

The Luxembourg Rail Protocol: What the Luxembourg Rail Protocol means for African States and for Africa

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Advantages for African States

- Removes a significant financial burden from the government
- Liberates public and private operators to obtain private sector finance for rolling stock when needed: no government budgetary constraints nor tied funding
- Opens up non-recourse private financing of existing fleets
- Important part of a PPP strategy (e.g. *Gautrain* expansion)
- Key driver for a modal shift from road to rail
- By introducing a common system of rules in contracting states, it protects operators and financiers where rolling stock operates across jurisdictional borders - so directly supports efficient free trade of goods within Africa

Advantages for African States

- The URVIS identifier means
 - ☐ One system applicable worldwide on all rail assets
 - ☐ Real-time tracking of condition and location of assets domestically and in other jurisdictions (and tracks)
 - ☐ Easier cross border operation
 - ☐ Facilitates more efficient asset management and customised predictive maintenance
 - ☐ Makes calculation of lifetime costs much easier for operators, manufacturers and financiers

Advantages for African States

- URVIS
 - ☐ Defence against fraud on purchasers and creditors of rolling stock
 - ☐ Important for immatriculation – admission to rail system
 - ☐ Will support regional regulatory co-operation and interoperability systems
 - ☐ Supports new technology



Advantages for African States

Some state of the art examples:

**Regenerative
braking**

**Supercapacitor
trams**

**Low-noise
rolling stock**

**Automated
train operation**

**High-speed
trains**

**Automatic
coupling
systems**

**Artificial
intelligence and
platooning**

**Real-time rolling
stock location
and diagnostic
systems**

**Variable-gauge
rolling stock**

**Positive train
control/ERTMS
& other in cab
signal systems**

**Hybrid, clean
diesel &
hydrogen/fuel cell
locomotives**



Advantages for African States

- Helps provide a more competitive service to freight shippers
- Supports multi-modal operations
- Creates new jobs and skills in manufacturing, maintenance, financial services and operations
- Delivers more modern, reliable and efficient rolling stock for passenger and freight services, for business and the public

Advantages for African States

- Cheaper finance - reduces bank capital costs/margin and debt financing costs as risks decrease
- Lower Export Credit Agency (ECA) premiums (min. -10%)
- Eliminates complex documentation and structures
- Recent Oxera studies on direct micro-economic savings of the Rail Protocol:
 - ❑ **€ 13.9 bn** for 9 “1520” states
 - ❑ **€ 1.3 bn** for South Africa
 - ❑ **€ 19.4 bn** for 20 European states
- Macro economic benefits come on top

South Africa

oxera
compelling economics



FINANCIAL BENEFITS

€1.3bn total benefits
equivalent to

R20.0bn total benefits
R358 per inhabitant

Refinancing
28%



New deliveries
72%

Freight
44%



Passenger
56%

Advantages for African States

- Supports
 - ☐ more manufacturing of rolling stock locally as demand increases
 - ☐ the local financial services and maintenance industry and therefore more jobs and skills' development
- Encourages foreign investment in the railways
- Lowers the barriers to entry for new industry participants
- Makes railways more commercial and competitive
- Underwrites operating leases – a key win for the rail sector


Advantages for African States

- Operating Leasing
 - ❑ Finance and Operating Leasing are critical ways to provide secured finance independent of government
 - ❑ Financier owns the financed equipment
 - ❑ Operating leasing is a key component in the success of the aviation sector in the last 40 years
 - ✓ Lessee can be lightly capitalised
 - ✓ Flexible instrument: lessor can carry maintenance, insurance and other liabilities
 - ✓ Promotes a secondary market

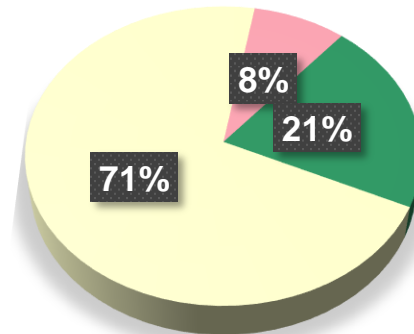
Case Study






SOUTH AFRICAN AIRWAYS

A STAR ALLIANCE MEMBER 

**77% of aircraft in service with SAA
are leased**



-  in storage
-  owned wide bodies
-  leased

Advantages for African States

- Operating Leasing
 - ☐ Allocates practical and technological obsolescence and other risks where they can be most easily borne
 - ☐ Unburdens balance sheet – and operator is no longer an asset manager
 - ☐ **Transparency** on daily costs
 - ☐ **Flexibility**: matches availability to operator needs
 - ☐ Driver towards **standardisation** because this enhances residual values
 - ☐ Operators can monetise excess equipment

Advantages for African States

- Operating Leasing
 - ☐ Only possible if the lessor can be sure of recovering the leased asset on default or insolvency of the lessee
 - ☐ Or at the end of the lease, to recover the residual value invested
 - ☐ Even more a consideration if leased rolling stock is crossing borders
 - ☐ No Luxembourg Protocol, no leasing to moderate credits without (good) state guarantees – it's a binary decision – which means that the Protocol brings a disproportionate benefit to the poorer states



