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Ways of secured financing of 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**



SCOPE

- Convention and Protocol apply when, at the time of the conclusion of the agreement creating or providing for the international interest, the **debtor** is situated in a Contracting State
- The fact that the creditor is situated in a non-Contracting State does not affect the applicability of the Convention and the Protocol



“international interest”

- means an interest held by a creditor
- “creditor” means
 - a chargee under a security agreement,
 - a conditional seller under a title reservation agreement or
 - a lessor under a leasing agreement



Advantages of International Registration of Security Interests

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



Objects of Registration: Items of 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



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 49 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 PrepCom Session on 16/17 July 2007 at OTIF in Berne**
 - Formation (R. o. P., Chair etc.),
 - RFP, issued in December 2007
- **2nd 8 to 10 April 2008 at Unidroit in Rome**
 - final study of bids received in response to RFP
 - project awarded to an undertaking based in Luxembourg
 - July 2008 start of contract negotiations, failed in October 2008
- **3rd on 1/2 October 2009 at OTIF in Berne**
 - Information Session for Potential Bidders 25 February 2010, Rome
 - new RFP, issued in July 2010
- **4th 26 to 28 October 2010 at Unidroit in Rome**
 - project awarded to SITA NV based in the Netherlands
 - contract negotiations ongoing



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



Supervisory Authority

- Has international legal personality, Secretariat has immunity rights and may claim the refund of expenses
- OTIF will serve as secretariat
- Operational after entry into force of the Luxemburg Protocol
- Registry may start operations in 2013

