

Legal support for financing railway rolling stock

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OTIF



Legal basis

- Instruments initiated by the International Institute for the Unification of Private Law (Unidroit)
 - **Convention** on International Interests in Mobile Equipment, adopted in **Cape Town** on 16 November **2001**, in force since 1 April 2004
 - **Luxembourg Protocol** to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock, adopted in Luxembourg on 23 February **2007**, **not** yet in force

OTIF



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Railway rolling stock

- **vehicles** movable on a **fixed railway track** or directly on, above or below a **guideway**, together with
- **installed/incorporated** parts
- related **data**, manuals and records
- = Locos, goods and passenger wagons, tram/underground train sets, light railways



Why an International Registry?

- Promotion of new building and development in the rail transport sector generates more **need for investment worldwide**
- Financing railway equipment from **public** funds has its **limits**
- Private financing, including from the **international capital market**, is becoming more important



Advantages of International Registry

- **Lenders'** rights in the event of
 - non-payment of credits
 - insolvency of the debtor
 - international transfer of the railway rolling stockare **safeguarded** internationally
- for **borrowers**, secured loans are therefore easier and **cheaper** to obtain
- **Both** lender and borrower benefit from the internationally **uniform legal position** (legal certainty and transparency)



What is registered?

- International interests on the basis of
 - **security agreements** between the chargee (e.g. lender who provides secured credit) and the chargor,
 - **title reservation agreements** between the conditional seller and the conditional buyer
 - **leasing agreements** between lessors and lessees
- Sale notifications (information)



Remedies in case of default

- Hold **possession** of the object transferred, take **possession/control** of the object
- **Sell/lease** the object
- Collect or receive any **income** or profits arising from the management or use of any such object
- **Court order**



Remedies in case of default

- **Restricted** at discretion of the Contracting States (declarations)
- Must be exercised in a “commercially reasonable manner”



Effects of the registration as against third parties

- **Priority** of the registered *valid* interest over a **subsequently** registered and an **unregistered** interest
- Effectiveness in the **insolvency procedure**
- **Assignment** of associated rights also includes the international interest



Registry requirements

- Fully electronic
- In operation 7 days a week, 24h/24h (97%)
= max. 3% for maintenance (not at peak times),
power cuts, hardware problems, etc.
- Main reference points:
 - item of rolling stock
 - contracting party (declarations)
- Multilanguage interface (gradual)



Current status entry into force

- Cape Town Convention in force in 31 States
see www.unidroit.org/english/implement/i-2001-convention.pdf
- Luxembourg Protocol enters into force
 - 3-4 months after the **fourth** instrument of ratification, acceptance, approval or accession is deposited (with Unidroit) and
 - OTIF must have deposited/deposit a certificate confirming that the International Registry is fully operational
- **Neither** condition has yet been met



Preparation for entry into force

- Basis above all Resolution No.1 of the Diplomatic Conference of Luxembourg
see
www.otif.org/otif/_epdf/dir_droit_2007/DCME_FINAL_ACT_23.05.07.pdf
- Invitation to Preparatory Commission (“PrepCom”) concerning the setting up of the Supervisory Authority and the International Registry for railway rolling stock



Preparation for entry into force

- 1st Session on 16/17 July 2007 at OTIF in Berne
 - Formation (Rules of Procedure, Chair: S + US)
 - General Examination of
 - Request for Proposals (RFP) for the Registrar
 - Registry Regulations
 - Rules of Procedure of the Supervisory Authority
- RFP issued in December 2007



Preparation for entry into force

- 2nd Session on 8 to 10 April 2008 at Unidroit in Rome
 - final study of bids received in response to RFP
 - project awarded to CHAMP, an undertaking based in Luxembourg
- following the award, CHAMP supported by OTIF drafted a contract with the Supervisory Authority on setting up and managing the Registry



Preparation for entry into force

- July 2008 start of negotiations between CHAMP and a negotiating team for this purpose, comprised of both chairmen of the PrepCom and one representative from OTIF and UNIDROIT respectively. In addition, the chairman of the Rail Working Group (RWG) and occasionally lawyers acting on behalf of the RWG and CHAMP as well as experts for specific issues, such as liability and insurance took part.
- negotiations came to a standstill in October 2008



Supervisory Authority

- Operational after entry into force of the Luxemburg Protocol
- OTIF will serve as secretariat
- Has international legal personality, Secretariat has immunity rights and may claim the refund of expenses



Supervisory Authority

- Basis for the activity: Convention/Protocol and registry regulations
- Selection/prolongation/dismissal of the Registrar (5-10 years)
- Supervises Registrar and registry operation, instructions for Registrar, dealing with complaints, periodic reporting to contracting parties
- Proprietor of the data/registry archives

