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Sample “Luxembourg Clause”

Once a jurisdiction has adopted the Cape Town Convention and the Luxembourg Protocol, pre-existing security or lease interests held by respectively creditors in, or lessors of, railway rolling stock will retain their priority for a limited period of time, even when they are not registered. However it may be advisable to execute a new agreement replacing the existing documentation so as to take advantage of the additional rights which flow to the creditor or lessor under the Protocol (although the parties should take advice as to the effect this may have on hardening periods).

The wording below, designed for a lease entered into prior to the Protocol coming into force in the jurisdiction where the lessee has its principal place of business, anticipates actions which could be taken once the Protocol is in force. It assumes that “Vehicle” is defined elsewhere in the document. The suggested wording could be used also for a loan or security agreement where “Creditor” and “Debtor” (or the corresponding terms used in those agreements) would be substituted for “Lessor” and “Lessee” respectively.

1 LUXEMBOURG RAIL PROTOCOL

- 1.1 At any time or times after the Luxembourg Rail Protocol comes into full force and effect the Lessor shall be able to require the Lessee to obtain from the International Registry a unique identification number for each of the Vehicles and, within a time limit agreed by the parties, to affix such number to each Vehicle on a plate or other form of marking and in locations as required or permitted by the International Registry under regulations and procedures issued in relation thereto (“**Plates**”). Where alternative locations for the Plates are permitted, the Lessee shall advise the Lessor of the position of the Plates on the relevant Vehicles promptly following the affixing of the Plates thereon.
- 1.2 The Lessee shall ensure that the Plates remain affixed to the Vehicles in accordance with the above-mentioned regulations and procedures and that the same are conspicuous and are at no time removed, obliterated, defaced or covered up.
- 1.3 At any time or times after the Luxembourg Rail Protocol comes into full force and effect in a jurisdiction in which the Lessee is situated the Lessor may require the Lessee:

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- 1.3.1 to terminate this Agreement and contemporaneously enter into a new leasing agreement (the “**New Lease**”) for the Vehicles on terms and conditions identical in effect to those in this Agreement save for the term which shall commence on the date of the New Lease and end on the last day of the term as specified in this Agreement and an additional provision confirming that the Lessor may enforce its rights under the Luxembourg Rail Protocol without the need for any further consent by the Lessee;
- 1.3.2. to execute such other documentation and to provide all assistance to the Lessor as the Lessor may reasonably require to ensure that the New Lease constitutes international interests in the Vehicles; and
- 1.3.3. to consent irrevocably and unconditionally to the registration of such international interests (including any registration of such interests as prospective international interests) in the Vehicles arising from the New Lease at the International Registry (the “**Registration**”)

PROVIDED THAT nothing in this clause or its implementation shall restrict the Lessor’s rights under this Agreement in respect of the period prior to the execution of the New Lease.

1.4 Following the Registration:

- 1.4.1 the Lessee shall ensure that any sublease or security interest to which it is a party which is already registered at the International Registry as an international interest or a national interest in some or all of the Vehicles shall be subordinated to the Lessor’s international interests in the Vehicles;
- 1.4.2 the Lessee will not do anything which could or might adversely affect the Registration without the Lessor’s prior written consent and will promptly co-operate with the Lessor or its representative to effect and maintain such Registration; and
- 1.4.3 the Lessee irrevocably and unconditionally grants to the Lessor a full and irrevocable power of attorney to register, in the Lessor’s absolute discretion, any subordination of competing national interests or international interests or discharge of the same on behalf of the Lessee as well as carry out any act which the Lessor shall deem necessary for the purposes of securing the Lessor’s international interests in the Vehicles.

1.5 The reasonable costs and expenses incurred by the Lessor and Lessee in relation to the discharging of the obligations under clauses 1.1, 1.3 and 1.4 above shall be borne by the [].

1.6 For the purposes of this clause, the Luxembourg Rail Protocol shall mean the 2007 Luxembourg Protocol to the 2001 Convention on International Interests in Mobile Equipment (the “**Convention**”) on matters specific to railway rolling stock, and the terms “International Registry”, “international interest”, “national interest” and “situated” shall have the meaning set forth in the Convention as applied by the Luxembourg Rail Protocol.

1.7 The terms of this clause shall survive the termination of this Agreement.



Please note that this suggested clause is intended to help lawyers when drafting an agreement but does not constitute legal advice. It is designed by reference to an agreement under English law and may need to be adapted to different laws and circumstances.