Advantages for African States

- General benefits for the private sector
 - ☐ Helps provide a more competitive service to freight shippers
 - ☐ Supports multi-modal operations
 - ☐ Creates new jobs and skills in manufacturing, maintenance, financial services and operations
 - ☐ Delivers more modern, reliable and efficient rolling stock for passenger and freight services, for business and the public

Obligations for African States

This is a private international law treaty; adoption of the Protocol creates no state obligations except:

- Requirement to implement the Protocol (and declarations) into national legislation
- Possible assistance on repossession on debtor insolvency (Article X – declaration required)
- Participation in supervisory authority (Article XII)

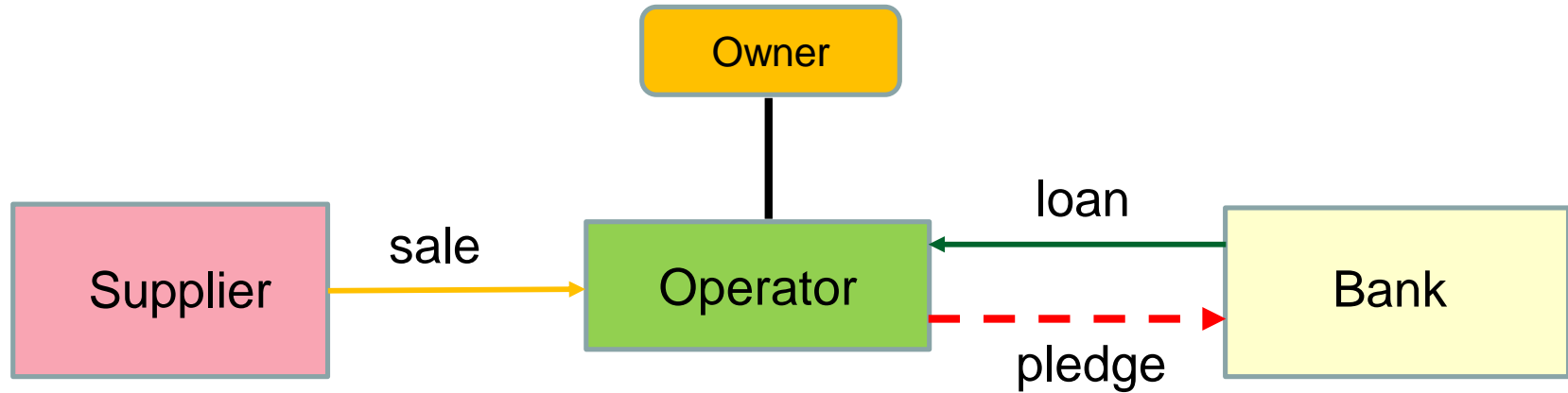
Note: the name of the Protocol gives no powers to European states, creditors or manufacturers to impose any European standards.

Costs

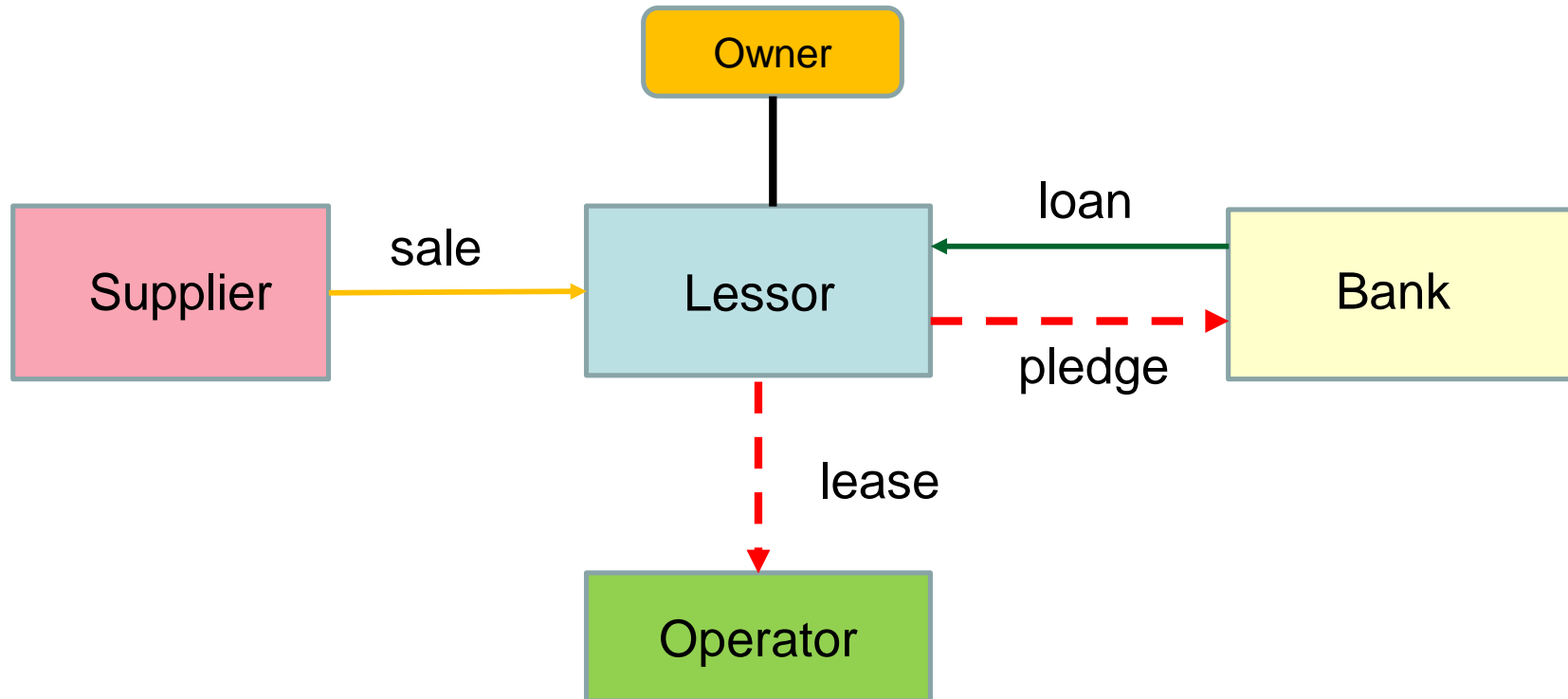
- User registration fees for the debtor
- Fee for URVIS number (one time cost)
- Cost of fixing identifier on rolling stock
- Registration and search fees at completion of financing
- Ongoing (annual?) search fees by creditor

