



The Luxembourg Rail Protocol - emerging opportunities

THE 2001 CAPE TOWN CONVENTION
ON INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT





A world-wide legal framework to recognise and regulate security interests

The challenge: financing railway equipment

It is estimated that railways currently invest approximately EUR 35 billion a year in rolling stock. Much more is needed, however, as governments seek to expand the railways as an efficient, environmentally friendly and safe way to transport people and goods in the 21st century. States cannot always finance existing requirements at the current level - let alone provide increased investment - yet rail networks are critical for emerging economies.

Unless there is investment-rated state credit support, private sector funders of railway equipment require security that credit provided through loans or leases will be repaid, and that their property rights will be respected even when their collateral moves across borders, so the assets can be repossessed by the creditor on non-payment or insolvency of the debtor.

A key problem is that there is no international registry system for their security interests, and often no asset-specific registry on a national level regulating the priority of creditor rights. There is also no global identification system for rolling stock.

The solution: the Luxembourg Protocol to the Cape Town Convention on International Interests in Mobile Equipment

At a Diplomatic Conference held in Luxembourg in February 2007, sponsored jointly by UNIDROIT and OTIF, and attended by 42 states and 12 international organisations, the Luxembourg Protocol to the Cape Town Convention on International Interests in Mobile Equipment was adopted. This creates a new world-wide legal framework to recognise and regulate security interests of lenders, lessors and vendors selling under conditional sale agreements, where each are secured by railway rolling stock.

The Protocol applies to all rolling stock (from high-speed trains to trams) and will create an international system of recognition for, and priorities of, security interests for creditors. This will be implemented through a world-wide registry accessible 24/7 via the internet. The registry will create, for the first time, unique global identifiers for rolling stock, and will allow financiers to register their interests, as well as facilitate prospective creditors and purchasers checking any rival claims to the equipment being financed.

The Protocol will also create a common system for repossession of assets on default or insolvency of the debtor, subject to public interest safeguards.

The Protocol will be particularly helpful in respect of equipment that crosses borders, avoiding the present difficulties of security created under one law being challenged in the courts of another jurisdiction where the asset is located. At the same time, it will also assist in domestic financing.

The benefits: numerous - for all stakeholders

By reducing risk for rail equipment financiers, the Protocol will

- attract more private sector lenders and lessors into the market, resulting in cheaper finance for non-state-guaranteed operators as the risks for private sector funders decrease and more funders come into the market, also creating choice for operators in relation to costs and types of financing
- facilitate the provision of finance to customers where, up to now, their poor credit and/or the lack of a legal infrastructure has discouraged creditors
- attract capital investment, which will in turn promote the expansion of rolling stock manufacturing facilities
- facilitate short-term operating leases of rolling stock, not just into railway operators from financiers, but also between operators, ensuring more efficient use of rolling stock

The net result will be to lower barriers to entry into the industry for private sector operators, make existing operators more efficient and competitive, reduce the dependence of state and private operators on state funding, and lead to a more dynamic industry. Governments may then focus limited resources on the financing of infrastructure rather than rolling stock.

For the text of the Protocol as well as helpful articles, briefing papers and presentations, please see

www.railworkinggroup.org

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The Rail Working Group is a non-profit, international association comprised of members from all sectors of the railway industry world-wide. The RWG works actively with governments, industry bodies and the two sponsoring organisations, OTIF and UNIDROIT, on the implementation of the Luxembourg Protocol to the Cape Town Convention on International Interests in Mobile Equipment as a mechanism for furthering private sector finance of railway rolling stock.

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