

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 to the African Union](#)

At the First Meeting of the African Union's Ministerial Sub-Committee on Transport last week in Addis Ababa, RWG Chairman Howard Rosen gave a detailed presentation on the Luxembourg Rail Protocol and the advantages it will bring for African states. In his presentation, Howard Rosen focussed specifically on how the Protocol supported operating leasing structures and why that would make a significant practical difference for the African Rail Community.

The RWG intends to work with the African Union and its Transport Sub-Committee on an on-going basis to encourage its member states to adopt the Protocol as quickly as possible.

Spreading the word in Sweden

RWG chairman Howard Rosen gave a detailed presentation to the Swedish Rail Community at the Annual Meeting of ASTOC (the Association of Swedish Train Operating Companies) and Swedtrain.

Sweden has already ratified the Aircraft Protocol to the Cape Town Convention and it is expected that, having signed the Luxembourg Rail Protocol earlier this year, Sweden will formally ratify it during the course of 2018.

Discussing the Protocol in Baku

The Caspian & Central Asian Rail Conference took place in Baku on 6th / 7th December. RWG Chairman Howard Rosen chaired a number of the panels. A key area of interest was how Azerbaijan is upgrading its rail network to become an important bridge between Europe and Asia. It will also be a pivotal state for the southern route for the Belt and Road Initiative with the goods coming into Baku from the East and being shipped across, usually through Georgia into Europe. The new Baku-Kars railway, just opened, is an important part of this network and the variable gauge passenger rolling stock being delivered possibly sets the scene for efficient utilisation of the rail network keeping when there is a gauge change.

Howard Rosen made a detailed presentation on the Luxembourg Rail Protocol which, he argued, has an important role to play in supporting transnational operation of rolling stock in the region.

Topic of the month: When can't you register an international interest?

If the Rail Working Group held a Christmas quiz, this would surely be one of the first questions. We know that an international interest can be created over assets and not registered. Perhaps the creditor does not know about the Luxembourg Rail Protocol (or does not read this newsletter); or perhaps sees no need to register the interest because of the strong financial state of the debtor. But this risks another party claiming a superior lien over the assets financed if that party registers an international interest and the first creditor does not. Sometimes creditors will register a security interest claiming that it is an "international interest" for the purposes of the Protocol, but it is not. But is there a situation where a creditor would like to register the international interest but cannot do so? Indeed there is, and this was one of the innovations introduced to the Cape Town Convention model by the Luxembourg Rail Protocol.

Essentially there are five conditions that have to be fulfilled before an international interest can be created. The Luxembourg Rail Protocol has to be in force. We expect this to be the case in mid 2019. Then the Protocol has to be in force in the jurisdiction where the debtor has its principal operations (Article 4 (1) of the Convention). Thirdly the security created must be one of the three types of security recognised by the Convention as constituting an international interest. These are the rights of a secured creditor as pledgee of the financed assets, the rights of the lessor under a lease and the rights of conditional vendor under a title reservation agreement (Article 2 (2) of the Convention). The security of course must relate to railway rolling stock as broadly defined under Article 1.2 (e) of the Protocol. But the solution to the riddle is in Article 7 of the Convention stipulating the formal constitutive conditions where (c) requires that the agreement creating the security “enables the object to be identified in conformity with the Protocol”.

The innovation of the Luxembourg Rail Protocol was to allow, under Article V, the creation of an international interest in railway rolling stock even though the equipment can only be generically identified and even allows the creation of an international interest on equipment not yet acquired by the chargor, lessor or conditional seller thereby giving to the creditor its rights under the Luxembourg Rail Protocol. This means that the security can be created over pool of assets identifiable by type but without a unique description. This means that companies can create international interests through floating charges over railway rolling stock where the collateral only crystallises at the time of default and where the debtor can carry on running its business acquiring and disposing of assets which are subject to the floating charge. The same would apply to a manufacturer looking to finance its production line or stock of unsold equipment. So it is a valuable new commercial finance tool.

But of course, when it comes to *registering* an international interest in an asset in the international registry, the railway rolling stock concerned must be uniquely identified, not least because otherwise it is difficult on a practical basis to complete a registration. Article XIV sets out much more detailed provisions for uniquely identifying the collateral and section 5.3 of the draft registry regulations stipulates that the precondition for registering an international interest in an asset is that it must be uniquely identifiable with its URVIS number. But until the security is specifically identified, the creditor cannot register the international interest even though it may already exist. As soon as it can be identified individually, the creditor should ensure that the asset has its URVIS number and registers the international interest thereon immediately before any other rival claimant has time to do so.

Happy Christmas!

Middle East Rail Conference 2018 - special rates for RWG members

The largest Rail Conference and Exhibition across the Middle East, North Africa, South Asia & Central Asia. *The RWG has negotiated a 15% discount for its members and RWG members should mention their membership when applying for tickets*
12 – 13 March 2018 - Dubai International Convention & Exhibition Centre, UAE



RWG supporting AfricaRail 2018 - special rates for RWG members

The 21st AfricaRail 2018 conference will take place on 12th/13th June 2018 in Johannesburg, South Africa. *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](#).

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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Published by the Rail Working Group, a not for profit Association established under Swiss law.

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