UNIDROIT AND THE LUXEMBOURG RAIL PROTOCOL

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UNIDROIT
Basic Facts about UNIDROIT

- Independent Intergovernmental Organisation
- Set up in 1926 as an auxiliary organ of the League of Nations
- Currently 63 member States:
  - World’s main economies
  - Relevant developing markets
  - A global institution
  - One of the ”Three sisters”
**INTERNATIONAL COMMERCIAL CONTRACTS**
- Current projects: Principles of Reinsurance Contracts – Cooperation with UNCITRAL and HCCH on a guidance document on international sales

**INTERNATIONAL FINANCIAL DEVICES**
- UNIDROIT Conventions on International Financial Leasing and International Factoring (Ottawa, 1988)
- UNIDROIT Model Law on Leasing (2008)

**CAPITAL MARKETS PRIVATE LAW REGULATION**
- GENEVA Convention on Substantive Rules for Intermediated Securities (2009)
- UNIDROIT Principles on the Netting of Financial Instruments (2013)

**INTERNATIONAL PROTECTION OF CULTURAL PROPERTY**
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995)
- UNESCO-UNIDROIT Model Legislative Provisions on State ownership of undiscovered cultural objects (2011)
- Current project: Private Art Collections (2016-date)

**TRANSNATIONAL CIVIL PROCEDURE**
- Draft ELI/UNIDROIT Rules on European Civil Procedure (2014-date)
- Principles of effective enforcement (on WP)

**LAW AND DEVELOPMENT IN AGRICULTURE**
- Current project: Legal Guide on Agricultural Land Investment Contracts
THE CAPE TOWN CONVENTION AND ITS PROTOCOLS
• Uncertainty in the financing of high-value assets moving across international borders:
  o Mobility requires special rules to ensure efficacy of security
  o The problem of the diversity of secured transactions regimes
  o Problems concerning creditors’ rights and enforcement
• Uniform legal regime to facilitate asset-based financing and leasing of certain types of uniquely identifiable, mobile, high value equipment
• Developed within UNIDROIT, through a decade-long, highly inclusive, industry-driven process.
Two-Tier Structure: Main Convention/Protocols

- Creation of an autonomous concept: **international interest** (security interest)
- Security registrable/searchable **24/7 in on-line public registry**
- Clear **system of priorities**
- A common system of **enforcement** of creditor rights on **default or insolvency**
- **Costless, coexistent** with national legislation
- Rail: A new system for **uniquely identifying** rolling stock
**Political acceptance:**
- CTC: 79 contracting States + 1 REIO (EU)

**Volume of transactions:**
- Over 1 Million registrations in the Aircraft Protocol Registry since 2006
- Around 100,000 filings each year
- Estimated value collateral 500 billion US$

**Quantifiable economic benefits deriving from lowering of the cost of credit:**
- “Cape Town Discount” practiced by Export Credit Agencies (OECD)
- **Improved rating** in recourse to capital market debt financing
- Better conditions for commercial credit (including leasing operations)
Wide-ranging stakeholder benefits

**Governmental Benefits**
- Reduced risk to governments providing export credit
- Enhanced privatization potential
- Improved export and employment interests
- Contribution to growth, increased revenues

**User Benefits**
- Enhanced access to funds and funding sources
- Reduced financing costs
- Increased operating efficiency
- Improved profitability

**Financier, Lessor & Investor Benefits**
- Less risk
- Enhanced security
- Increased returns
- Higher valuations/regulatory benefits

**Manufacturer and Supplier Benefits**
- More, cheaper credit available
- Expanded markets
- Improved sales
- Higher employment levels

**Economic Growth**
- Increases Access to Capital
- Expands Asset’s Market
- Lowers Risk & Improves Returns
The Luxembourg Rail Protocol

- **Luxembourg** on 23-2-2007, where International Registry is located:
  - 3 Contracting States (Luxembourg 2012, Gabon 2017, Sweden 2018)
  - 6 signatories (France [2016], Germany, Italy, Mozambique [2016], Switzerland, United Kingdom [2016])
  - A number of States in pipeline: Kenya, South Africa, Mauritius, several EU member states, etc.

- **Scope**: Article II: “Railway Rolling Stock” means vehicles movable on a fixed railway track or directly on, above or below a guideway, together with traction systems, engines, etc…

- **Fills gaps**:
  - (i) no domestic systems for security rights over rolling stock
  - (ii) no global system of asset identification: **Unique Vehicle Rail Identification System (URVIS)**, first global unique and permanent identification system for all Rolling Stock
Unique Vehicle Identification

Important for immatriculation – admission to rail system

Defence against fraud on purchasers and creditors of rolling stock

Facilitates technical monitoring of status and location of asset and customised maintenance

Makes lifetime asset management much easier for operators, manufacturers and financiers

Will bring benefits for insurers and regulators
The Luxembourg Rail Protocol

Growing interest in Rail Protocol globally, in line, for example, with the EU’s 4th Railway Package (expansion & liberalisation):

- Rail Protocol is expected to attract more private sector lenders and lessors into the rail market, resulting in cheaper finance for operators and a wider choice in relation to types of financing.
- Allows States to concentrate public resources on rail infrastructure, relying on private/public-private-private capital to procure rolling stock
- Fosters sustainable economic and social development in enhancing urban & extra-urban transportation of people & cross-border transportation of freight by railways
- Green Technology. Graz declaration: “Clean, safe and affordable mobility in Europe”
- In line with current international commercial networks (Belt & Road, Rail Baltica)
Catch-up through reducing average age of fleet
Rational and methodology

- Assets older than 40 years assumed to be gradually retired
- Average fleet age therefore gradually reduces to 20 years

Countries with younger fleets:
- [Flags of selected countries]

Countries with older fleets:
- [Flags of selected countries]

Luxembourg Rail Protocol
- Increase in access to private financing for all operators
- Higher rate of investment in new fleet over a catch-up period of 10 years until the average fleet age is 20 years
20 countries
€19.4bn total benefits

Refinancing 16%
Freight 12%
New deliveries 84%
Passengers 88%

Financial savings by country in billions of Euros

UK 3.5
DE 3.9
FR 2.7
CH 1.5
DK 0.9
NL 0.8
BE 0.3
AT 0.4
IT 1.2
SE 0.6
FI 0.2
BE 0.3
AT 0.4
IT 1.2
SE 0.6
FI 0.2
RO 0.3
UA 0.9
BU 0.2
TR 0.9
Thank you