

The Cape Town Convention and its protocols

Why it makes sense for Mauritius

Port Louis, 2nd September 2019

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INTRODUCTION

- Introducing UNIDROIT and your speakers
- The Cape Town Convention (CTC) as a modern international regime for equipment financing and leasing
- The various protocols to the Convention
 - Aircraft and Rail
 - Space and the next protocol (MAC)
- Discussion of practical issues



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

- The International Institute for the Unification of Private Law (UNIDROIT) is an independent intergovernmental Organisation with its seat in Rome
- Its purpose is to study needs and methods for modernising, harmonising and co-ordinating private and in particular commercial law as between States and groups of States
- Set up in 1926 as an auxiliary organ of the League of Nations, the Institute was, following the demise of the League, re-established in 1940 on the basis of a multilateral agreement
- Current membership: 63 states

THE 2001 CAPE TOWN CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT



- Formed in 1996 at the request of UNIDROIT
- Not-for-profit global industry group based in Switzerland
- All officers and members work for free
- 90 direct members and hundreds via industry associations
- Linking up various industry stakeholders
- Dedicated to the adoption of the Luxembourg Protocol to the Cape Town Convention
- In Africa we work closely with the UN Economic Commission for Africa

The CTC is the solution but what's the problem?

- Growing need for more investment in high value moveable equipment at affordable rates
- Governments cannot shoulder the financial burden
- No current global system providing for uniform creditor rights and their enforcement
- No common rules on debtor insolvency
- Additional security issues when financed assets cross borders and conflict of laws

The CTC is the solution but what's the problem?

- Significant additional problems for non aircraft assets:
 - No national title or security registries
 - Identifiers unstable (from a creditor's perspective) and inconsistent across the sector
 - Limited legal infrastructure domestically and internationally
 - Repossession issues for creditors on debtor default or insolvency;
 - Public Policy and Public Interest
 - Banks' capital requirements and Basel II and III
 - Limited commercial tracking of assets

Africa Needs More Railways



Sustainable transport

“The provision of services and infrastructure for the mobility of people and goods - advancing economic and social development to benefit today’s and future generations - in a manner that is safe, affordable, accessible, efficient, and resilient, while minimizing carbon and other emissions and environmental impacts.”

Mobilizing Sustainable Transport for Development, Analysis and Policy Recommendations from the United Nations Secretary-General’s High-Level Advisory Group on Sustainable Transport, 2016

Africa Needs More Railways

Africa has a low level of intra-regional trade ...

