

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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[\*\*Rail Industry welcomes UK signature of the Luxembourg Protocol\*\*](#)

His Excellency Christopher Prentice CMG, British Ambassador to Italy, signed the Luxembourg Protocol for the United Kingdom on 26<sup>th</sup> February at the offices of UNIDROIT in Rome in the presence of the Secretary General, Mr José Angelo Estrella Faria and Deputy Secretary General Professor Anna Veneziano.

This is the UK Government's first step in acceding to the Luxembourg Rail Protocol. Next step is a market consultation on the detailed options that may be adopted when ratifying

the Luxembourg Rail Protocol.

Martin Fleetwood, Secretary of the Rail Working Group and its UK Contact Group Chairman, said “I am pleased to see the UK signing the Rail Protocol because it underlines the message that the UK is a major centre for financing railway rolling stock.”

#### **Programme announced for RWG Seminar in Paris**

On 7<sup>th</sup> April, the RWG is running a half-day seminar entitled “The future for railway finance: how the Luxembourg Rail Protocol will transform the rail sector”. It will take place in the morning from 8.30 a.m. at the offices of the UIC in Paris. Speakers will include José Angelo Estrella Faria, Secretary General of UNIDROIT, François Davenne, Secretary General of OTIF, Mervi Kaikkonen and Peter Bloch, the Co-Chairs of the Preparatory Commission working on the implementation of the Protocol, the Registrar-designate, Elizabeth Hirst as well as other academics, advisors and practitioners. There is no charge for the event but attendees must register.

[Information and registration details \(English\)](#)

[Information and registration details \(French\)](#)

[Full programme](#)

#### **Time for a Level Playing Field**

On 25<sup>th</sup> February, RWG Chairman, Howard Rosen, gave a presentation to the South African rail community at the 4<sup>th</sup> African Rail Summit in Johannesburg on “Levelling the Playing Field – making it easier to finance railway equipment”. In his presentation Mr. Rosen appealed for a more equal treatment of the rail sector compared to aviation and road as competing forms of transport. In many cases, he said, the rail sector was significantly disadvantaged compared to its competitors and one clear problem was the lack a legal framework for the private sector to come in and finance rolling stock for state and private operators. So “one of the answers”, he said, “was for states to adopt the Luxembourg Rail Protocol as quickly as possible”.

#### **RWG files response to Basel Committee**

The RWG has filed a detailed response to the Basel Committee on Banking Supervision, at the Bank for International Settlements, in relation to its “second consultative document on Standards: Revisions to the Standardised Approach for credit risk”.

In its consultation paper, issued last December, the Committee proposed a “one size fits all” approach, allocating a bank risk weighting of 120% for all object based funding. In its response, the RWG strongly argues that the Committee should revise its proposal in relation to secured finance for rolling stock to make it more reflective of the true risks. Noting that the suggested risk weighting is significantly lower for unsecured corporate lending and certain types of project finance, the RWG writes that it “is surely illogical that both unsecured corporate debt and types of project finance should have a lower risk rating, although clearly riskier, compared to secured rail finance”. The letter further points out that at a time when private, asset based, finance for railways, without state support, is becoming increasingly important globally, and when the Luxembourg Rail Protocol will significantly improve the level of security for creditors, the Committee’s proposals will do significant damage to the rail sector by incentivising banks to lend money elsewhere.

You can see the full text of the letter [here](#).

#### **[RWG to support AfricaRail 2016](#)**

The AfricaRail 2016 conference will be taking place on 28th/29th June 2016 in Sandton, Johannesburg, South Africa. RWG Chairman Howard Rosen will chair the conference. The RWG has negotiated a 15% discount for its members. For more information about the conference please see [here](#) and RWG members should mention their status when applying for tickets.

#### **[Topic of the month: Interim Relief](#)**

For a creditor any serious delay in recovering its asset on debtor default means a real cost. Since rolling stock depreciates in value over time any later remarketing of the asset will result in less money, later. The Convention and the Protocol anticipate this issue by providing for “Interim Relief” for a creditor.

The basic rule is set out in Article XIII of the Convention. Subject to any particular declaration which may be made by a contracting state, the Convention provides that a creditor who shows evidence of default by the debtor may, pending final determination of its claim, obtain from the court one or more orders preserving the asset and its value, dealing with its possession, custody or control, dealing with its immobilisation and on the other side dealing with leasing of the asset. Article VIII of the Protocol modifies the Convention in a couple of important ways. Firstly it creates a system for a contracting state to set out what exactly “speedy relief” means in terms of the maximum time during

which relief must be granted by the court. It also adds an additional power for the court, in any order, to order not just the lease of the asset but also the sale and to deal with the application of proceeds therefrom.

Article VII of the Protocol also introduces an additional remedy on default where the creditor may procure the export and physical transfer of the railway rolling stock from the territory in which it is situated. Article VIII then makes it clear that these remedies shall be made available by the administrative authorities in the contracting state where the rolling stock is located and such administrative assistance shall be given no later than 7 calendar days after the creditor has notified the authorities that the relief is granted. This may even be relief granted by a foreign court recognised by a contracting state where it is only concerned with the implementation of an order.

In relation to all of these interim remedies, there needs to be consent of both the debtor and the creditor but this can be “at any time”. This wording is important since it is most unlikely that a debtor would agree to a creditor exercising its rights to interim relief at the time when it actually needs to do so. So a prudent creditor will ensure that there is advance consent from the debtor in the documentation from the outset. The creditor also needs to check that the contracting state in which the debtor is located has not excluded or modified the interim relief provisions of the Convention or its modifications under the Protocol. The RWG in its recommendations to governments for when they ratify the Convention and the Luxembourg Protocol suggests to states that they do not opt out of Article XIII of the Convention and should apply all of Article VIII of the Protocol with a 10 day time limit on all of the remedies except for leasing or sale where the time limit is 30 days.

Lastly there is a question as to whether, as far as EU Member States are concerned, they are able to make a declaration or whether this is within the competence of the European Union. The EU has already ratified the Luxembourg Protocol in respect of its competences but it has declined to make any declaration in relation to Article VIII of the Luxembourg Protocol and therefore it is open to Member States to make such declarations implementing Article VIII under domestic law (but not by declaration except in relation to Denmark which has an opt out from the EU’s competence in this area).

### **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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