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The Luxembourg Rail Protocol

An important aid for ECAs

Howard Rosen
Chairman, Rail Working Group
Zug, Switzerland
www.railworkinggroup.org

Introduction

The Rail Working Group

- Formed in 1996 at the request of UNIDROIT
- Not for profit global industry group based in Switzerland
- More than 70 direct members and hundreds via industry associations
- Linking up the various stakeholders in the industry
- Dedicated to the adoption of the Luxembourg Protocol



Introduction

Railway Finance today

Urgent need for new investment in rolling stock worldwide driven by economic, environmental and societal needs
special projects such as the Belt and Road Initiative



Introduction

Railway Finance today

Rail infrastructure requires
government engagement
Rolling stock increasingly financed
by private sector
Constraints due to lack of security
for creditors



Problems of bringing in private capital

No national title or security registry

Identifiers unstable (from a creditor's perspective)

No comparable running number for other rolling stock (e.g. metros)

Limited legal infrastructure domestically and internationally

Repossession issues for creditors on debtor default or insolvency

Public Policy and Public Interest

Bank's capital requirements and Basel II and III

Limited commercial tracking of assets

Cross border risks



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THE LUXEMBOURG PROTOCOL TO THE CAPE TOWN CONVENTION ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT

Agreed in Luxembourg 2007

**Participants from 42 States and 12 international
organisations at the Diplomatic Conference**

What does the Luxembourg Rail Protocol do?

The Protocol creates

- A new type of global security interest (the “International Interest”) for railway rolling stock, internationally recognised with established priorities
- Security registrable (voluntary) and searchable 24/7 in a public registry, in Luxembourg, through the internet
- Relevant for domestic and international rolling stock finance
- A common system for enforcing creditor rights



What does the Luxembourg Protocol apply to?

The
Protocol
applies

- To all rolling stock (broadly defined):
 - “..vehicles movable on a fixed railway track or directly on, above or below a guideway” so covers
- Inter-urban and urban rolling stock
- Specialist boring and other rail mounted equipment
- Metro trains and trams
- People movers/shuttles at airports
- Cranes and gantries at ports
- Cable cars



When does the Luxembourg Protocol apply?

The
Protocol
secures

- Lessor under a lease
- Creditor under a secured loan and
- Vendor's rights under a conditional sale (where title is retained)



Luxembourg Benefits

The Protocol

- Establishes a new domestic and international legal framework securing creditors
- Eliminates complex documentation and structures – saving money
- Resolves cross border and conflict of laws issues
- Reduces need for state support and private financing costs
- Facilitates operating and finance leasing and other private sector finance
- Makes the industry more competitive against road and aircraft transportation



Luxembourg Benefits

The
Protocol
reduces
creditor
risk

- Clear system of rights and priorities
- **Common system** facilitates repossession and redeployment of equipment in and outside of debtor's state
- Creditor rights recorded in a public register
- Unique Vehicle identifier



Luxembourg Benefits

The
Protocol
reduces
creditor
costs

- Easier repossession on default or insolvency
- Simpler documentation
- Lower legal costs



The Status of the Luxembourg Rail Protocol

Adopted 2007 (not yet in force)

Appointment of Registrar (SITA subsidiary) December 2014

Ratified by EU, Gabon and Luxembourg

Signed by Italy, Germany, France, Mozambique, Sweden, Switzerland and UK - all moving towards ratification

Other EU and non-European countries now actively working on ratifications

4 ratifications required and secretariat (OTIF) must also authorise that the Registry is ready before the Protocol “goes live”

Expected to be in force in Mid 2019



Export Credit Agencies [OECD]

ECAs and aircraft – the ASU and the 10% “Cape Town Discount”

ECA engagement – a major factor in the adoption of the Aircraft Protocol

Railways now potentially at a competitive disadvantage compared to aviation

ECAs – play essential role supporting rail supply contracts

Aggressive credit support for railway equipment from non OECD members – OECD state manufacturers need help



Export Credit Agencies [OECD]

Rates will become more critical as procurement through private finance increases

2014 Rail Sector Understanding (RSU) in place

- **Now renewed until 2020 (thank you!)**
- **Does not deal with the Luxembourg Protocol**
- **Makes no distinction between infrastructure and rolling stock**

We accept that no substantive changes to the RSU can take place in the near future

But ECAs have discretion within those parameters on a commercial basis

We propose three principles



The Three principles

To apply IF (a) credit is fully secured by financed equipment and (b) the Luxembourg Protocol applies

1. Terms should reflect the reduction of risk
2. Buyer Risk should be at or near zero
3. A way has to be found to replicate at least the equivalent to the 10% ASU Cape Town discount

RWG ready to help

Needs to be publicised



Conclusion

Railways are now the sunrise industry for good economic, social, environmental and political reasons

Liberalisation will lead to significant new demand for rolling stock – and non-state actors and more private finance where creditor security will be critical

The Luxembourg Protocol - a new global legal regime securing creditors, opening out possibilities for more asset based credit

OECD state manufacturers are threatened by very low finance packages from non OECD states

Export Credit Agencies have a key support role to play, supporting procurements at lower rates based on enhanced security when the Protocol applies (and telling the world)



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