



An association under Swiss law

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The Benefits of the Luxembourg Rail Protocol for Japan

In 2007 the Luxembourg Protocol to the Cape Town Treaty on International Interests in Mobile Equipment was adopted, paving the way for a new international system of recognising security interests taken as part of financing of railway rolling stock. A number of states have signed the Protocol. The first ratification has been completed and further ratifications from states are under way.

Essentially, the Protocol creates a new international régime for recognising the security interests of financiers (which can include states) providing capital to finance the procurement of rolling stock whether it be through leasing, conditional sales or secured credit transactions. The security interests will also be registrable in an international Registry, based in Luxembourg, which will be accessible 24/7 through the internet thereby providing a valuable new first warning system for creditors protecting them against any fraudulent or inadvertent financing of equipment which has already been pledged or even sold.

A major consequential benefit of the introduction of the Protocol will also be a new worldwide railway rolling stock identification system. At the moment there is no international registry for rolling stock (and only national registries in very rare cases) and no universal identification system for rolling stock.

Critically, the Luxembourg Protocol will apply if the debtor under a secured financing has its principal place of business in a state which has ratified the Protocol. It is not therefore dependent on where the rolling stock is operating.

Japan provides some of the leading operators and manufacturers in the global rail industry and the Japanese rail system is highly respected and undoubtedly one of the leading networks in the world. It is both the leading exporter of railway equipment and its manufacturing sector also heavily invests in production facilities outside of Japan. In this context, the Luxembourg Protocol will bring huge benefits to Japan both in the public and the private sector. For example, the Protocol:

1. **Is good for the Japanese government as**
 - a. It will reduce the finance burden on government by creating a more secure and open market for private sector finance of rolling stock thereby allowing government to use its valuable resources for infrastructure investment where required.
 - b. It lowers the barriers to entry for new operators, thereby encouraging an efficient and progressive industry.
 - c. It encourages investment in environmentally friendly equipment, thereby helping the environment as well as creating new jobs.
 - d. It creates a new tool for private sector financing of suburban transportation since the Protocol will apply to trams, underground and light rail rolling stock, relieving a burden on local authorities.

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- e. It creates a new instrument for overseas aid (and a new market for Japanese funders) since the Protocol, by creating the legal conditions in developing countries for the private sector to finance rolling stock, will deliver new investment in this sector with limited government financial commitment.
 - f. By adopting the Protocol Japan will have a voice in the composition of the supervisory authority which will regulate and modify the operation of the Protocol, in turn affecting Japanese companies operating outside Japan in the rail sector.
- 2. Helps local operators as**
- a. It creates a major additional security for local and foreign lenders and lessors financing rolling stock operating in Japan since the priorities and other rules as well as the public notifications of security positions will reduce financier uncertainty and therefore lower the cost of debt.
 - b. It opens out the possibility of operating leases of rolling stock.
- 3. Assists manufacturers by:**
- a. Making it easier to finance work in progress and pre-immatriculation equipment.
 - b. Opening out the sources of capital for new capital investment in rolling stock at home and overseas (especially where there is a possibility of rolling stock moving across jurisdictional boundaries).
 - c. Encouraging the development of an operating leasing market.
 - d. Easing pre- and post-delivery asset and customer management through the universal identification system for rolling stock.
 - e. Facilitating export finance where operators are based outside of Japan and where finance is provided by the manufacturer.
- 4. Supports Japanese banks and other financiers by**
- a. Increasing their security on rolling stock financed both within and outside of Japan.
 - b. Facilitating local securitisation projects.
 - c. Creating an operating lease market.
 - d. Harmonising key aspects of security law with other countries which will adopt the Protocol, thereby opening the way to international financings and cross border syndications.
- 5. Will make new rail infrastructure projects easier and cheaper as**
- a. Government can exclude the need to finance rolling stock.
 - b. BOT projects can finance rolling stock separately reducing (expensive) equity costs.
 - c. Limited term operator franchises will work more effectively (with independent finance being available).
 - d. It facilitates leasing of specialised mobile rail construction equipment.