

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. For copies of past newsletters click [here](#).

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[RWG meets the Maltese Government](#)

At the end of January, Howard Rosen, Chairman of the RWG, together with the two RWG members in Malta, Mamo TCV and Fenech Farrugia Fiott Legal met Economic Development Minister Cardona to discuss Maltese adoption of the Luxembourg Rail Protocol. Malta has a developing financial services sector and so is interested in supporting the development of this sector through the adoption of the Protocol. Last December the government in Malta submitted to the European Investment initiative a 79 km monorail project at an estimate cost of € 1.42 billion. So the possibility of financing the equipment with the benefit of the Luxembourg Protocol it is also attractive to the Maltese

government. Malta has already ratified the Cape Town Convention and the Aviation Protocol so the legislation enabling the ratification should be quite straight forward.

More UK Progress

On 2nd February, Baroness Kramer, the UK Minister of State at the Department for Transport, stated that “[n]ow that the procedures around the European Union acceding to it have recently been concluded, the Government will now start the process of considering what it needs to do to ratify the Protocol.”

The RWG has subsequently met DfT officials to discuss UK signature and then ratification of the Protocol and has now also filed a detailed supportive briefing for them.

Topic of the month: Public service

The drafters of the Luxembourg Protocol had to confront a serious practical problem. How do you reconcile the rights for creditor to reposes rolling stock when the debtor is not paying its contractual obligations with the problem that repossession could leave hundreds of thousands of passengers stranded on station platforms, with no practical way of getting into work on time, where the loss of the community as a whole is disproportionate to the benefit which accrues to the creditor in repossessing the financed assets?

Article XXV of the Protocol creates a practical compromise whereby a contracting state may retain any existing law which would interfere with repossession by the creditor in relation to “railway rolling stock habitually used for the purposes of providing a service of public importance”. This type of rolling stock needs to be identified in the declaration accompanying the ratification of the Protocol or lodged with Unidroit afterwards. But if the government uses this right it has a duty to preserve and maintain the rolling stock until it is handed over to the creditor and whilst the creditor is denied use of the rolling stock it shall have the benefit of its existing bargain, being the greater of the amount any law in a contracting state states as being payable in compensation and the market lease rental. The contracting state does have the right to make a second declaration declaring that compensation will not be given to the creditor but this is unlikely to be used in most countries since in many states this will be considered to be confiscatory and therefore unconstitutional and of course it would be a major disincentive for the private sector to finance debtors located in such contracting state. Assuming compensation is paid however what is important to note is that the creditor is put back into the position as if it had repossessed the asset not as if the lease has just continued in accordance with its terms.

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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