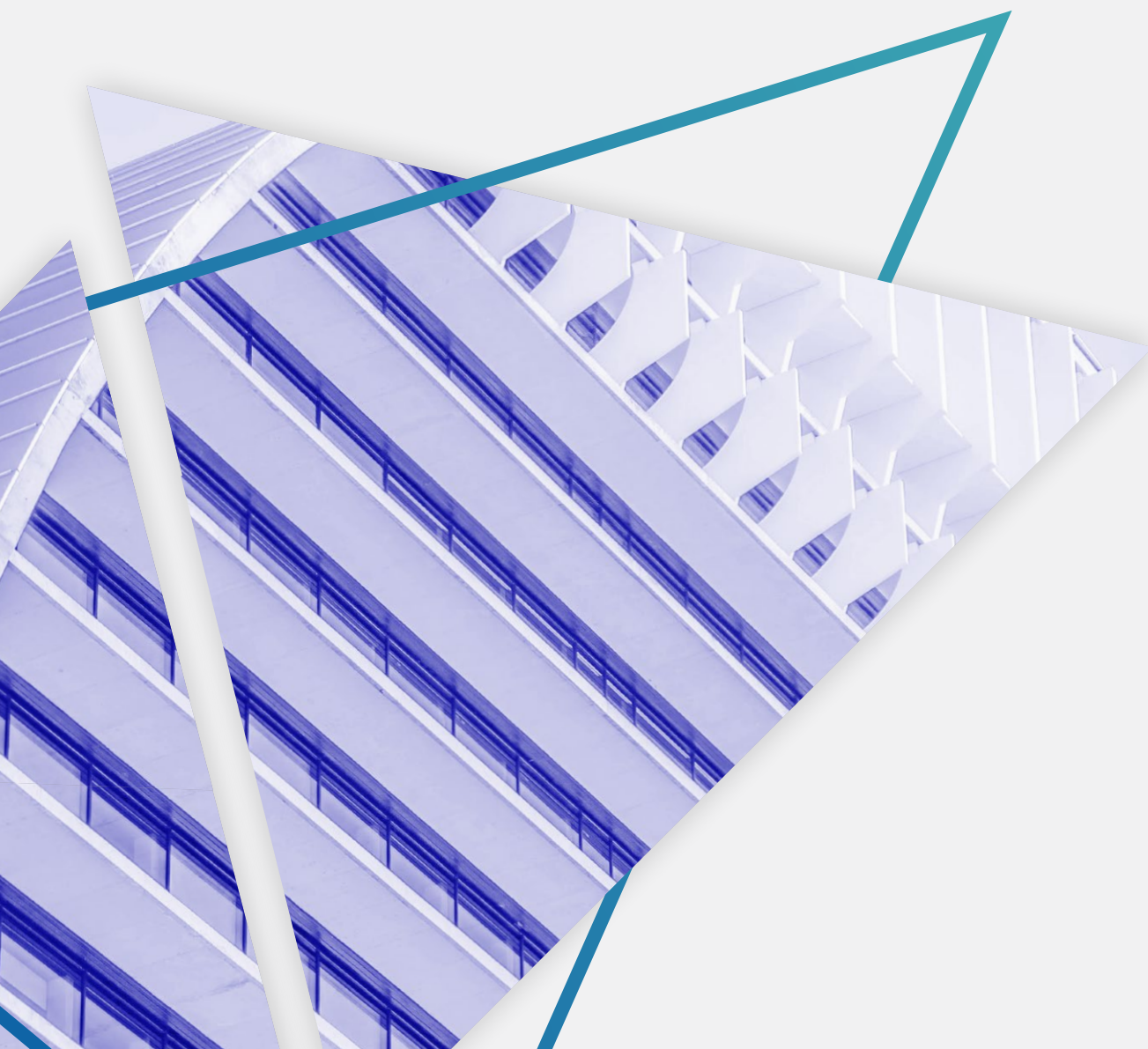


# Corporate & Commercial

ALERT | 29 January 2025



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## Rail privatisation is on track: South Africa ratifies Luxembourg Rail Protocol

The ratification and adoption of the Luxembourg Rail Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock (adopted in 2007) (Protocol) is imminent in South Africa. On 27 January 2025, South Africa submitted its ratification instrument, with adoption set to be effective from 1 May 2025.

The Protocol, which is established in terms of the Cape Town Convention on International Interests in Mobile Equipment of 2001 (Convention), is a critical step forward in rail reform and in facilitating open access to South Africa's rail network. The Protocol broadens the financing options available for the private sector to finance rail access (which will particularly assist new entrants) and regulates and assists in mitigating financing and debt risks.

This is a welcome development in light of the publication of the final Transnet Network Statement on 20 December 2024. Together with the Network Statement and the Economic Regulation of Transport Act 6 of 2024, which we discussed previously [here](#), the Protocol significantly lowers barriers for private sector participation in South Africa's rail network, and will improve South Africa's economy if implemented effectively.

Importantly, three types of security interests held by creditors are recognised in terms of the Protocol read with the Convention:

1. Security agreements
2. Title reservation agreements
3. Leasing agreements

The Protocol applies to all rolling stock on rail and in particular sets out the priorities of security interests, making enforcement of rights easier and providing important safeguards against key risks faced by creditors and lessors, such as insolvency of debtors and lessees.

### Encouraging investment and cross-border financing

A significant benefit of the Protocol is that it has the potential to attract foreign investment. As the Protocol takes precedence over domestic law in contracting states, it reduces jurisdictional legal uncertainties for foreign lenders involved in financing of rolling stock.

Additionally, the Protocol establishes an international registry in terms of which security interests over rolling stock are registered. The registry is based in Luxembourg, but is publicly available, and streamlines the process for registering and verifying rights over rolling stock.

However, despite imminent ratification, the Protocol will not yet be enforceable as domestic law in South Africa. To be binding within South Africa, the Government will need to enact enabling legislation to incorporate the Protocol.

**Vivien Chaplin and Gaby Wesson**

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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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