Source: UN Economic Commission for Africa

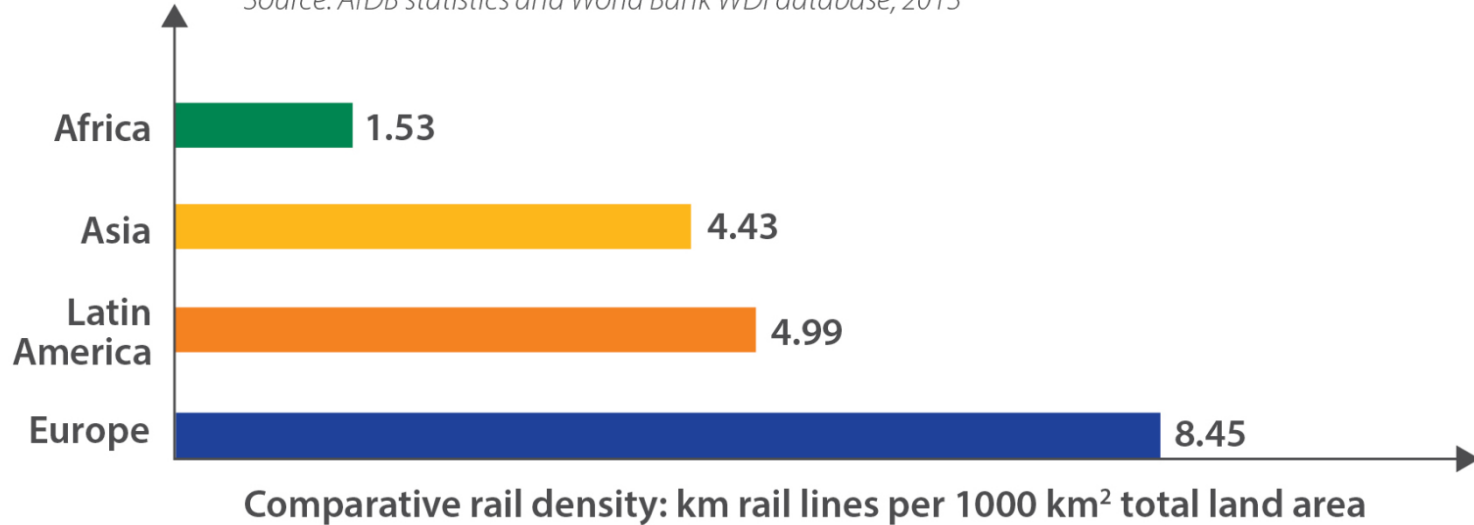
Percentage of
intra-regional
trade →



Africa Needs More Railways

... and too little rail infrastructure

Source: AfDB statistics and World Bank WDI database, 2013



Africa Needs More Railways

- Railways are essential for sustainable development
- The lack of integrated African rail networks is holding back growth and intra-continental trade – including the AfCFTA
- Roads cannot take the strain from increased trucking
- Cities are strangled by congestion and pollution
- Moving passengers and freight onto rail is vital for environmental, social and economic reasons (1 train can transport the freight carried by 40 trucks)

Cape Town Convention on International Interests in Mobile Equipment (2001)

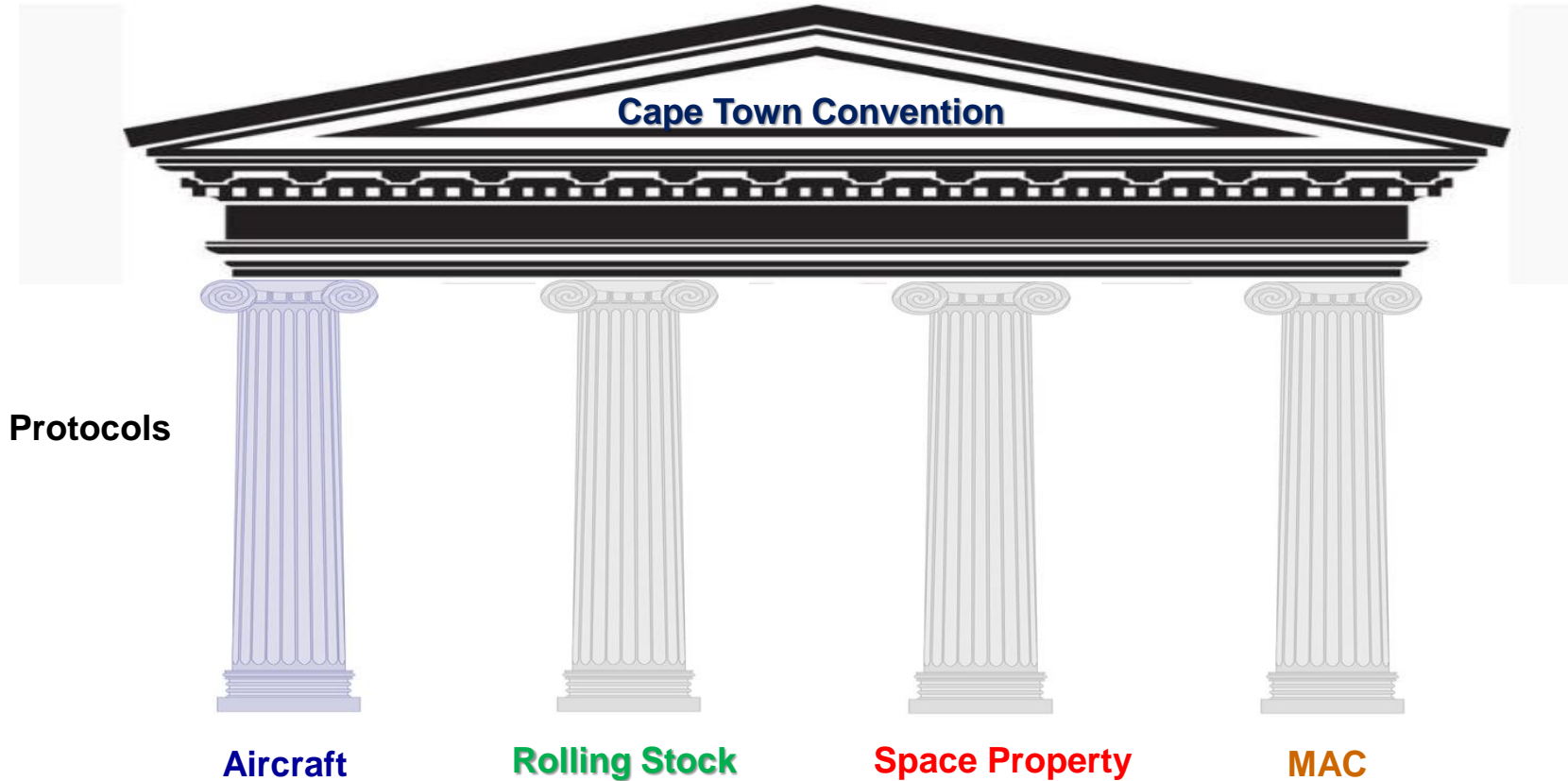
- New global system of international legal rights and priorities for secured creditors
- Common system for enforcing creditor rights upon debtor default or insolvency
- Public registry of security interests, accessible 24/7 online
- Already adopted by 79 States



