

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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[The Future for Railway Finance in Spain](#)

On 22nd June Bird & Bird and the Rail Working Group will be running a breakfast briefing on the Luxembourg Rail Protocol and how it will change the rail sector in Spain. Speakers will include José Luis Lorente Howell, Professor Benjamin von Bodungen and Professor Teresa Rodríguez de las Heras Ballell. It will commence at 9 a.m. and admission is free of charge.

More details [here](#).

Green light for the Protocol in Sweden

The Swedish Justice Ministry has just issued a detailed report on the Luxembourg Rail Protocol making a firm recommendation that Sweden should proceed with its adoption. It is further understood that the Ministry will now move forward as quickly as possible to move through the consultation process as the precursor for ratification. The highly professional report, which includes a summary in English and complete translation into Swedish of both the Cape Town Convention and the Luxembourg Rail Protocol, may be found [here](#).

Topic of the month: Alternative Insolvency Provisions

Where an item of railway rolling stock is operated by a debtor who is based in a country to which the Luxembourg Rail Protocol applies, are the debtor and his creditor always required to comply with the Article IX insolvency provisions adopted by that country? The first question to ask is whether the relevant country has actually adopted any of the 3 options available under Article IX. The Rail Protocol effectively provides 4 alternatives – adopt one of the three options or maintain the national law provisions of that country (whatever they may be). If there has been no adoption, then by default national law will apply and the parties will need to continue to follow the relevant legal requirements. Depending on the country, it may be possible for the parties to have the right to agree some small variations to the basic regime under national law, which suits their transaction, but it is also possible that there will be no flexibility at all.

If the country has adopted any of the three options, the relevant one (Option A, Option B or Option C) provides the starting point for the parties. However, under Article III of the Rail Protocol, the parties are able to exclude the application of Article IX and its remedies on insolvency for a specific transaction. The key point to note here is that the parties “exclude the application of Article IX”, rather than agree to amend its provisions. There is no cherry picking of terms from the three options and national law to provide a bespoke deal-specific solution. This is logical to provide consistency across insolvency regimes and for other parties who may be affected by the transaction. Effectively the parties will revert to the requirements under national law, subject to the provisions in Articles VII(3) and (4) applying (as Article III specifically prevents any derogation from these two sub-articles). These relate to exercising remedies in a reasonably commercial manner (Art VII(3)) and a chargee giving at least 14 calendar days’ notice of a proposed sale or lease to an interested person (Art VII(4)). Thus third parties will still gain some protection from the existence of the Rail Protocol while the debtor and his creditor get to use provisions which

are (presumably in their own view) better suited to the relevant deal.

Where there is a purely domestic transaction, this ability to exclude Article IX (while maintaining the protection provided under Articles VII(3) and (4)) may be quite helpful. The parties can take the benefit of the registration system to protect the holder of the security interest from a bona fide purchaser without notice (the registration providing the requisite notice) while maintaining a set of insolvency provisions that both of the parties are presumably comfortable with and where they are able to price this risk at a level that works for both sides. Domestic transactions are therefore not penalised, nor made more difficult, by the adoption by a country of the Rail Protocol.

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 Simon Daum, Head of Strategy Passenger Transport International, Deutsche Bahn, Germany, Peter Thomas, Commercial Director, GE Transportation, Olivier Frendo, Managing Director, Goldman Sachs International, Andrea Giuricin, Managing Director of CRIET Transport, Center of Research on Transport Economics, University of Milan Bicocca, Italy, Renato de Castro, International Advisor, The World e-Governments Organisation of Cities and Local Governments (WeGo), 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](#).

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

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

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