Note: All costs are minimal. The asset registration and search fees from the international registry are unlikely to be more than \$10 per item.

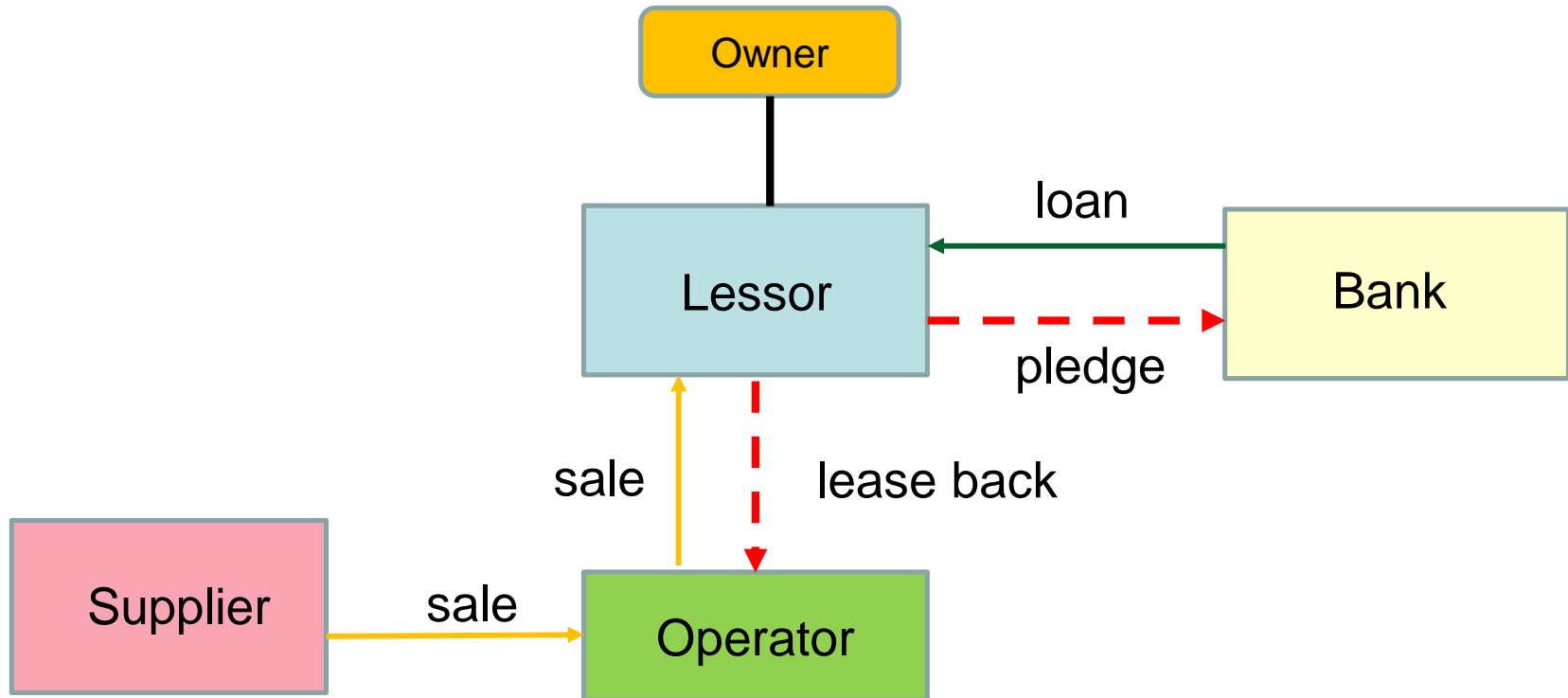
Case Study: the classic financings



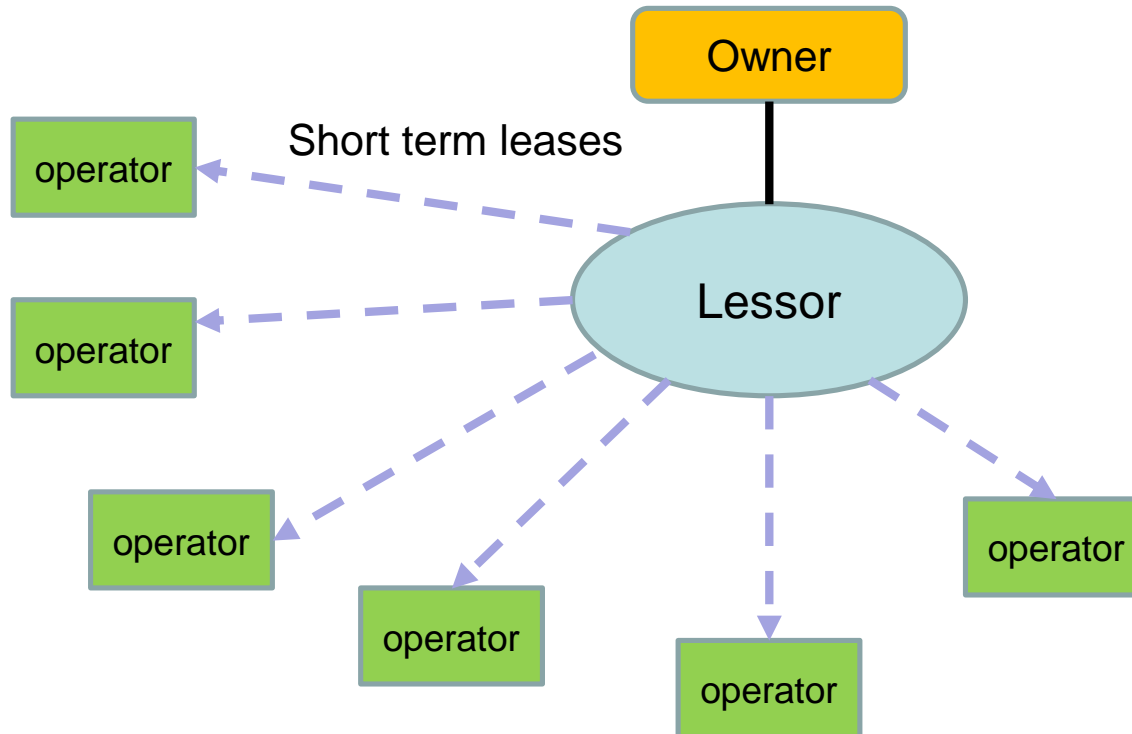