The Convention Creates

- A new type of global security interest (the “International Interest”) for designated movable equipment
- Internationally recognised with established priorities
- Secures the:
 - Lessor under a lease
 - Creditor under a secured loan
 - Vendor’s rights under a conditional sale (where title is retained)
- Applies based on seat or domicile of debtor/lessee

How the Convention works



How the Convention works

- Convention is applied to an asset class by a protocol
- Declarations may be made in relation to both the Convention itself and adopted protocols
- All declarations are voluntary (except for a mandatory declaration under Article 54 (2) of the Convention)

Aircraft Protocol

- Adopted at the 2001 Cape Town diplomatic conference
- Applies the Convention to airframes, engines and helicopters subject to some *de minimis* rules
- Applies the Convention also when the Airframe is registered in a contracting state at the time the security interest is created
- Extends the Convention to aircraft sales
- Operating since 2006 – now in force in 76 states plus 1 REIO (European Union)

Aircraft Protocol

The Convention and the Aircraft Protocol is in force in 24 African States

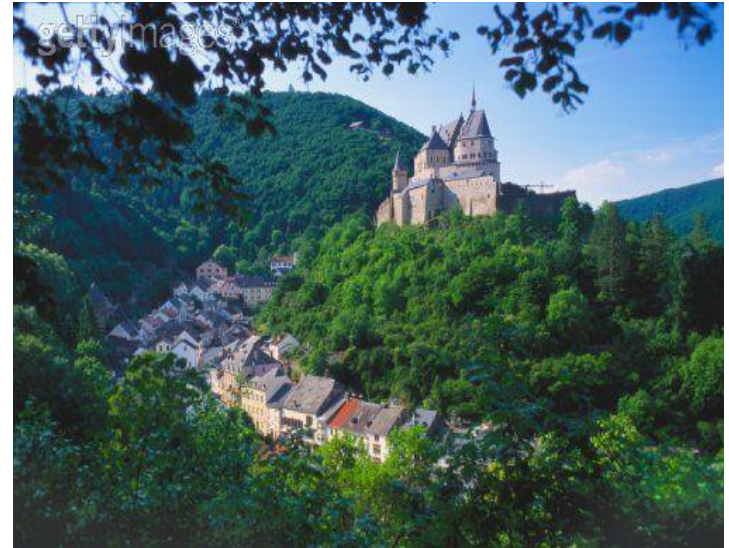
- Angola • Burkina Faso • Cameroon • Cape Verde • Congo
- Côte d'Ivoire • Democratic Republic of the Congo • Egypt
- Eswatini • Ethiopia • Gabon • Ghana • Kenya • Malawi
- Madagascar • Mozambique • Namibia • Nigeria • Rwanda
- Senegal • Sierra Leone • South Africa • Togo
- United Republic of Tanzania

Aircraft Protocol

- International registry based in Dublin, Ireland: registrar Aviareto, a special purpose company established by SITA,
- Supervisory Authority: ICAO in Montreal
- Under the Aircraft Sector understanding ECAs reduce their risk premiums by 10% as long as the Protocol is adopted with the recommended declarations
- Over 1 million registrations to date – on aircraft with an estimated value of over \$ 500 Billion
- Aviation Working Group: the Aircraft Protocol will save the air transport industry **\$161 bn** 2009 - 2030

