

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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### [Review in Swedish parliament](#)

On April 26<sup>th</sup>, the bill for the adoption of the Luxembourg Rail Protocol by Sweden will go to the Swedish parliament. We expect that it will be approved quickly putting Sweden in a position to formally present its instrument of ratification of the Luxembourg Rail Protocol before the summer break.

### [Moving forward in Mauritius](#)

The Prime Minister's office has established an interdepartmental committee to review the adoption of the Cape Town Convention and all three Protocols and it is hoped that there will be a decision to move forward in the coming months.

## **Railways in the Gulf**

At the annual Middle East Rail Conference which took place in Dubai earlier this month, there were detailed discussions about the development of the rail system in various parts of the Middle East. RWG Chairman Howard Rosen gave a presentation on the Luxembourg Rail Protocol and how it would unlock the region's potential and he also chaired a high level panel discussing the persuasive interoperability and inter regional integration with speakers including Philippe Citroen, the Director General of UNIFE, François Davenne, the Secretary General of OTIF and Josef Doppelbauer, the Executive Director of the European Union Agency for Railways.

## **Cape Town Convention Conference 2018**

The annual conference in Oxford on the Cape Town Convention will take place on 12<sup>th</sup> and 13<sup>th</sup> September. RWG members regularly attend this conference. For further information contact [info@railworkinggroup.org](mailto:info@railworkinggroup.org).

## **Topic of the month: Why States should not opt out of the Rail Protocol for internal transactions**

There is a common perception that the Luxembourg Rail Protocol only applies where financed rolling stock moves on tracks across jurisdictional borders. The main reason for this misconception is that the Cape Town Convention regime is focused on “international interests”. What is more, the likelihood with the first three Protocols to the Cape Town Convention is high that aircraft, rail and space equipment will indeed cross jurisdictional boundaries.

The good news for manufacturers, banks and operators wishing to finance or re-finance rolling stock is that the Rail Protocol can benefit them even if all parties involved, as well as the financed rolling stock, are located within just one jurisdiction. By way of an example, the Protocol also covers rolling stock that due to track gauge or other design elements is only capable of being operated on a single railway system within a given jurisdiction. Only then will the Rail Protocol not apply in this case if the relevant jurisdiction chooses to opt out of the application of the Rail Protocol in relation to transactions that merely relate to its territory. However, in order to enhance the economic benefits to be derived from the Cape Town Convention in relation to the financing and leasing of railway rolling stock, ratifying States should carefully examine whether they really want to make such a declaration. There are several reasons against this.

First of all, what originally appears to be a national transaction may well only subsequently exhibit an international element. Rolling stock has the potential to move into other jurisdictions, whether directly on rails or transported otherwise. Similarly, the lessee or debtor could sublease equipment on a short or long term basis to a user with its principal place of business in a different country. In these cases, the security system established by the Rail Protocol will be highly valuable.

Next, the Rail Protocol will also be extremely advantageous for secured credit or lease deals involving rolling stock used exclusively domestically because most countries do not yet have a common system for identifying rolling stock in a unique way. In this respect, the URVIS numbering system will make a real difference. The Luxembourg Rail Protocol will also introduce a public registry, which will record parties' claims to specific rolling stock. This registry will publish a clear system of priorities for rival creditor or owner claims, thus creating real added value for many national legal systems. Finally, in many countries, the domestic law is not clear on the rights of creditors in relation to providing leasing or secured credit finance for railway equipment. In contrast, the Luxembourg Protocol delivers a coherent system of clear creditor rights, which apply both during the term of the financing and on termination due to default, insolvency or otherwise. All this suggests that the Protocol will attract additional, more varied, and cheaper finance for railway rolling stock also on a purely national level. It will therefore also be highly relevant for secured credit or lease deals for rolling stock used domestically, bringing some direct and important benefits even if all the parties involved, as well as the rolling stock are located in one jurisdiction.

To sum up, the Cape Town Convention is a ground breaking global treaty which makes it much easier for the private sector to finance high value equipment. Especially in the rail industry, the Luxembourg Protocol promises immense benefits even where the financed equipment, such as trams or metro trains, does not cross borders as part of its daily operations. Against this background, States proceeding to ratification should, at least from an economic point of view, strive to reap the full benefits of the Luxembourg Rail Protocol by not excluding national transactions from its application.

#### **RWG supporting AfricaRail 2018 - special rates for RWG members**

The 21<sup>st</sup> AfricaRail 2018 conference will take place on 12<sup>th</sup>/13<sup>th</sup> 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

The East AfricaRail Conference will be taking place this year in Nairobi 21<sup>st</sup>/22<sup>nd</sup> November 2018. Further details in the next issue of Inside Track



### 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](#).

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Published by the Rail Working Group, a not for profit Association established under Swiss law.

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