Case Study: the classic financings



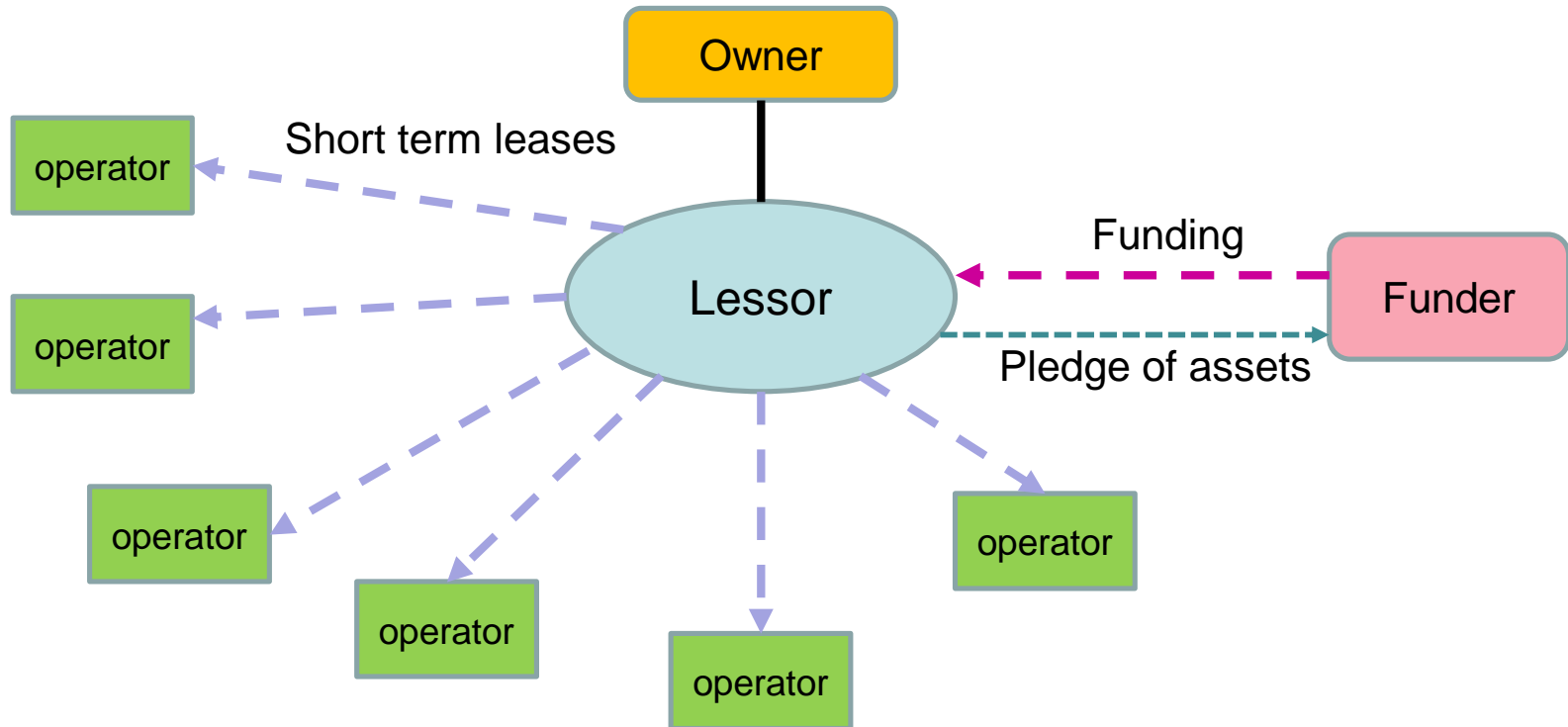
Case Study: the classic financings



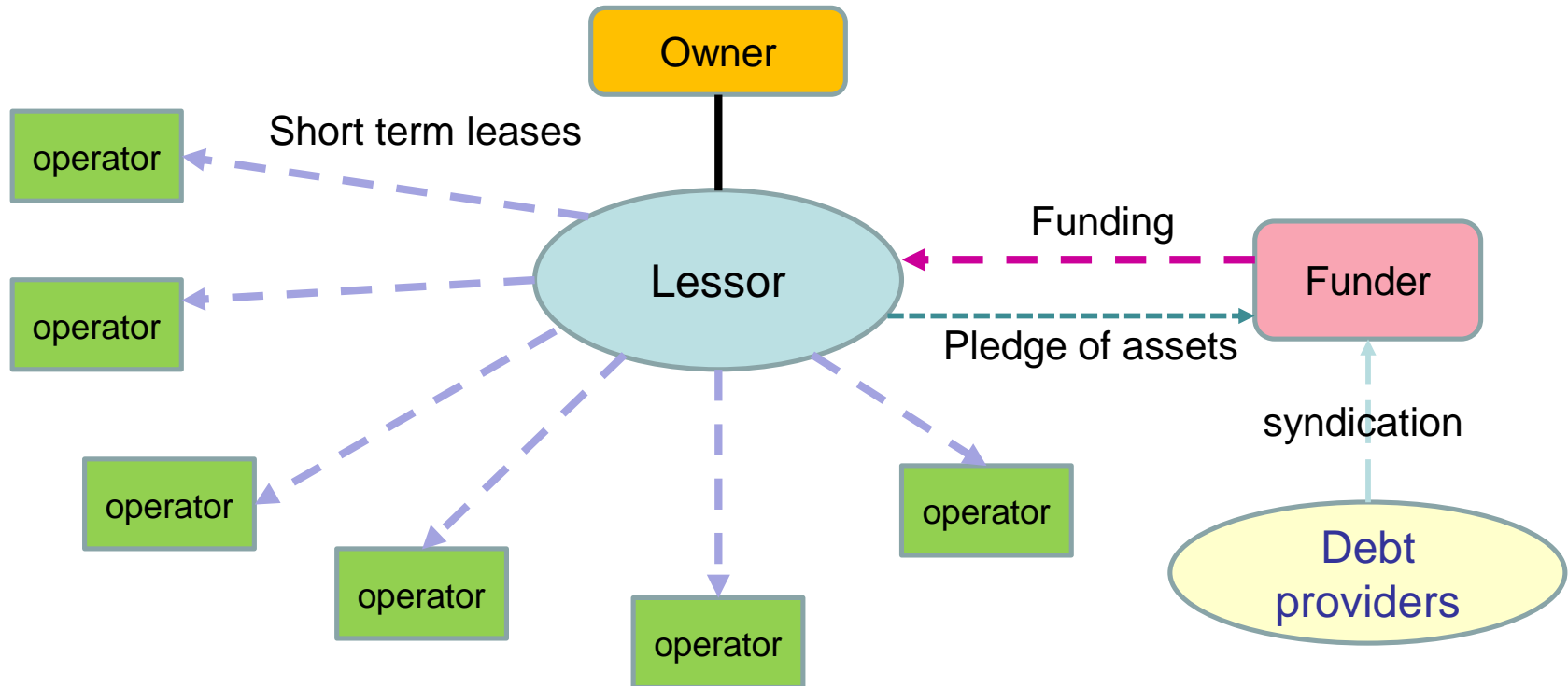
Case Study SPC Model



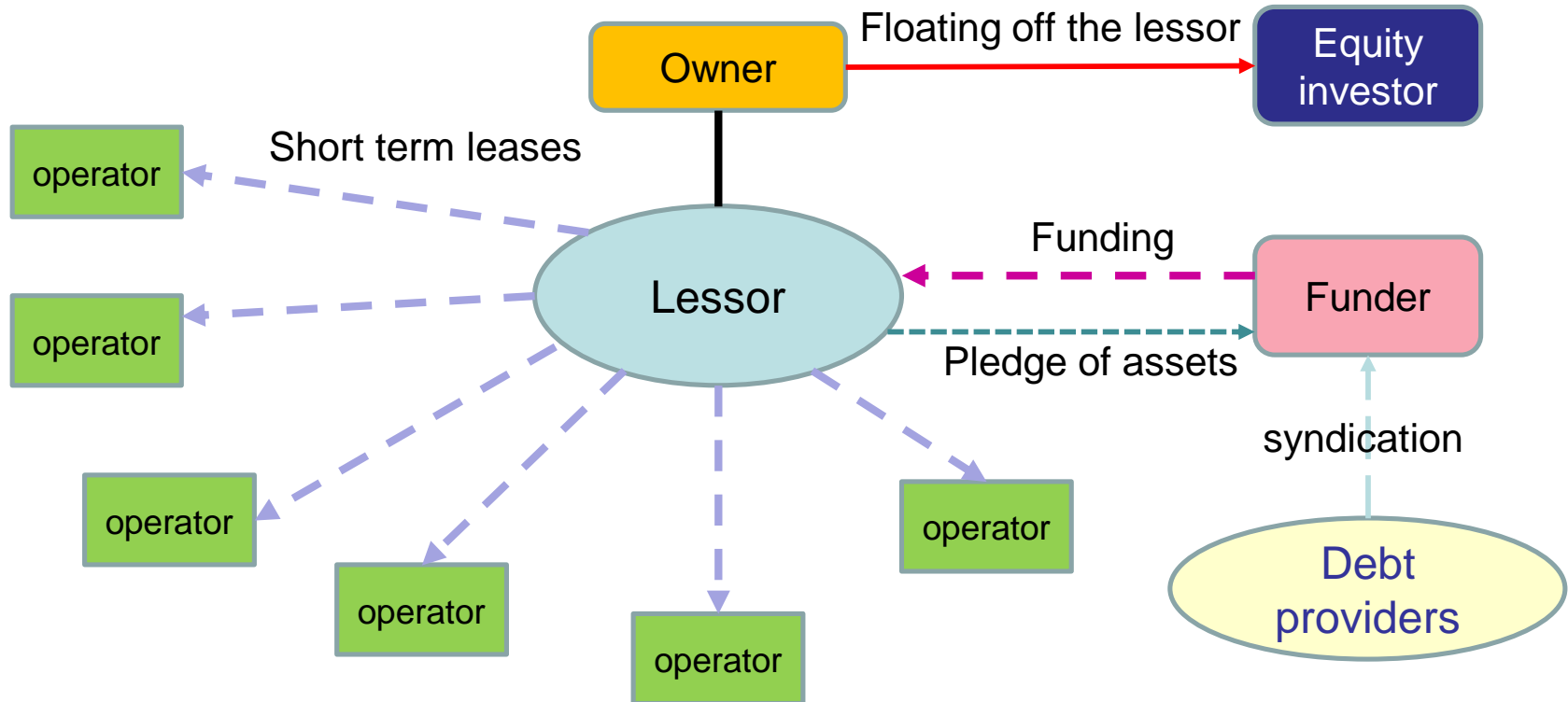
Case Study SPC Model