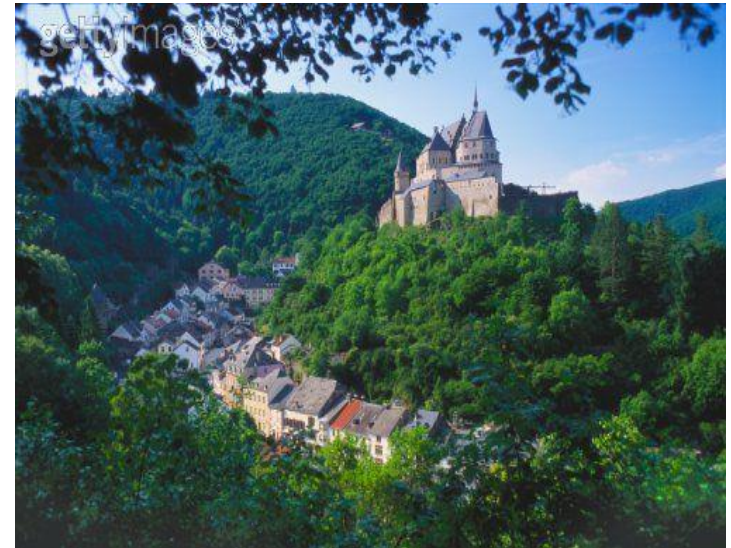
Rail Protocol

- Diplomatic Conference in Luxembourg in 2007:
- Attended by 42 states and 11 international organisations including 7 African States and SADC
- Sponsoring intergovernmental organisations UNIDROIT and OTIF – both with African members



Rail Protocol

- Applies the Cape Town Convention to rolling stock when debtor is located in a contracting state
- International registry in Luxembourg
- Registrar responsible to contracting states
- Will introduce global unique identification system for railway equipment





The Rail Protocol Applies to ALL Rolling Stock

- Wherever manufactured, whatever gauge and operability standards
- Broadly defined: “..vehicles movable on a fixed railway track or directly on, above or below a guideway.” This covers:
 - Inter-urban and urban rolling stock
 - Specialist boring and other rail mounted equipment
 - Metro trains and trams
 - Monorail trains and cable cars
 - People movers/shuttles at airports
 - Cranes and gantries at ports
 - Hyperloop pods

Unique Vehicle Identification

- Rolling stock must be uniquely identifiable to register interest
- Unique Vehicle Rail Identification System (URVIS) will be established by registry regulations
- First global unique and permanent identification system for rolling stock
- 16-digit number allocated by the Registrar in Luxembourg that will never be re-used
- Affixed permanently to each piece of rolling stock by the manufacturer, maintainer or keeper

The Protocol's Status

- Adopted in 2007 (4 ratifications and active registry required to enter into force – expected entry into force during 2020)
- Appointment of Regulis SA (SITA subsidiary) as Registrar in December 2014
- Ratified by Gabon, Luxembourg and Sweden (and the EU) and Kenya about to ratify
- Signed by Italy, Germany, France, Mozambique, Switzerland and UK - all moving towards ratification
- Aside from Mauritius, also under review, in Africa, by the states of South Africa, Burkina Faso, Ghana, Morocco, Nigeria, Uganda, Senegal and Ethiopia.

Benefits for Africa

- 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

Benefits for Africa

- URVIS
 - One system applicable worldwide on all rail assets
 - Real-time tracking of condition and location of assets domestically and in other jurisdictions (and tracks)
 - Supports new technology
 - Facilitates more efficient asset management and customised maintenance
 - Assists insurers, manufacturers, port operators and other stakeholders
 - Will support regional regulatory co-operation and systems

