Will trams soon be getting the Luxembourg effect?

A new international Rail Protocol promises benefits to owners and users of both heavy and light rail vehicles. **Martin Fleetwood** of Stephenson Harwood explains.

In February, an international diplomatic conference agreed to create a Rail Protocol to the 2001 Cape Town Convention on International Interests in Mobile Equipment. Designated 'The Luxembourg Rail Protocol' the text, together with the Cape Town Convention, will set out the framework for an internationally accepted registration of ownership and security rights in railway rolling stock.

The Rail Protocol (RP) is not restricted to rolling stock used in cross-border traffic. It applies to all types of rolling stock, whether used on a city-centre tram system, a narrow-gauge mountain railway or a short-haul freight route. This is because all rolling stock can, in theory, be moved between systems, whether by rail or road, and moving the stock to a different country can change the legal jurisdiction that applies to it. Another reason is that not all countries have a public registry for recording security and ownership interest in rolling stock. The RP provides an International Registry where a unique registration number will be allocated to each item of rolling stock, and which will be recognised by all countries that are parties to the RP.

By making it possible to record such details, even for a domestic financing, the RP will make it easier for financiers to record their interests in vehicles, making them more secure. By removing some risks from financiers, it may also reduce the cost of borrowing or make financing possible.

In addition to cheaper finance, a particular advantage for governments is the RP provision securing use of rolling stock that is "habitually used for the purpose of providing services of public importance." Where stock is designated in that way, a financier cannot simply take possession of the stock if a borrower fails to pay. Instead the public authority can agree to pay the financier its finance costs and in return the financier is required to make the stock available for operations. While it should be noted that the service must be of public importance, in the case of a tram system it is likely that this would apply to all well-patronised services that are part of the local commuter network.

	Authority owned	PPP arrangement	Lease funded
Registration of interest in trams at the International Registry	Authority can register its ownership to give notice to others.	Financier registers interest to improve its security position which should result in lower costs to operator.	Financier registers interest to improve its security position which should result in lower costs to lessee.
Effect of international registration when selling or re-leasing trams	Authority can identify its rights of ownership when selling its trams.	PPP company operator identifies its ownership of the trams. Lessor able to indicate its interest in the trams.	Financier able to identify itself as owner of the trams.
Effect of international registration when purchasing trams	Authority can identify selling party if buying second-hand trams	Easier for operator and financier to identify the party purporting to sell second-hand trams to it.	Financier able to identify all parties with a financial interest in the trams. Easier for operator to identify the title of the party purporting to lease second-hand trams to it.
Ability of another party to claim ownership/title to the trams	Restricts ability of others to claim title to trams when off the system e.g. in another country for repairs.	Indicates financier's security interest in the trams.	Indicates financier's title to the trams, including against the system owner.
Retain trams for services of "public importance"	Already able to control the usage of the trams.	Enables continued operation of the trams provided public authority agrees to pay rental that has not been paid.	Able to continue to operate the trams provided public sector agrees to pay rental that has not been paid.

Comparator Table

Set out in the table above are three different types of tram funding and a brief comparison on how the RP may affect them.

- Owned and funded by a public sector local or regional authority - The authority is the owner of the trams, having raised the purchase price from taxation (either general taxation or a specific transport tax), with the system being operated either by the authority or by a private sector operator under an operating concession.
- PPP-type arrangement - The private sector Public-Private Partnership party is responsible for providing the trams, with the banks that provide project finance for the scheme taking security over the private sector party's assets.
- Lease funded - Tram vehicles are leased either to a private sector operator operating a system under a form of concession or to the authority which owns and operates the system itself, or which sub-leases the trams to a system operator.

Conclusions

While not as significant as for heavy rail vehicles working cross-border, the RP still results in a number of advantages to tram systems. As more tram promoters look at using private sector operators and examine the benefits of PPP and leasing, a registration system that has the potential to reduce funding costs has to be a good thing. The "services of public importance" provision is also a significant benefit to public authorities.

Now that the RP has been agreed, the next steps of finalising the registration system and putting the International Registry in place have begun. Both the private and public sector should now encourage their governments to accede to the RP by showing them the benefits that it brings, both in funding terms and the effect on availability of stock. *TAUT*

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