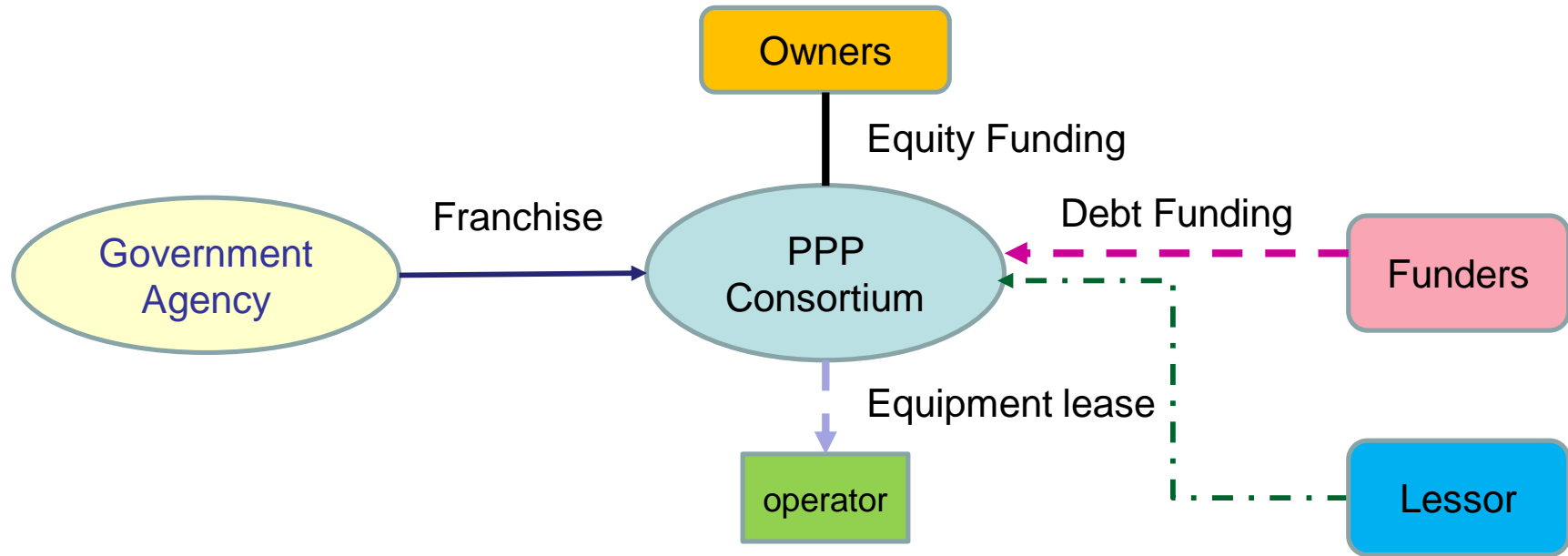
Case Study SPC Model



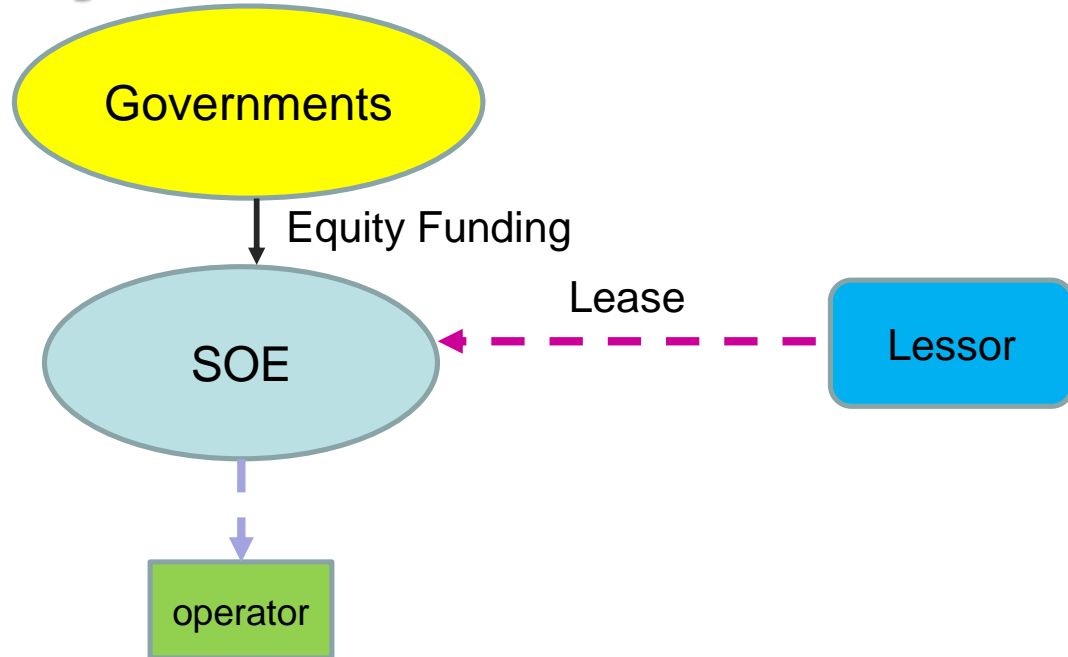
Case Study SPC Model



Case Study PPP/BOT



Case Study JV/Lease finance



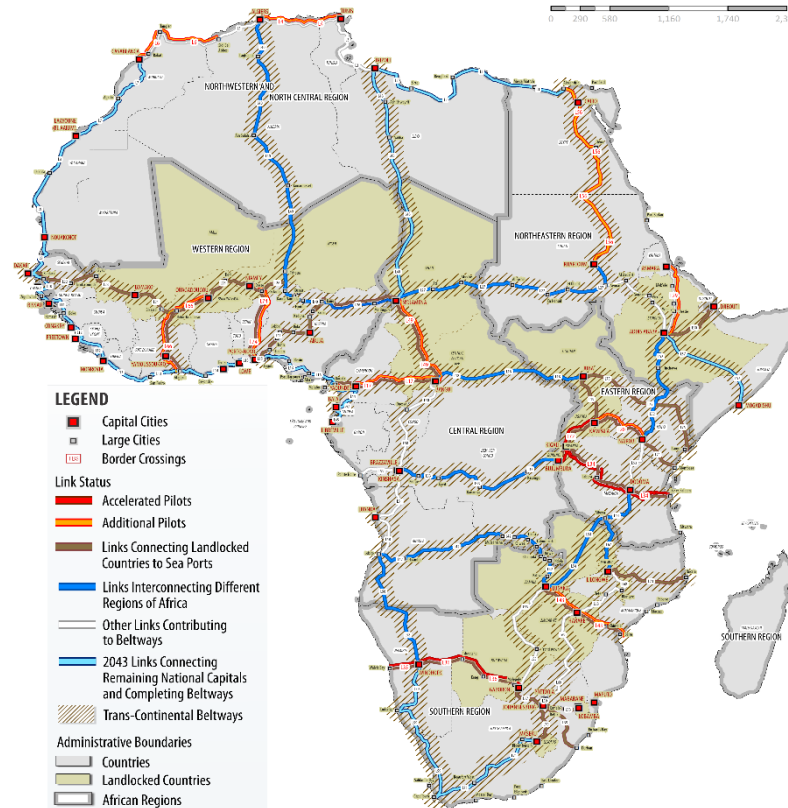
Supporting the AfCFTA and the AIHSRN

- Without the railways, delivering the goods in volume in the free trade area is impossible
- The Protocol
 - ❑ Creates a **common** system, operating in various different countries, protecting the interest of secured creditors, owners and operators
 - ❑ Creates a new legal framework protecting creditors and operators for financings of railway equipment operating in one state
 - ❑ Encourages cross border operation within the same gauge system or beyond where variable gauge rolling stock is used

