

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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### [Programme announced for Singapore and Malaysia seminars](#)

The programme has been announced for the two stakeholder seminars in Singapore and Kuala Lumpur taking place on respectively 13<sup>th</sup> and 14<sup>th</sup> January. Speakers will include

Preparatory Commission co-chair Peter Bloch, Registrar Designate Elizabeth Hirst and RWG Chairman Howard Rosen. Each event will be opened by Luxembourg Ambassador H.E. Robert Lauer.

[Registration for Singapore](#)

[Registration for Kuala Lumpur](#)

[Programme for Singapore](#)

[Programme for Kuala Lumpur](#)

### **House of Lords breakfast for industry stakeholders**

The RWG will be holding a breakfast event for industry stakeholders on the Luxembourg Protocol at the House of Lords in London at 8.30 am on 27th January. It will be kindly hosted by Lord Berkeley, the Chairman of the Rail Freight Group and a director of the European Rail Freight Association. This is by invitation only. If you would like to attend please contact [info@railworkinggroup.org](mailto:info@railworkinggroup.org).

### **Public ownership of railway equipment: how far does it go?**

On 9th December the RWG will publish a study by consultants Roland Berger analysing in detail how much of current procurement of railway rolling stock in Western Europe is government financed and how they see the way ahead. A further study on Eastern Europe will follow early in the New Year. The study will be interesting reading; details will be published on the RWG website on 9th December.

### **Topic of the month: Protecting the lessee**

The Cape Town Convention and its respective Protocols are often viewed as instruments designed to enhance the security rights of creditors, including lessors, but in one respect it creates a valuable new protection for the lessee. Lessors are often financed either by banks where they may be discounting the receivables under the lease or taking a loan with the collateral of the lease or they may be themselves leasing the assets from a head lessor. In each case there is always an open question as to what the position is of the underlying lessee/operator if its lessor defaults under the terms of its financing or under the head lease. In that situation does the creditor have the right to take back the assets even though the underlying lessee/operator has been fully compliant with the terms of its lease?

In the past this has been left to the courts applying local law and it has remained a point of

uncertainty for underlined lessees. This will no longer be the case under the Convention and the Luxembourg Protocol in relation to railway equipment. Article XI (1) of the Protocol, assures the lessee of its right to quiet possession of the leased assets subject to two conditions.

Firstly, the lessee must not be in default of its obligations under the lease. This is more than a simple failure to comply with all the terms and default will usually be set out in the lease (and if not is defined in the Convention as “a default which substantially deprives the creditor of what it is entitled to expect under the agreement” (Article 11).

Secondly the lessor’s creditor (financier or head lessor) does not have an international interest registered in priority to the lease, i.e. it is either registered prior to the lease and therefore takes priority or is registered subsequently and the lessee agrees that the lessor’s creditor has priority. Even if the lessee knows of the creditor’s security or lease interest but it is not registered in priority to the underlying lease, this does not disrupt the lessee’s right to quiet possession (Article 29.2 (b) of the Convention).

The Convention and the Protocol therefore gives a valuable new protection to a lessee, reassuring it that as long as it is not in default under its lease, it may continue to use the leased rolling stock for the lease term regardless of the position between its lessor and its creditors, unless a prior interest of the creditor is registered at the International Registry (in which case the lessee, being on notice, can always require the lessor to arrange for its creditor to agree to the lessee’s quiet possession rights as a condition of the lessee entering into the lease) or the lessee has otherwise explicitly consented to the overriding creditor rights.

#### **4<sup>th</sup> Africa Railway Summit going ahead in February 2016**

The 4<sup>th</sup> African Railway Summit will be going ahead on 25<sup>th</sup>/26<sup>th</sup> February 2016 in Sandton, South Africa. RWG Chairman Howard Rosen will be presenting a paper at the Summit. The RWG has negotiated a 20% discount for its members. For more information about the conference please see [here](#) and RWG members should mention their status when applying for tickets.

### **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](#).



The RWG management committee wishes all its members and friends a peaceful festive season and a happy and successful New Year. See you in 2016!

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