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## Opinion | Transition period to the Luxembourg Protocol (rail): protection of existing portfolios

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Isabel Rodríguez, Senior Associate in Bird & Bird's Finance & Financial Regulation department, explains in her column that Spain is applying a transitional period until 2027 so that pre-existing railway guarantees retain priority, in accordance with the Cape Town Convention and the Railway Protocol.

4/12/2025 05:41 Updated: 4/12/2025 05:41

**This news item discusses:**



The Convention on International Interests in Mobile Equipment, adopted at the Diplomatic Conference held in Cape Town from 29 October to 16 November 2001 (the "Convention"), together with its Luxembourg Protocol on matters specific to railway rolling stock (the "Rail Protocol"), which entered into force in March 2024, establish an international legal framework governing the creation and effects of internationally effective guarantees on railway rolling stock.

Such security interests take priority over any national security interests governed by domestic law.



**The new legal framework provides creditors and lessors with greater legal certainty, addressing the challenges of financing mobile railway equipment operating across multiple jurisdictions.**

In principle, the Convention only applies to pre-existing rights or guarantees if a contracting State makes a declaration to that effect. Otherwise, any pre-existing right or guarantee retains the priority it has under any applicable legislation prior to the entry into force of the Rail Protocol in the relevant State.

*In this regard, upon depositing its instrument of ratification of the Rail Protocol in January 2023, Spain made the following declaration in accordance with Article 60(1) of the Convention: "... the Convention shall apply to pre-existing guarantees on railway rolling stock for the purposes of determining priority, the day following the third anniversary of the date on which this declaration enters into force."*

The most reasonable and consistent interpretation of the statement is that the three-year transitional period begins on 8 March 2024, when the Railway Protocol enters into force (and not on the date of deposit of the instrument of ratification).



**This means that any pre-existing right or guarantee that is not registered in the International Registry before March 2027 will lose its priority to those registered subsequently on the same rolling stock.**

It should be noted that a pre-existing right or interest is defined in the Convention as a right or interest of any kind in the rolling stock, created or arising prior to the date on which the Railway Protocol enters into force in the jurisdiction where the debtor is located (and not where the rolling stock is located, as rolling stock may move between jurisdictions).

Considering the above, and bearing in mind the approaching deadline of 2027, if lessors and financiers wish to maintain the priority of their guarantees in the existing financing arrangements, they must complete their registration in the International Registry.

To do so, they must obtain a URVIS (Unique Railway Vehicle Identification System) number and affix it to the rolling stock in accordance with the Model Rules on the Permanent Identification of Railway Rolling Stock adopted by the United Nations Economic Commission for Europe, as well as register the pre-existing guarantee in the International Registry before the transitional period expires.



It should be noted that **registering a pre-existing right or guarantee during the transitional period allows you to retain your priority over international guarantees created subsequently**, ie. before the pre-existing ones. However, this registration does not convert the pre-existing right or interest into an international right or interest with all the benefits of the Convention (including remedies in the event of default or insolvency and the possibility of expedited enforcement).

Creditors should therefore also consider creating an additional international interest in the rolling stock to obtain these benefits, ensuring that they do not extinguish the pre-existing right or interest in the process in order to preserve priority.

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