

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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[New RWG website](#)

The RWG has significantly upgraded its website. It now has more information which is more easily accessible. Take a look [here](#).

[Industry workshop in South Africa](#)

On 1st September the RWG South African contact group will be running an industry workshop on the Luxembourg Protocol. [More information](#).

New members of the RWG

We are delighted to announce the following new RWG members:

- [Ashurst LLP](#), Dubai
- [Arendt & Medernach](#), Luxembourg
- [Burgess Salmon LLP](#), Bristol

Welcome on board!

New Contact Groups

The RWG is in the process of establishing contact groups, to work with government on ratification of the Protocol, in Italy, Belgium and Denmark. Please advise us info@railworkinggroup.org if you would like to be involved in any of these groups (or other existing groups – see [here](#) for the various implementation groups and commissions).

Defining railway rolling stock

The RWG has just issued a new briefing paper: *What Equipment is covered by the Luxembourg Protocol? More than you might think*. Download a copy of the paper [here](#).

Topic of the month: Pre-existing interests

The Luxembourg Protocol grants various rights and priorities to creditors where the debtor is located in a country which has ratified the Luxembourg Protocol. But what happens to creditor rights in rolling stock where those rights were created prior to the Protocol coming into force in the debtor jurisdiction? How does the Protocol deal with the conflict between prior but non-registered rights and subsequent security interests which are registered because they were created at a time when the Protocol applied?

Article 60 of the Convention deals with the issue of pre-existing rights and interest. A “pre-existing right or interest” is defined as a right or interest of any kind in or over the rolling stock created or arising before the date the Rail Protocol comes into force in the jurisdiction where the debtor is situated. In principle, the Cape Town Convention does not apply to any pre-existing right or interest, which therefore retains the priority it has under any applicable law before the Rail Protocol comes into force in the state concerned, unless a Contracting State makes a declaration otherwise. The determination of where the debtor is domiciled or “situated” is defined in detail as being the place where it has its centre of administration or, if it has no such centre of administration its place of business or principal place of business (if there are more than one) at the time the right or interest in question is created. But this creates a policy dilemma in that creditors need certainty as to their legal position and specifically need to be able to rely on the registry as an inclusive and comprehensive reflection of secured party rights. On the other hand, there needs to be a transition period to enable existing secured creditors to protect their priority right.

Accordingly, Article XXVI of the Rail Protocol makes a significant modification to Article 60 of the Convention by creating a revised version of Article 60 (3).

Article 60 (3) as amended permits a Contracting State to make a declaration as to the date when the priority of pre-existing rights or interests relating to an item of railway rolling stock, which of course cannot be registered as international interests since they pre-date the Rail Protocol coming into force, are overreached by subsequent rights and protections created and registered under the Rail Protocol in relation to that equipment. It states that the pre-existing right or interest has protection for a minimum of three years following the date of the declaration and the transitional period then is what is decided by a Contracting State by declaration but this cannot be longer than 10 years. Moreover, it's important to note that a subsequent registration of a pre-existing right or interest within the transition period will protect the priority of the secured creditor's priority but will not result in the creditor acquiring rights as a holder of an International Interest under the Convention. This would require the creation of a new agreement after the date the Convention comes into force in the location where the debtor has its principal "seat" or domicile.

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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