



Private sector finance for rolling stock

**Viet Transport 2010
Conference
Hanoi, Vietnam
4th – 5th November 2010**

**Howard Rosen
Principal, Howard Rosen Solicitors, Zug, Switzerland
Chairman, Rail Working Group**

Putting things in Context

The different finance options

- **Examining the different types of finance from the operator perspective**
 - Role of government
 - Equity, state loans and grants, aid
 - Private debt, leasing, BOT,
- **What are the current strains on finance capacity**
 - Lack of liquidity
 - Funder security/collateral
 - Aid budgets



Looking for financial flexibility/credit lines

- The basic challenge: to match
 - Revenue with cost
 - Usage term with credit
- New forms of capital
 - Alternative equity
 - Alternative debt (sales aid, term debt)
- Farebox or other asset securitisations
- ECA and other agency guarantees
- Recourse Debt or Leasing



The key private finance issue

lease or buy

- Do you buy rolling stock and finance through private sector debt
- Or do you lease
- What types of leases?
 - Finance lease or operating lease
 - Type of operating lease
 - Service leasing



Advantages of Leasing

- Relieves credit lines and can be cheaper
- Fixed cost
- Flexibility
- Can be effective use of aid/ECA guarantees
- Risk transfer
- Balance sheet treatment
- Transparency and discipline
- Eliminates RV risk



www.shutterstock.com · 31250752

Transparency and asset risk allocation

- **Transparency**
 - **Cost per day analysis**
 - **Add on costs for enhancements**
- **Asset risk**
 - **Depends on lease type**
 - **Watch out for inertia**
 - **Impact on asset strategy**



Weighing the burdens on a lessee

- Fixed costs and variable income?
- Legal review and costs
- Asset maintenance
- The “sticky factor”



More downsides for the lessee

- **Lack of ownership**
- **Limited not complete control - operational: restrictions on asset management**
- **Financial: limited stake in (residual) value**
- **Availability**
- **Balance sheet - the Health Warning**



Lessor and lessee rights and repossession of rolling stock

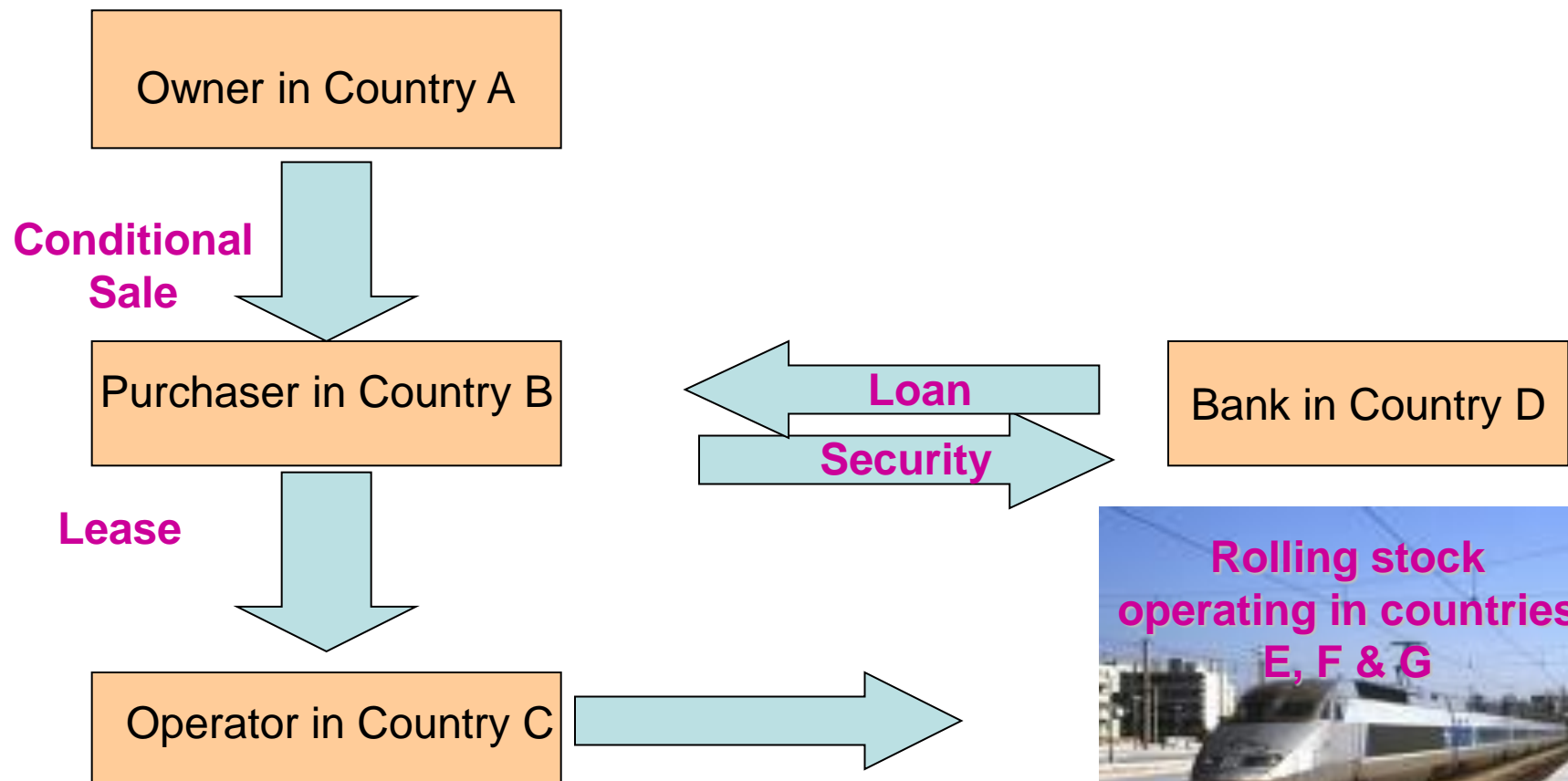
The normal contractual considerations

- **Quiet possession but...**
- **Termination on default or insolvency**
- **Other liabilities**
- **Conflicts of rights**





Financing rolling stock today



The Luxembourg Protocol

Protecting creditor (and debtor) rights

- What the Protocol does
 - a new type of security internationally recognised with established priorities
 - registerable in a publicly searchable 24/7 registry
 - Additional creditor rights, facilitating collateralised (and cheaper) debt
 - Lowers barriers to entry
 - Facilitates operating leases



The Luxembourg Protocol

Protecting creditor (and debtor) rights

- **Application of the Protocol**
 - All rolling stock
 - Applies to security under leases, conditional sales
 - Debtor location
- **Looking at the issue from both perspectives**



Repossession of rolling stock

Lessee rights

- Quiet possession (assuming no default)
- Registerable interest
- Priority over subsequent creditors
- Recourse to courts in certain cases



Conclusion

- **Various types of Private Finance**
- **Not inconsistent with government or aid agency support**
- **They can be innovative**
- **Key decision will often be whether to buy on credit or to lease**
- **Each have their advantages and disadvantages**
- **But “Luxembourg” will make it easier**





Private sector finance for rolling stock

**Viet Transport 2010
Conference
Hanoi, Vietnam
4th – 5th November 2010**

Howard Rosen
Principal, Howard Rosen Solicitors, Zug, Switzerland
Chairman, Rail Working Group
www.railworkinggroup.org
www.legalease.ch