Supporting the AIHSRN

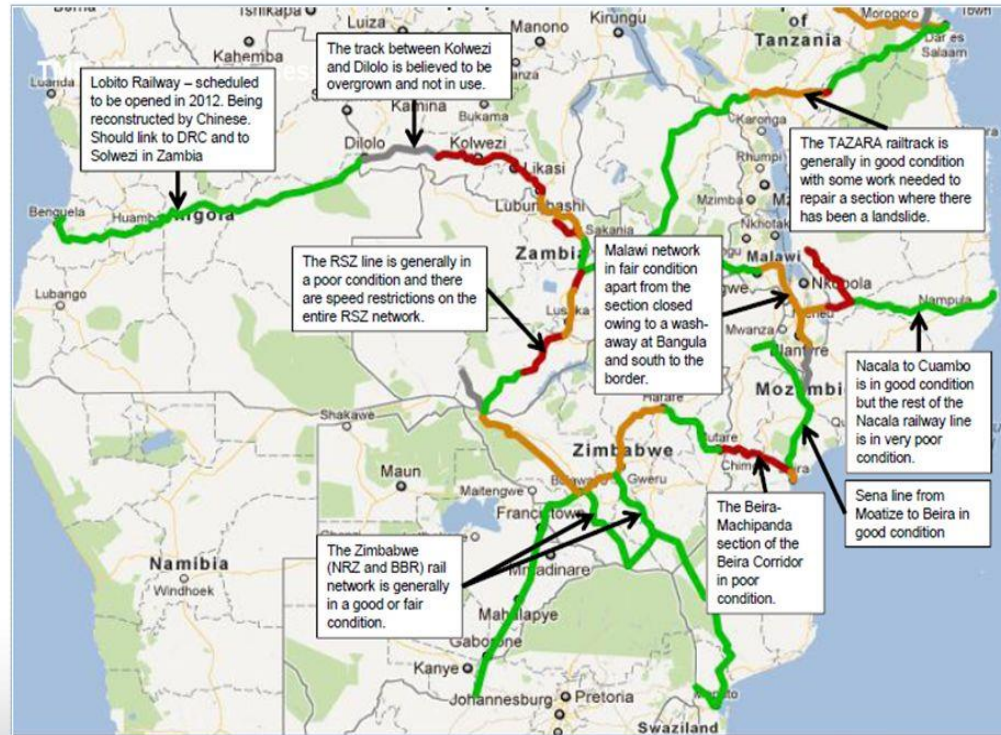
- Symbiotic relationship – a new SGR network needs new rolling stock, which needs to be financed and operate cross borders
- The Protocol secures cross border operation for financiers and operators
- And will indirectly help with infrastructure costs since
 - ❑ Allows operators and governments to refinance existing fleets – freeing up liquidity for infrastructure
 - ❑ Much building equipment (tamping machines, boring machines etc.) are on rails and therefore are covered by the Protocol, which should result in private sector finance and lower financing costs

Case Study: AIHSRN Masterplan 2043



Case Study: NSC

North-South Corridor Railways and Connections



Interoperability

- A key practical challenge for implementation of the AIHSRN
- The Protocol removes creditor restrictions on cross border operations (as long as the Protocol is in force in both states)
- Supporting common signalling systems
- The URVIS numbering system facilitates a lifetime dossier on each item of rolling stock
- Permitting dossiers to be exchanged between regulators
- Allowing regulators and creditors to monitor location and maintenance status of rolling stock accurately and in real time, even where the running number changes, and to enforce admissibility standards



The case is overwhelming

- Expansion and rehabilitation of the railways are a critical component of a sustainable development agenda
- The Luxembourg Rail Protocol creates a new global legal regime for securing creditors facilitating more and cheaper asset based, financing of railway equipment without state support and at no cost or obligation for governments
- delivering new capital sources and new ways of doing business, leading to a larger, more dynamic, efficient, transparent and competitive industry, helping fighting climate change and specifically complements AfCFTA and AIHSRN
- It will bring major benefits to creditors, operators, manufacturers, the business sector and the public

The Way Forward

- Adoption process
 - ☐ Stakeholder/intra departmental consultations may be required
 - ☐ States can sign first but better to accede to the Protocol (and the Cape Town Convention if it has not already been adopted) from the outset
 - ☐ African States should adopt the Protocol in a consistent way
 - ☐ Instruments of accession must be authorised under local law and issued (with declarations) in English or French (RWG and UNIDROIT will assist)

The Way Forward

- We recommend that African States adopt the Protocol as soon as possible
 - ☐ Instruments of accession must be lodged with the Depositary (UNIDROIT) in Rome with the appropriate credentials
 - ☐ The Protocol needs to be incorporated into the local law of the acceding state (depending on the state, this may be decree or act of parliament)
 - ☐ States should pursue a regional strategy to maximise the benefits

Conclusion

- The Luxembourg Rail Protocol creates a new **common** global legal regime for securing private sector creditors financing rolling stock, providing for a public international registry of security interests, introducing unique identification
- It will facilitate more and cheaper finance asset based financing of railway equipment operating domestically or cross border, without the need for state support
- leading to a larger, more dynamic, transparent and competitive rail sector across Africa
- Supporting sustainable African development, the AIHSRN and the AfCFTA and general interoperability across Africa

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