

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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[Leading European Rail Lessor calls for the Luxembourg Protocol](#)

In an interview for the Rail Working Group, Shaun Mills, CEO of Alpha Trains, one of the leading rolling stock lessors in Continental Europe, has welcomed the growing liberalisation of the European rail market and has called for European states to prioritise the adoption of the Luxembourg Rail Protocol as a catalyst for the opening up of the rail sector. But he is also concerned that the Public Transport Authorities in Germany are tying up public capital, which could otherwise be used for other social purposes, by financing

passenger rolling stock themselves rather than leaving this to the private sector. [Read more](#)

UK on hold

Due to the British election due on June 8th, the government is not able yet to launch its consultation process for the adoption of the Protocol in the UK. It is expected that this will move forward once again after the election.

RWG publishes second elevator pitch

RWG has just published the second one page “elevator pitch” slide which, hopefully, will be helpful in the promotion of the Luxembourg Rail Protocol. The slide, accessible [here](#), describes the categories of financial benefits the industry will see once the Protocol is operating.

Topic of the month: Changing bogies

Much rolling stock crosses borders. However when freight or passengers are moved between rail systems where the gauge of the track changes, this presents a particular problem for operators. Passengers may have to change trains although some manufacturers are now developing variable gauge rolling stock. Freight transported in containers, may be lifted from one wagon to another but in other cases the wagons themselves may be lifted and placed on different bogies suitable for the gauge concerned. With the opening up, gradually of regional and even intercontinental freight corridors (for example the One Belt One Road system linking Eastern China with Western Europe), the issue of which equipment is subject to a creditor security interests, where the rolling stock is financed, becomes critical. In other words if a wagon sitting on top of bogies suitable for 1435 mm track gauge is emplaced on bogies suitable for 1520 mm gauge, does the international interest automatically transfer to the wagon with the replacement bogies? Or, to put it in another way, will the creditor’s international interest be adversely affected by the change of bogies?

What the creditor owns (where it is a lessor) or takes as collateral, where it is financing the rolling stock through a secured credit agreement, will firstly be defined by the terms of the contract and then any applicable law. However creditors will no mean insist on a contractual provision making it clear that the bogies upon which the vehicle sits, are part of the equipment being financed. Like any other component if the bogies are changed or replaced either for operational or maintenance reasons, the creditor’s interest should be stated to apply to the modified equipment. Moreover, under domestic law in some cases,

a doctrine of accession will automatically attribute the ownership of the component parts of the wagon to the creditor.

For the purposes of the Luxembourg Rail Protocol, railway rolling stock is defined as “vehicles movable on a fixed railway track or directly on, above or below a guideway, together with traction systems, engines, brakes, axles, bogies, pantographs, accessories and other components, equipment and parts, in each case installed on or incorporated in the vehicles”. This means that the international interest created in relation to a vehicle automatically extends to the component parts. The international interest will be registered against the wagon itself, deemed to include its components, and therefore a free possession will apply to the vehicle together with its components, whatever they are, at the time of repossession. There is no provision for registering a separate security interest against the components. This means that where railway rolling stock is being moved between different gauge systems where the bogies are changed, the replacement bogies automatically become part of the asset in which the creditor holds an international interest unless the parties agree otherwise. The creditor will be protected by the Luxembourg Rail Protocol even where it does move between different rail systems.

What the actual rights of creditors are in the components will be determined by the applicable law and what is clear is that the components such as bogies have no separate status under the Protocol.

RWG supporting AfricaRail 2017 - special rates for RWG members

The 20th AfricaRail 2017 conference will take place on 13th/14th June 2017 in Johannesburg, South Africa. Keynote speakers include Howard Smith, Operations Director, Crossrail; UK, Argent Chuula, CEO, COMESA & ACTESA, Zambia and Jack van der Merwe, CEO, Gautrain. 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](#).

Register [here](#).

Cape Town Convention Academic Project: 6th Annual Conference

The 6th Annual Conference of the Cape Town Convention Academic Project will take place 12th/13th September 2017 in Oxford (UK). Registration is now open and you can register [here](#). The draft programme may be accessed [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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