

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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[Seminar dates confirmed for Singapore and Malaysia](#)

The dates have now been confirmed for the two RWG seminars taking place in January next year. The events will be held over the morning on 13th and 14th January 2016 in respectively Singapore and Kuala Lumpur. More information for [Singapore](#) and [Malaysia](#).

Railway Days Bucharest Summit calls on governments to adopt the Protocol

At the Annual Black Sea Area rail investment conference, on 7th October in Bucharest, delegates adopted the a resolution urging “the distinguished leaders of the governments of the States comprising the West Black Sea Area to sign and then ratify the Luxembourg Protocol at the earliest opportunity.” For the full text of the resolution please see [here](#).

RWG at the EU Rail Freight Day 2015

The RWG will be taking a stand and participating in the EU Rail Freight Day 2015, hosted by the European Commission and RailNetEurope, to be held in Vienna on 4th December.

Date change for the 4th Annual African Railway Summit

The dates for the 4th Annual African Railway Summit have been changed to 25th/26th February 2016. As before, RWG Chairman Howard Rosen will be making a presentation at the Summit and there is a special discount for RWG members. Please mention this discount when you register. You will find more details [here](#).

Topic of the month: When does the Luxembourg Protocol come into force?

The Cape Town Convention itself has been in force for 9 years and has now been ratified by over 60 countries. Under Article XXIII of the Luxembourg Protocol to the Convention, the Protocol will only come into force when two conditions are met. First the Protocol has to be ratified by four states. At the moment only Luxembourg and the European Union (in respect of its competences) have ratified and it is understood that the EU would not be considered in itself as the second ratifying state. So at least three more countries need to present their instruments of ratification to UNIDROIT in Rome before this first condition is fulfilled.

But there is an important second condition. The International Registry is an essential part of the operation of the Protocol. Not only will all international interests be registerable and then searchable at the International Registry, but the Registry will also perform valuable other functions such as operating a separate register for notices of sale under Article XVII of the Protocol or recording declarations made by contracting states in relation to non-consensual rights under Article 39 or Article 40 of the Convention. So even assuming that four instruments of ratification have been deposited and the necessary three months after the deposit of the fourth instrument has been completed, for the Protocol to come into force, the Secretariat to the Supervisory Authority has to deposit a certificate with UNIDROIT confirming that the International Registry is fully operational. The Secretariat will be OTIF (Intergovernmental Organisation for International Carriage by Rail). Once the first four ratifications have been filed, the Protocol will come into force in relation to any additional ratifying states on the later to occur of three months from the date of its deposit of its instrument of ratification with UNIDROIT and the date that the Secretariat delivers its certificate confirming that the Registry is fully operational.

The reason for the second condition, the certification by the Secretariat, is not just to ensure that the registry is in the right state to fully service the Protocol. There is a more subtle reason. Article XVI (2) of the Protocol provides that the fees for operating the registry should be determined so as to recover “to the extent necessary, the reasonable cost of establishing, implementing and operating the International Registry” as well as the Secretariat’s costs over the term of the registrar’s appointment. There was a clear understanding that the fees for using the International Registry should not be at such a level which discourages use. On the contrary, the fees should be minimal so that it would always be clear that the benefits outweigh the cost of using the Registry. Most of the Registry’s costs are fixed so the throughput of registrations and searches, as well as other utilisation of the Registry, should generate a sufficient volume of fees so that the actual per unit charge can be kept as low as possible. Accordingly Article XVI (2) gives the Supervisory Authority, through its Secretariat, some critical flexibility as to when it could agree with the Registrar that the Registry should become fully operational, bearing in mind the need of the Registry ultimately to pay for itself and the industry concerns to keep the utilisation fees as low as possible.

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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