Introduction to the Luxembourg Rail Protocol

Overview and current status

Howard Rosen
Chairman, Rail Working Group

Securing the Future for the World’s Railways
Introduction

The Rail Working Group

• Formed in 1996 at the request of UNIDROIT
• Not for profit global industry group based in Switzerland
• More than 70 direct members and hundreds via industry associations
• Linking up the various stakeholders in the industry
• Dedicated to the adoption of the Luxembourg Protocol
Railways in the 21st Century

- Long history of global (relative) decline
- Cross border operation essential to serve global markets
- Significant underinvestment worldwide both in infrastructure and rolling stock
Railways in the 21st Century

• Transportation mode of preference for policy makers for good economic, environmental, social and public policy reasons
• New interest in High Speed inter urban links and municipal light rail
Development of railways in Africa is a major component of a sustainable development agenda and key to African economic integration. A major modal shift required from road to rail means that moving to standard gauge will result in significant new procurement of rolling stock.
Railways in the 21st Century

• And attract more entrepreneurs
• More private operators means more private capital needed
• More credit support required
• Funding rates matter if competition is to be encouraged
• Public sector needs to offload risks
Financing Railway Rolling Stock

- **Public finance**
  - Equity, state loans and grants, aid

- **Public Export Finance**
  - ECA, state or parastatal loans

- **Private investment**
  - Private equity, secured credit, leasing, BOT, etc
Financing Railway Rolling Stock

- Cost of credit
- Funder security/collateral
- Creditor especially exposed on cross border financing or operations

Current constraints
Problems of bringing in private capital

- No national title or security registry
- Identifiers unstable (from a creditor’s perspective)
- No comparable running number for other rolling stock (e.g. metros)
- Limited legal infrastructure domestically and internationally
- Repossession issues for creditors on debtor default or insolvency
- Public Policy and Public Interest
- Bank’s capital requirements and Basel II and III
- Limited commercial tracking of assets
- Cross border risks
Financing Railway Rolling Stock today

- Owner in Country A
- Conditional Sale
- Purchaser in Country B
- Lease
- Operator in Country C
- Loan Security
- Bank in Country D
- Rolling stock operating in countries E, F & G
participants from 58 States and 11 international organisations at the Diplomatic Conference
Cape Town Convention

<table>
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<tr>
<th>Aircraft Protocol operating in over 60 jurisdictions</th>
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<td>International registry for aircraft running in Dublin since 2006</td>
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<td>Over 600,000 registrations to date - estimated value of over half a trillion USD</td>
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<td>Registrar – Special purpose company established by SITA</td>
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<td>Aviation Working Group: “Cape Town” will save the air transport industry $161 Billion 2009 - 2030</td>
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participants from 42 States and 12 international organisations at the Diplomatic Conference
The Luxembourg Protocol
Protecting creditor rights

The Protocol creates

- A new type of global security interest (the “International Interest”) for railway rolling stock, internationally recognised with established priorities
- Security registrable (voluntary) and searchable 24/7 in a public registry, in Luxembourg, through the internet
- Relevant for domestic and international rolling stock finance
- A common system for enforcing creditor rights on debtor default or insolvency
The Luxembourg Protocol applies to:

- To all rolling stock (broadly defined):
  - “..vehicles movable on a fixed railway track or directly on, above or below a guideway” so covers
- Inter-urban and urban rolling stock
- Specialist boring and other rail mounted equipment
- Metro trains and trams
- People movers/shuttles at airports
- Cranes and gantries at ports
- Cable cars
The Protocol secures

- Lessor under a lease
- Creditor under a secured loan and
- Vendor’s rights under a conditional sale (where title is retained)
Unique Vehicle Identification?

Rolling stock must be uniquely identifiable for the Protocol to apply

Unique Vehicle Rail Identification System (URVIS) will be established by registry regulations

First global unique and permanent identification system for Rolling Stock

Unique 20 digit number allocated by registrar in Luxembourg, never re-used

Affixed permanently to rolling stock by manufacturer, maintainer or keeper
When does the Luxembourg Protocol apply?

- Protocol must be in force
- Which must be uniquely identifiable
- And in force in the jurisdiction where the debtor is principally located
- When an International Interest is created in the rolling stock
Luxembourg Benefits

The Protocol

- Establishes a new domestic and international legal framework securing creditors
- Eliminates complex documentation and structures – saving money
- Resolves cross border and conflict of laws issues
- Minimises need for state support
- Reduces private financing costs and, for exporters, ECA and political risk premiums
- Facilitates operating and finance leasing and other private sector finance
- Makes the industry more competitive against road and aircraft transportation
### The Status of the Luxembourg Rail Protocol

- **Adopted 2007 (not yet in force)**
- **Appointment of Registrar (SITA subsidiary) December 2014**
- **Ratified by EU and Luxembourg**
- **Signed by Italy, Germany, France, Mozambique, Switzerland, Gabon and UK – all, together with Sweden, moving towards ratification**
- **Other EU and non-European countries now actively working on ratifications**
- **4 ratifications required, and secretariat (OTIF) must also authorise that the Registry is ready, before the Protocol “goes live”**
- **Expected to be in force in 2018**
Why the Protocol is Important for Mauritius

- Increases the availability, while reducing cost, of private finance for railway equipment.
- Removes the need for state financing of rolling stock procurement.
- Facilitates discounted Western ECA fund support for the financing of imported rolling stock and rolling stock leased into other parts of Africa.
- Develops Mauritius’ growing reputation as the key financial services centre for Africa.
Why the Protocol is Important for Mauritius

- Creates new development solutions for sister countries across Africa
- Critical part of Mauritius’s profile as a financial services centre
- Potential support for the Port Louis to Curepipe light rail project
- Financing option for harbour development
Conclusion

Railways are now the sunrise industry for good economic, social, environmental and political reasons.

New investment will mean significant additional demand for passenger and freight rolling stock.

And more private finance through loans and leases, where security of the collateral will be critical.

Leading to a larger industry, more dynamic, transparent and competitive industry.

The Protocol offers a better legal solution for asset based financing.
### Further Materials

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<td>Luxembourg Protocol in a Nutshell (English)</td>
<td>Summary of the Luxembourg Protocol</td>
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<td>Full Luxembourg Protocol</td>
<td>Rail Working Group brochure</td>
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<tr>
<td>Key talking points</td>
<td>Working towards a global common identifier for railway rolling stock</td>
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<td><a href="http://www.railworkinggroup.org">www.railworkinggroup.org</a></td>
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