RAIL WORKING GROUP

www.railworkinggroup.org

Baarerstrasse 96, PO Box 7262, 6302 Zug, Switzerland
Tel: +41 (0)41 760 28 88; email: info@railworkinggroup.org
g

RailWorkingGrp
LinkedIn

The Luxembourg Rail Protocol – in a nutshell

- It is estimated that railways currently invest approximately Euros 53.7 billion per year in rolling stock but much more is needed and governments cannot always finance existing requirements at the current level let alone increased investment.

- Unless there is investment rated state credit support, private sector funders of railway equipment require security that credit provided through loans or leases will be repaid and that their property rights will be respected even when their collateral moves across borders so the assets can be repossessed by the creditor on non-payment or insolvency of the debtor.

- A key problem is that there is no international registry system for their security interests and often no asset specific registry on a national level regulating the priority of creditor rights

- At a Diplomatic Conference in Luxembourg in February 2007, sponsored jointly by UNIDROIT and OTIF and attended by 42 states and 12 international organisations, the Luxembourg Protocol to the Cape Town Convention on International Interests in Mobile Equipment was adopted, creating a new world wide legal framework to recognise and regulate security interests of lenders, lessors and vendors selling under conditional sale agreements, where each are secured by rolling stock.

- The Protocol applies to all rolling stock (from high speed trains to trams) and will create an international system of registration and priorities for secured parties with the Registry accessible 24/7 through the internet allowing these parties to register their interests and facilitating prospective creditors checking any rival claims to the equipment being financed.

- The Protocol will also create a common system for repossession of asset on default or insolvency of the debtor subject to public interest safeguards.

- Although the Protocol will be particularly helpful in respect of equipment which crosses borders, avoiding the present difficulties of security created under one law being challenged in the courts of another jurisdiction where the asset is located, it will also assist in domestic financing.

- By reducing risk for rail equipment financiers, it will

  - attract more private sector lenders into the market resulting in cheaper finance for non state-guaranteed operators as the risks for private sector funders decrease and more funders come into the market, also creating choice for operators in relation to costs and types of financing

  - facilitate lending to customers where, up to now, their poor credit and/or the lack of a legal infrastructure prevented banks lending

  - encourage capital investment which will in turn promote the expansion of rolling stock manufacturing facilities

  - facilitate short term operating leases of rolling stock, not just into railway operators from financiers but also between operators, ensuring more efficient use of rolling stock

  thereby lowering barriers to entry into the industry for private sector operators, making existing operators more efficient and competitive and reduce the dependency of state and private operators on state funding, in turn leading to a more dynamic industry. Governments may then focus limited resources on financing of infrastructure rather than rolling stock.

For the text of the Protocol as well as helpful articles, briefing papers and presentations, please see www.railworkinggroup.org