

Howard Rosen

Solicitors

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Working on the railways

Railway rolling stock has been leased and financed for over 150 years, and today over €50 billion is spent each year on new procurement worldwide. In recent times, much of the financing has come from or been underwritten by government. But this is steadily changing as the industry liberalises and utilisation of the railways by passengers and freight grows, and demand for rolling stock increases. States keen to use their resources more efficiently, are looking to involve private operators and private capital.

Railway rolling stock is an attractive investment that banks, private investors and pension funds are increasingly investing in. However, there are special considerations that apply to the financing of rolling stock. Locomotives differ substantially in value and mission compared to wagons, and the rail freight sector is generally more open than the passenger sector.

Transactional structures and the financing model will differ depending on the type of debtor, and in each case there are legal, regulatory and tax considerations, cross-border jurisdiction issues, international treaties and industry practice, which all need to be taken into account.

In the near future, rail financing will be significantly changed through the adoption of the Luxembourg Protocol to the Cape Town Convention on International Interests in Mobile Equipment. The Luxembourg Protocol will make it much easier for the private sector to finance railway equipment by creating a new global system of rights for secured creditors and lessors of railway equipment, along with the first registry, in Luxembourg, for the registration of those rights. Current agreements will need to anticipate this change.

Howard Rosen has been advising on rail finance for over twenty-five years and was amongst the first legal advisors involved in this area, working with manufacturers, lessors and other industry stakeholders. He writes on rail finance and regularly speaks at, or chairs, major rail conferences around the world. Since 1996, Howard has been the Chairman of the Rail Working Group, a not-for-profit rail industry group working on the adoption of Luxembourg Protocol. As such he has been actively involved in drafting the Protocol and is a leading expert on how it will impact the rail industry and financing. So we have unique contacts and expertise in the rail industry with extensive experience of drafting and negotiating various types of finance agreements and ancillary documentation.

For further information please contact Howard Rosen or Caroline Masters.

The solicitors of Howard Rosen Solicitors are authorised and regulated by the Solicitors Regulation Authority and are recorded in the official register of lawyers in the Canton of Zug.