

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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[UK Adopts Aviation Protocol](#)

The United Kingdom this week deposited its instruments of ratification with UNIDROIT for the Cape Town Convention. "This opens the way for the adoption of the Luxembourg Protocol by the UK" said Howard Rosen, RWG Chairman. The RWG has a growing and active UK contact group and is participating in meetings with the British Government in relation to its ratification of the Luxembourg Protocol. If you wish to be part of this or the other [implementation teams](#) please contact howard.rosen@railworkinggroup.org

[Details of RSA industry seminar announced](#)

The RWG has now announced the details of its industry seminar taking place in Sandton, Johannesburg, South Africa on 1st September. Amongst the speakers will be Peter Bloch, the Co-Chair of the Preparatory Commission for the implementation of the Luxembourg Protocol and Elizabeth Hirst, the Registrar-Designate for the International Registry. You can see full details of the programme [here](#).

If you are not registered yet for the seminar and would like to attend, please see the [flyer](#) and follow the directions. Do circulate the flyer to colleagues who may be interested in the event.

Topic of the month: Are cross-border operations required for the Luxembourg Rail Protocol to apply?

Although the Cape Town Convention and the Luxembourg Rail Protocol refer to recording “International Interests” in rolling stock, there is no requirement for the rolling stock to operate on services which cross borders. Indeed given the wide range of mobile assets that the Protocol covers, such as dockside cranes, people movers and tram systems it quickly becomes clear that equipment designed to move no further than a few hundred metres is still covered.

The “International Interest” is an interest constituted under Article 7 of the Cape Town Convention where the agreement creating or providing for the interest:

- a. is in writing
- b. relates to an object of which the charger, conditional seller or lessor has power to dispose;
- c. enables the object to be identified in conformity with the protocol; and
- d. in the case of a security agreement, enables the secured obligation to be determined, but without the need to state a sum or maximum sum secured.

Provided the 4 limbs are met, even a transaction between 3 parties, all based in the same country, relating to rolling stock using solely in that country would be covered.

In the majority of cases it is expected that finance for a moveable asset would be coming from overseas and therefore there would be an “international” interest in the asset. Of course, more than one International Interest can be created in relation to one asset. So, for example, a lessor and lessee, as well as the railway rolling stock, may be located in the same jurisdiction but the lessor may then finance the lease receivables through

secured borrowing from a consortium of international banks. With a complex piece of legislation it is often easier to just have a single definition which is the “best fit” for its use and this is undoubtedly the case here, particularly since local legislation may not give the parties the new rights and remedies offered by the Luxembourg Protocol. The good news for organisations wishing to finance or re-finance new rolling stock is that the Luxembourg Protocol can benefit them even if their rolling stock is intended to remain within just one country.

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](#).

The next issue of Inside Track will be published in September. We wish our readers in the Northern Hemisphere a restful summer break.

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