



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

**OTIF**



ORGANISATION INTERGOUVERNEMENTALE POUR LES  
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ZWISCHENSTAATLICHE ORGANISATION FÜR DEN  
INTERNATIONALEN EISENBAHNVERKEHR

INTERGOVERNMENTAL ORGANISATION FOR INTERNATIONAL  
CARRIAGE BY RAIL

**DIPLOMATIC CONFERENCE TO ADOPT A RAIL  
PROTOCOL TO THE CONVENTION ON  
INTERNATIONAL INTERESTS IN MOBILE  
EQUIPMENT**

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## **COMMENTS ON DRAFT RAIL PROTOCOL**

*(presented by the Government of Japan)*

The Government of Japan would like to express its deepest appreciation for and sincere compliment to the remarkable results achieved by the International Institute for the Unification of Private Law (UNIDROIT) and the Intergovernmental Organisation for International Carriage by Rail (OTIF).

We are very pleased to be given an opportunity to submit our following comments.

### **1. Article 1(2)(b)**

This sub-paragraph defines “guarantor” as “a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance”.

It is, however, not clear what sort of agreements would be included in the security agreement. We are wondering whether an agreement of pledge would be the security agreement. It should be clarified whether the security agreement would include an agreement of pledge or not.

### **2. Article 1(2)(f)**

(a) This sub-paragraph defines “railway vehicle” as a “moveable on or directly above a fixed railway track or guideway, or fixed superstructures or racks installed or designed to be installed on such vehicles, including all traction systems, engines, brakes, axles, bogies, and pantographs, and in each case including accessories and other components, equipment and parts installed or incorporated therein or attached thereto”.

The meaning of “accessories” is however not clear for us. It should be clarified what kind of things would be accessories.

(b) The definition of “railway vehicle” in Article 1(2)(f) should be re-considered. The current definition seems to include roller coasters and model cars, which are irrelevant as “railway vehicle.”

### 3. **Article IV**

This article mentions “trust” with agency and representative capacity. Trust is, however, different from agency and representative capacity. The trustees have the title of the trust property. On the other hand, neither agency nor representatives would have the title. Trust should be separated from the others.

### 4. **Article VIII(6)**

This sub-paragraph provides that “Judicial relief under Article 13(1) of the Convention may be granted in a Contracting State notwithstanding the commencement of insolvency proceedings in another State”. It is, however, not clear whether judicial relief may be granted in the situation where insolvency proceedings are commenced in another State and the Contracting State requested to give judicial relief has recognized the proceeding.

We consider the judicial relief may not be granted if the Contracting State has recognized the insolvency proceedings in another State. If this sub-article means so, it should be clarified.

### 5. **Article IX**

Article IX(1) provides that this article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXVII.

It is, however, not clear whether this article would apply to the State which has not made any declaration pursuant to Article XXVII in the situation where the other State having the primary insolvency jurisdiction has made a declaration. The current text should be revised to answer this question.

### 6. **Article XI**

This article provides that the debtor has a duty to make payment or give other performance to the assignee if

(a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor

(b) the notice identifies the associated rights and

(c) the debtor has not been given prior notice in writing of an assignment in favour of another person.

The other person, however, doesn't always have priority over the assignee. Therefore, requirement (c) is unnecessary and should be deleted.