

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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Railway Financing: SA Railroad Association Backs Luxembourg Protocol

The 2019 AGM of Railroad Association of South Africa which took place earlier this month at the offices of Timken SA, Kempton Park, deliberated on many issues touching on railway financing, railway ambitions of many African nations and the solution readily available through the Luxembourg Protocol.

The AGM, addressed by RRA President Kevin Holloway, CEO Mesela Nhlapo, Transnet non-executive director Mpho Letlape and Chair of the RWG Howard Rosen came at a critical time in the life of South Africa and African Railways.

Howard Rosen, Chair of the Rail Working Group, addressing the RRA AGM said, "Railways are essential for sustainable development. Lack of integrated African rail networks is holding back growth and infra-continental free trade. Roads cannot take strain from increased trucking. Cities are strangled from congestion and pollution.

"When AfCTA comes into full force, large volumes of goods and bulk commodities, including mining outputs will be generated, creating huge markets. Africa's vast size and landlocked countries encourage development of high-speed, high-capacity transport corridors.

"The Luxembourg Protocol will change the way rolling stock is financed in the future, opening door to cheaper private credit without state finance or guarantee. SA should sign and then ratify the Protocol at earliest opportunity – it is a game changer", he said.

Mrs Letlape also referred to the Protocol in her presentation and welcomed any benefits it could deliver to Transnet and to the rail community as a whole.

The RRA CEO, Mesela Nhlapo delivering the CEO's Report to members of the association endorsed the presentation and reiterated the RRA's support for the Luxembourg Protocol. "Africa desperately needs more investment in its railways; both infrastructure and rolling stock. The problem is how to pay for it". Many countries are embarking on road-to-rail initiatives in line with their sovereign infrastructure development objectives, however due to the size of investment required there are existing limitations on their procurement abilities", she said.

UNECA COM 2019: Side event on rail finance

The UN Economic Commission for Africa will be holding a special side event next month, as part of its COM 2019 annual conference of African Ministers of Finance, Planning and Economic Development in Marrakesh, Morocco, on "railway rolling stock financing: a new solution for Africa". This will take place on 23rd March in Marrakesh. The Rail Working Group will actively participate in the seminar. It is by invitation only. To receive an invitation, please contact us at info@railworkinggroup.org.

The Protocol in Budapest

RWG Chairman Howard Rosen and Dr. József Vági, chair of the RWG Hungary Contact Group have been invited to give a presentation on the Luxembourg Rail Protocol at the Hungrail Railway Academy Conference 2019 on 9th May in Budapest.

Making railways work in Africa

In a new article published in Railways Africa, Dr. Vera Songwe, Executive Secretary of United Nations Economic Commission for Africa and RWG Chairman Howard Rosen argue strongly for the Luxembourg Rail Protocol as a way of promoting the African Continental Free Trade Area. You can see the detailed article [here](#)

Topic of the month: Declarations, Derogations and Other Decisions

In recent months the Rail Working Group has been liaising with a number of States who are moving towards signing or ratifying the Rail Protocol. This has brought to the fore the various declarations that a Contracting State can make as it accedes to the Rail Protocol.

Back in October 2016, our Topic of the Month looked at the Declaration Matrix that the RWG had produced in order to assist Contracting States in considering the declarations that they should be making in connection with adopting the Rail Protocol. These recommendations continue to be available on the RWG's website and illustrate the optimal declarations or non-declarations which can be made by a Contracting State to enhance the full economic benefits to be derived from both the Convention and the Rail Protocol. They can be found [here](#).

However, there is a considerable amount of flexibility which lies within the Rail Protocol. This recognises that each State has its own set of laws which may or may not align with the provisions in the Rail Protocol. In an ideal world there would be a complete alignment, but civil law and common law approaches mean that generally there are a number of differences, some greater than others. The Rail Protocol itself recognises the different emphasis on insolvency provisions with the three alternatives for Article IX. These move from an alternative which has more emphasis on the rights of the creditor to one which has more emphasis on the rights of the debtor.

