

# Heritage Railways Looking Forward

## *Why a new international treaty may make it easier for heritage railways to operate and prosper in the future*

**By Howard Rosen, Chairman, Rail Working Group, Switzerland**

Heritage railways are not just a dip into nostalgia. Today in every country they can engage the public in celebrating and maintaining past achievements, still provide a valuable passenger and freight transportation service, particularly on lines which otherwise would be rarely or never used, and be an important part of the tourist industry. Heritage railways provide employment and valuable hands-on engineering training including apprenticeships as well as create an opportunity for the older generation to pass on essential technical skills. In the UK and Ireland there are about 130 heritage railways with 450 stations spanning 550 miles. In southern Africa, there are a wide range of heritage railways operating on narrow and Cape gauge. Companies such as Rovos Rail have invested considerable amounts in magnificent old rolling stock and operate premium "rail cruises". From Egypt, to Madagascar, to the Cape, vintage rolling stock is being tracked down, renewed and placed into operation. Millions of passengers world-wide travel on these heritage networks every year generating millions of dollars in revenue. As a recent British parliamentary report pointed out, these railways deliver a benefit to the local community of about 2.7 times the railway's turnover.

Despite the dedication of many volunteers helping to locate, refurbish and maintain the old locomotives and carriages, there still needs to be an economic model. On the one hand, if operators are to offer reliable and safe services to the public, the rolling stock has to be correctly operated and serviced, investments in equipment and infrastructure still need to be made and to some extent at least the service needs to be operated on a commercial basis. But operators, which may be local heritage trusts or not-for-profit organisations, are often not well capitalised and the procurement, refurbishment and operation of heritage rolling stock still requires considerable resources. There remains much work to be done across Africa, rescuing and rehabilitating legacy rolling stock. Moreover, as the older volunteers, who maintained the equipment when it was in general use, age and step back, these railways will face a particular challenge in the future where they will not always be able to draw in the expertise for free. Despite state subsidies and generous donations from foundations, trusts and rail enthusiasts, heritage railways will need to develop a viable commercial model if they are to survive.

In the conventional rail sector both state and private operators have to find resources for procurement of their rolling stock. In the past, monies often came as equity or loans from the state. But, increasingly, as the rail sector liberalises and governments look to use their limited budget elsewhere, leaving the private sector, operating historically through banks and leasing companies, to provide the resources. Indeed, beyond the normal financiers, private equity investors and pension funds and other institutions are investing in railways at an unprecedented level, making this an interesting new source of foreign investment for many countries. The availability and cost of finance will be critical in assessing the commercial viability of a particular route. These considerations are the same for the heritage rail industry. However, historically private lenders are much more reluctant to provide resources. The borrowers are often small operations and the ability to repossess and redeploy the equipment is very restricted. If this attitude continues, heritage railways will not be able to achieve their true potential.

Fortunately, there is a solution on the horizon. The Cape Town Convention on International Interests in Mobile Equipment came into force in 2006 and has now been adopted by close to 70 countries

together with a Protocol applying the Convention to the aviation industry. This Convention creates a new global legal framework for the recognition and prioritisation of security interests held by creditors lending against or leasing movable assets. It gives the creditor specific rights on default or insolvency of the debtor and creates an international registry where creditors' security interests in an item of movable equipment may be registered and which registration is then publicly searchable through the internet.

A new international registry, registering creditors' security interests in rolling stock, will be established in Luxembourg and the Protocol will also facilitate, for the first time globally, a uniform numbering system for uniquely identifying individual items of railways equipment, to be administered by the international registry. The Luxembourg Rail Protocol will extend the Cape Town Convention to all types of rolling stock, from conventional passenger and freight railcars and locomotives to light rail units, metro trains and cable cars and so this will include heritage locomotives and wagons as well as historic and more modern maintenance units running on rails.

This will all facilitate the financing and leasing of existing and future heritage rolling stock by the private sector at an affordable rate. Moreover, as countries begin to adopt the Protocol, the introduction of a *common* set of rules and creditor protections regardless of the physical location of the rolling stock or the debtor, means that any owner, lessor or operator with an interest in rolling stock running across national borders, can do so confidently that property and lessee rights will be respected wherever the rolling stock happens to be located. So in many cases in Africa, the Protocol will open the door for the first time to private credit for heritage railways, offering a new economic model where investments can be paid for from their revenue streams and not needing to be financed in advance, and where existing assets can be monetised through sale and leasebacks, paving the way for a more commercial operation and expansion of these networks. How much credit is made available in this way will depend on the vision and determination of the operators, but the Protocol provides a valuable new tool for operators – and the money is there.

The Luxembourg Protocol is not yet in force but is expected to come into operation at the end of 2018 and will be effective in jurisdictions where it has been ratified. Luxembourg has ratified the Protocol and the EU has recently acceded to the Protocol in respect of its competences. Within the EU, France, Italy, Germany, the UK, and Sweden have all signed the Protocol and are expected to ratify it in the near future. In Africa only Gabon has so far adopted the Protocol but Mozambique has already signed and is working towards ratification. The South African government is actively considering adopting the Protocol and almost certainly this will lead to surrounding countries following suit.

Rail enthusiasts worldwide, as well as the tourist and leisure industry, should be actively pressing their governments to move forward with adoption of the Protocol. This should then open up the possibility of secured affordable commercial funding for the heritage rail sector so that it can operate on a viable commercial model and yet continue to bring pride and joy to many thousands of passengers every year and to fulfil its important role in the community.

*For more about the Luxembourg Rail Protocol and the Rail Working Group, go to [www.railworkinggroup.org](http://www.railworkinggroup.org)*



**ABOUT THE WRITER:** HOWARD ROSEN CBE studied law at Oxford University, qualified as an English solicitor in 1980, and since 1989 has led a boutique law firm, *Howard Rosen Solicitors* in Zug, Switzerland, specialising in international commercial and finance law, with a particular emphasis on rail finance. He is a regular writer, as well as a speaker and moderator at international rail conferences. Since 1996, Mr Rosen has been chairman of the Rail Working Group ([www.railworkinggroup.org](http://www.railworkinggroup.org)), a world-wide not for profit industry association which is dedicated to the implementation of the Luxembourg Rail Protocol to the Cape Town Convention on International Interests in Mobile Equipment.

Mr. Rosen is a member of the Law Society of England and Wales and the International Bar Association. He is also Managing Director of both Rosetrust AG, Zug and Aviation Advocacy Sarl, Nyon.

In the 2003 Queen's Birthday Honours, Mr. Rosen was made a Commander of the Order of the British Empire (CBE) for services to British business in Switzerland.

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