THE FUTURE FOR RAILWAY FINANCE
HOW THE LUXEMBOURG RAIL PROTOCOL WILL TRANSFORM THE RAIL SECTOR

The Cape Town Convention and its Protocols
A modern international regime for equipment financing and leasing

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What is the Cape Town Convention system?

- Uniform legal regime developed within the International Institute for the Unification of Private Law (UNIDROIT)

- Decade-long, highly inclusive, industry-driven process:
  - Legal academics and practitioners
  - Governments and governmental experts
  - National regulatory authorities
  - Specialised Intergovernmental Organisations (Rail Protocol: Intergovernmental Organisation for the International Carriage by Rail - OTIF)
  - Decisive industry input during treaty negotiations and treaty implementation
  - for the Rail Protocol: pivotal role of Rail Working Group (RWG)
Cape Town Convention and its Protocols: An International Regime for Asset-Based Financing and Leasing

- **Two-tier structure: main Convention /specific Protocols**
  - Space Protocol (2012): satellites and their components
  - Draft Protocol on Agricultural, Mining and Construction Equipment (2014-date)

- **Common core of uniform principles and rules, able to be adapted to the particular industry**
- **Convention and Protocols to be interpreted as a single instrument**
- **Protocol prevails in case of conflict**
- **Aircraft Protocol as a model**
PREDICTABILITY AND CERTAINTY IN SECURED FINANCING

- Uniform regime designed to increase certainty and reduce risks in asset-based financing and leasing of certain types of high value mobile equipment
- Allows the creation of an autonomous, consensual "international interest"
  - security agreement
  - Retention of title
  - Leasing agreement
- Ensures (cross-border) effectiveness and enforcement of the international interest, also in insolvency proceedings
- Clear rules for determining priorities, including as against interests in national law
- Transparency and predictability through the establishment of an international registry

- More certainty = less risks = lower costs
Cape Town Convention: an international success
The example of the Aircraft Protocol

CAPE TOWN CONVENTION AND AIRCRAFT PROTOCOL:

- **Political acceptance:**
  - In force since 2006
  - Convention: 70 Contracting States
  - Aircraft Protocol: 62 Contracting States

- **Practical impact:**
  - More than 500,000 filings in the International Registry since 2006
  - 86,000 filings in 2013 only (+ 20% in relation to 2012)
  - Estimated value of collateral: 500 billion US$

- **Quantifiable, concrete economic benefits:**
  - “Cape Town Discount” practiced by Export Credit Agencies (OECD)
  - Improved rating in recourse to capital market debt financing
  - Better conditions for commercial credit
- FLEXIBILITY OF THE LEGAL REGIME

– Adaptation to the specific needs of each market through the two-tier system Convention/Protocols

– Role of party autonomy: Convention gives effectiveness to parties’ agreement

– System of DECLARATIONS:
  • States may make policy choices in relation to certain issues
  • E.g.: States may opt in to special provisions that are more advantageous to the creditor and enhance economic benefits
  • E.g.: States may declare which non-consensual liens or privileges prevail over the international interest
Thank you for your attention!