A Contracting State may decide that it has more to gain in acceding to the Rail Protocol while only making a limited number of these declarations than waiting until it has changed all of its relevant laws and can make all of the declarations recommended by the RWG. At times, legislative pressure may mean that there is a limited amount of scope for one department to support relevant changes in its laws but such a change, coupled with a limited number of declarations may be sufficient to unlock a funding stream to support rolling stock finance within that country. Where there are subsequent changes to national laws which mean that other declarations could be made, the Contracting State is able to make use of

Article XXX of the Rail Protocol, which allows subsequent declarations to be made. The new declarations do not come into force for at least six months after they are made and they do not apply to any relevant rights and interests which arise prior to the new declaration coming into force.

So if a State does accede to the Rail Protocol, but with a limited number of declarations, where does that leave a creditor and a debtor wishing to use the Rail Protocol to support the financing of a rolling stock transaction? Arguably they can be in a fairly strong position. Article III of the Rail Protocol allows the parties to a rolling stock transaction to agree to exclude the application of the remedies on insolvency in Article IX and to derogate from or vary the effects of nearly all of the other provisions of the Rail Protocol which apply to them. The only Articles which cannot be varied are Article VII(3) requiring remedies to be exercised in a commercially reasonable manner and Article VII(4) requiring that fourteen calendar days is the minimum time required for a charge to give "reasonable prior notice" of a sale or a lease of an asset to a person with an interest in that asset.

If the parties take a pragmatic approach, they can make the Rail Protocol work for them as if a number of the missing declarations had been made. In some instances they are likely to need additional legal advice to confirm the effects of their derogations when the relevant law of the contract is applied. However, the benefits of being able to use the Rail Protocol and have a clear, recorded interest in individually identifiable items of railway rolling stock is likely to outweigh such costs.

AGM 2019

The Annual General meeting of the Rail Working Group will take place in Frankfurt on 1st April at 2.30 p.m. The meeting is open to all members and official observers.

Save the date – Breakfast Seminar in Prague

On Monday, 13th May 2019, the RWG will be running a rail stakeholders' breakfast seminar on the Luxembourg Protocol (08.30 – 10.00am) at the offices of PricewaterhouseCoppers Česká republika s.r.o., in Prague. To receive an invitation, please contact us at info@railworkinggroup.org

Save the date – Vietnam's Hanoi, HCMC & Danang Metro Rail Projects Conference 2019

Vietnam's Hanoi, HCMC & Danang Metro Rail Projects Conference 2019 will be taking place next year in Ho Chi Minh City on 28th/29th March 2019. The RWG negotiated a 20% discount for our members. For more information, please email to: info@events-actually.com.sg.



Save the date – Africa Rail 2019

Africa's largest rail exhibition & conference will be taking place at the Sandton Convention Centre in Johannesburg, South Africa on 19th/20th June 2019. For more information click [here](#).



Subscription discount for the South African publication "Railways Africa"

Rail Working Group members are entitled to purchase the South African online publication "[Railways Africa](#)" at 25% discount off R6500 - place promo code *railworkinggroup2019* when checking out. The code expires at the end of 2019.

"The Railway Market in Africa and the Middle East" – special offer for members

SCI Verkehr, has just published a new study on the market for railway technology products and services in Africa and the Middle East. Rail Working Group members are entitled to purchase the study at a 10% discount if you announce your membership during the order process. To place an order click [here](#).

Official Commentary – consultation

The next edition of Professor Goode's official commentary on the Luxembourg Protocol is already being prepared. The RWG has been invited to submit comments. If you would like to suggest changes or additions to the commentary or, as an RWG member, would like to be part of our team evaluating the commentary, please contact [Professor Benjamin von Bodungen](#).

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](#).

Our next issue will be published towards the end of March.

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