

The Supervisory Authority, which is a new inter-governmental entity established under the Luxembourg Rail Protocol, has to be set up and it will formally begin work on the day the Protocol enters into force. However, in the meantime, the statutes have to be drafted together with rules of procedure and this work is on-going at the moment. Membership comprises contracting states plus, at the outset, representatives of up to three states nominated by OTIF and three by UNIDROIT.

We expect that a target date for entering into force of the Protocol will be set towards the end of this year. There is provision for the International Registry in Luxembourg to begin limited operations even before the Protocol enters into force. For example, the Registry may begin issuing URVIS numbers before it is fully operational. The position will be clearer on this once the target date for enter into force has been set.

The industry also needs to begin making preparations for the entry into force of the Protocol. Because the Protocol applies based on where the debtor is located, financiers may begin reviewing where they wish the debtor's location to be where the debtor is operating, through various subsidiaries, in various jurisdictions. If a lender requires a Special Purpose Vehicle structure for secured financing, it may wish to reassess its strategy based on which states have already ratified the Protocol. So, for example, we may see an increasing use of Luxembourg SPVs. Lenders and lessors should also start reviewing their documentation to ensure that they have the ability to move pre-existing financings onto documentation and structures which will allow them to gain the benefits of the Protocol for existing financings and include new wording for contracts where the Protocol is in force in a state where the debtor is located at the time the financing has entered into. Debtors, creditors and professional advisors will also need to consider whether they should register as transactional or professional user entities at the new International Registry. Again, it is possible that the user validation and registration process will start even before the Protocol enters into force.

Save the date - Madrid stakeholder seminar

The RWG Spanish Contact Group will be running a special seminar on the Luxembourg Rail Protocol in Madrid on Wednesday 17th October between 4 and 7 p.m. More details will be distributed nearer the time with registration information but please put the date and time in your diary now if you can attend.

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](#).

Save the date – East AfricaRail 2018

The East Africa Rail Conference will be taking place this year in Nairobi 21st/22nd November 2018. The RWG will again be negotiating a special deal for its members. More information [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](#).

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

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