Benefits for Africa

- 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

Benefits for Africa

- 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%

Benefits of the Convention for Mauritius



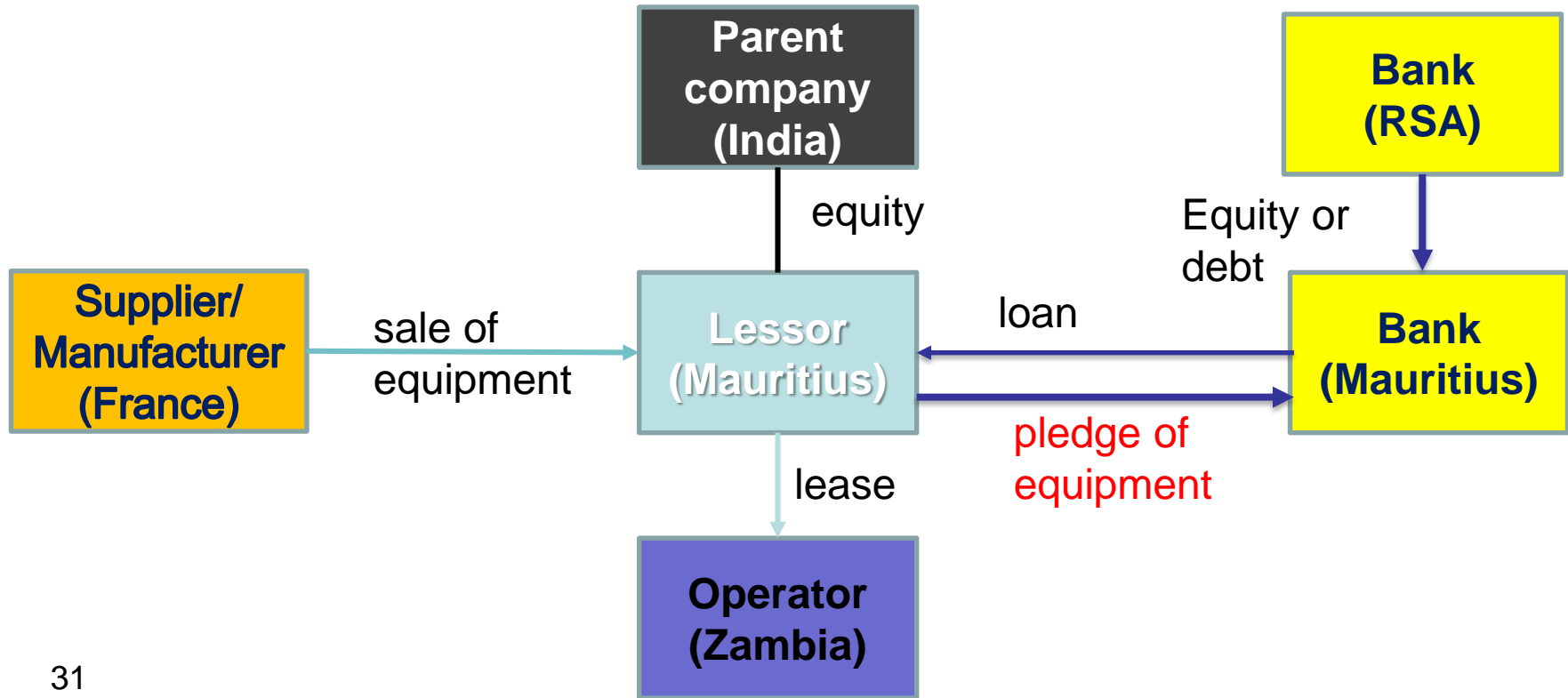
Benefits of the Convention for Mauritius

- Cheaper finance for credit for local projects
 - aircraft for Air Mauritius
 - rolling stock for the new Metro
 - Equipment at the port
- Lower Export Credit Agency (ECA) premiums (min. -10%)
- Eliminates complex documentation and structures
- Macro economic benefits come on top
- Key support for SADC states

Benefits of the Convention for Mauritius

- Reinforces Mauritius's unique position as the financial services centre for Africa and creates new business opportunities
 - Direct income from finance deals going through Mauritius
 - Enhances specialist local expertise
 - Indirect income for Corporate Service Providers
- Should Mauritius follow Malta's example and create a special status for asset leasing companies in implementing legislation?

Mauritius as a Financial Services Centre



The Cape Town story is only just beginning

- Huge success as a new international legal instrument for aviation
- Will soon begin to have a major impact on rolling stock procurement
- But the Space Protocol and the MAC (Mining Agricultural and Construction Equipment) Protocol will confront important issues and provide innovative solutions for private sector asset finance in those sectors