

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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**[Introducing the Protocol in Baku](#)**

At a landmark OTIF workshop in Baku, Azerbaijan on 3rd May, RWG Chairman Howard Rosen made a detailed presentation on the Luxembourg Protocol to assembled delegates involved in the rail sector from the region including the railways in Kazakhstan, The Ukraine, Turkey and Azerbaijan. Other presenters included OTIF Secretary General François Davenne, the Deputy Chairman of the Azeri Railways, Igbal Huseynov, Erik Evtimov, Deputy Secretary General of CIT and other industry experts.

“The Luxembourg Protocol can be of direct relevance for new investment programmes in the region” said Rosen. The Baku-Tbilisi-Kars line should be open by the end of the year leading to Azerbaijan playing a pivotal role in both the prospective Silk Route between east and west as well as a new north-south corridor into Iran. The line includes a gauge change and variable gauge passenger rolling stock is being supplied by the Swiss manufacturer, Stadler.

[Presentation by Howard Rosen](#)

### **New Ratification Matrix published**

The RWG has now published guidelines for states that have already ratified the Convention and therefore only need to ratify the Luxembourg Protocol. Details of the Matrix may be found [here](#).

### **More thoughts on Basel**

The RWG has been taking soundings from its members on the impact of the current BIS consultation which is suggesting resetting the banks' risk weighted allocations for leasing and other secured finance.

The consensus seems to be that the BIS proposals would result in a considerable increase of the financing costs for rail equipment even though current default rates worldwide on railway equipment financing are negligible. One bank has estimated that the changes could effectively increase the cost of financed equipment by about 10% over a 20 year period.

The RWG will continue to take soundings and will be filing a more detailed paper with the Bank for International Settlements during the course of June but the initial reactions from the finance community are extremely worrying. Not only could radical changes like this significantly increase the cost of funding for operators of railway equipment but there is a real risk that some banks will withdraw from this sector altogether just at the time when new private finance is urgently needed.

### **Information about the BIS Consultations**

If you have any comments on the latest BIS consultation, please send them to [howard.rosen@railworkinggroup.org](mailto:howard.rosen@railworkinggroup.org).

### Topic of the month: Notices of sale under the Luxembourg Protocol

Art. XVII of the Luxembourg Protocol authorises the registration in the International Registry of notices of sale. This creates the ability to place in the public domain the transfer of title interests in relation to railway rolling stock. However, searches in the International Registry in respect of such notices of sale may be for information purposes only and shall not affect the rights of any person, or have any other effect, under the Cape Town Convention and the Luxembourg Protocol. This is a compromise solution that was fashioned at the later stages of the development of the Luxembourg Protocol for the purpose of bringing together two conflicting approaches: On the one hand, the predominant view in the rail industry had always been that the Cape Town Convention principally dealt with security interests rather than with title interests or the documentation thereof. On the other hand, it was felt that providing an informational record of sales generated additional benefits because it could alert rival creditors and purchasers to a prior sale of an item of railway rolling stock.

It follows from the above that the system of priorities and remedies under the Cape Town Convention does not apply in relation to a sale transaction involving railway rolling stock. This is in stark contrast to the Aircraft Protocol which extends the registration and search facilities and related priorities to cover contracts of sale in relation to airframes, aircraft engines and helicopters. Nonetheless, being able to search against an item of rolling stock in the International Registry to detect the notice of a sale transaction in relation to such item is likely to be of significance under national law. In many civil law jurisdictions notification in the International Registry of a transfer of title will presumably place a greater burden on a (second) buyer when alleging superior ownership rights in the respective item of railway rolling stock as a bona fide purchaser without actual knowledge of the first buyer's rights. By way of an example, under German law the purchaser acquires ownership to an asset even if such asset does not belong to the seller, unless the purchaser is not in good faith at the time of acquiring ownership. Good faith on the part of the buyer is ruled out by statute if the buyer is cognizant, or as a result of gross negligence he is not cognizant, of the fact that the asset does not belong to its seller. One may well argue in future that not having searched the International Registry for a notice of sale amounts to gross negligence on the part of the buyer, thus precluding its bona fide acquisition of the respective asset under German law. Other – especially civil law – jurisdictions will most probably attach similar legal effects to the voluntary registration of a sale transaction in the International Registry. As a matter of precaution, all prudent buyers should search the International Registry and desist from completing any sale transaction if their search of the International Registry brings to light the possibility of a rival claim to their

acquisition of absolute title in the railway rolling stock concerned.

### **RWG supporting Africa Rail 2016**

The Africa Rail 2016 conference will be taking place on 28th/29th June 2016 in Johannesburg, South Africa. Keynote speakers include Atsushi Sakai, Deputy Director, Japan Railway Group, Olivier Frenco, Managing Director, Goldman Sachs International, Simon Daum, Head of Strategy Passenger Transport International, Deutsche Bahn, Germany and Argent Chuula, CEO, Alliance for Commodity Trade in Eastern & Southern Africa, COMESA, Zambia. RWG Chairman Howard Rosen will be the chairman of the conference. RWG is an official media partner and we have negotiated a 15% discount for its members. RWG members should mention their status when applying for tickets.



The free registration for the expo has opened - please see [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](#).

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

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