

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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### **Ukraine looks at the Protocol**

Earlier this month RWG Chairman Howard Rosen met both Minister for Infrastructure Volodymyr Omelyan and the CEO of Ukrainian Railways, Mr. Wojciech Balczun, and their respective teams in Kyiv to discuss the Protocol. The reactions have been generally very

positive and the RWG plans a stakeholder workshop on the Protocol in the coming weeks in Kyiv.

### **Spanish Steps**

Following a letter earlier this month from the State Secretary of the Spanish Ministry of Public Works and Transport, requesting a meeting with the RWG to discuss technical details of the Luxembourg Protocol, a delegation led by Jose Luis Lorente Howell, the chair of the RWG Spanish contact group, and including Registrar Designate Elizabeth Hirst and RWG chairman Howard Rosen, has met a panel of senior government officials from the Ministry as well as from the Ministry of Justice and the Ministry of Foreign Affairs and a representative from Renfe, the state owned rail company. The constructive discussion covered various aspects of the Protocol and the delegation urged the government to move forward with the signature and then ratification of the Protocol. Spain has already ratified the Cape Town Convention and the Aircraft Protocol and, as another member of the RWG delegation, Professor Teresa Rodríguez de las Heras Ballell, explained, the adoption of the Luxembourg Protocol should be an easy further step. The government officials agreed to continue their review and their dialogue with the stakeholder community.

### **RWG Seminar in Stockholm – save the date**

The RWG will be running a stakeholder seminar on the Luxembourg Protocol in Stockholm on 26<sup>th</sup> October. Speakers will include Professor Anna Veneziano, Deputy Secretary General UNIDROIT, Elizabeth Hirst, Registrar Designate for the Luxembourg Registry and RWG Chairman Howard Rosen.

### **Topic of the month: Designated entry points**

As the entry into force of the Luxembourg Rail Protocol draws closer, Article XIII of the Rail Protocol is receiving growing attention. This Article provides that Contracting States may designate an entity or entities as the entry point or entry points through which information required for registration shall or may be transmitted to the International Registry.

First and foremost, it should be noted that no such designation may be made by a Contracting State in relation to registrable non-consensual rights or interests (Article 40 of the Convention) arising under the laws of another State. This applies equally to notices of national interests (Article 50 of the Convention) created under the laws of a State other than the State designating the entry point. Apart from this, Contracting States may set up entry points for any kind of registration under the Cape Town system such as registrations of international interests, subordinations, amendments or discharges thereof. Within these

parameters, Contracting States are free to make the use of entry points optional or compulsory with one exception: With respect to information required for registrations in respect of notices of sale, a designation made under Article XIII of the Rail Protocol may only permit, but not compel, use of a designated entry point or entry points. This is to be understood against the background that registrations of notices of sale do not have any effects under the Cape Town Convention and the Rail Protocol.

Contracting States that make a designation under Article XIII of the Rail Protocol are generally free to lay down such additional requirements (including payment of fees) as they deem necessary for the transmission of data to the International Registry via designated entry points. Article XIII of the Rail Protocol merely stipulates that such designated entry points must be operated at least during working hours in their respective territories. In contrast, interested parties will be able to make searches in the International Registry on a "24/7"-basis. This is due to the fact that the provisions and procedures described above relate to designated entry points only and do not apply to searches.

The Rail Working Group (RWG) has prepared a declarations matrix (hereinafter the "Declarations Matrix") to illustrate the optimal declarations or non-declarations by Contracting States to enhance the economic benefits to be derived from both the Convention and Rail Protocol. The Declarations Matrix can be found on the RWG's website. In relation to Article XIII of the Rail Protocol, the RWG's recommendation is that no compulsory use of designated entry points should be required by Contracting States. The effect of not requiring use of a designated entry point, or merely permitting such use, is that all registrations can be made directly with the International Registry. If Contracting States nevertheless opt to make a designation under Article XIII of the Rail Protocol, the RWG is of the view that such designation should at least satisfy the following three conditions: It should be limited to registrations with regard to which the declaring State is the State of domicile of the debtor. Furthermore, the designation should state either that there will be no incremental costs for registrations in the International Registry or how any incremental costs will be covered by those registering interests through the designated entry point(s). Finally, the designation should provide that the designated entry point(s) may be used for information required for registrations in relation to notices of sale.

#### **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](#).

### **RWG supporting EastAfrica2017 - Special rates for RWG member**

The East AfricaRail 2017 conference will take place on 21<sup>st</sup>/22<sup>nd</sup> November in Nairobi, Kenya. The RWG is an official media partner and has negotiated a 20% discount for its members and RWG members should mention their membership when applying for tickets.



Register [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](#).



The next issue of Inside Track will be published in September. We wish our readers in the Northern Hemisphere a restful summer break.



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[www.railworkinggroup.org](http://www.railworkinggroup.org)

Contact: [info@railworkinggroup.org](mailto:info@railworkinggroup.org)

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