

CAPE TOWN CONVENTION COMPLIANCE INDEX

On 16 May 2018, the Aviation Working Group (**AWG**) agreed to develop an index on compliance by contracting states with the Cape Town Convention, the world's main aviation finance treaty. This Cape Town Compliance Index (the **Index**) will provide information to the aviation financing and leasing community, thereby maximizing compliance incentive. That, in turn, will positively impact the provision of aviation credit, thus strengthening the air transport sector and producing economic benefits.

WHAT IS THE INDEX?

- The Index will assess and score, on a scale of 1 to 100, each country's actual and anticipated compliance with the terms and intent of the treaty.
- Scoring, categorized according to expectations of future compliance (very high, high, medium, or low), will be based on the attached formula, as may be modified in the finalization process (the **formula**). The best data available to the AWG, including input from over 200 law firms, will be objectively applied in the formula by the AWG secretariat.
- Main elements in the formula will include whether the treaty (1) is fully and effectively implemented, (2) prevails over conflicting law, and (3) is being interpreted and applied in accordance with its terms and intent.
- The formula includes additional features which realistically relate to compliance, including a *precedent-based adjustment* (when the treaty has been tested), whether the government has established a problem-solving *communication channel* with the AWG, eligibility for the OECD 'Cape Town discount', an assessment of the country's legal practices that signal likelihood of compliance, and use of rule of law and political risk indices.

WHAT FORMS WILL THE INDEX TAKE?

There will be four versions of the Index, namely:

- Public version, posted on the AWG website. This version will only contain the final scores for each CTC ratifying country, grouped by category. A form of the public version is attached.
- Proprietary version. This version will contain final scores, details and explanations. It is exclusively for AWG members, governments, rating agencies, and select others.
- Certified-for-transaction version. This version will contain the assessment of the score for a specific country for a validity period. It is exclusively for AWG members, upon request.
- OECD version. This version will contain the Aircraft Sector Understanding relevant factors. It is exclusively for the OECD and its participants.

WHEN WILL THE INDEX BE RELEASED AND UPDATED?

- The Index will be published in Q4 2019 and re-issued twice a year thereafter. The OECD version of the Index will be published in Q1 2020.
- The Index will be evergreen in that material developments impacting the score of any country between official releases will be the subject of 'alerts' and revised scoring.

Queries relating to the Index should be directed to jeffrey.wool@awg.aero.

CTC compliance index

[formula and definitions]

$$\text{Score} = 5(\mathbf{A+B}) + 2.5(\mathbf{C + D + E + F})$$

WITH A **PRECEDENT-BASED ADJUSTMENT (PBA)**, AT LEVELS I, II OR III, BASED ON THE PREDICTIVE VALUE OF COURT CASES OR REPORTED ADMINISTRATIVE ACTION

Scoring: 100 (highest) to 20 (lowest)
Variable range: 5 (highest) to 1 (lowest)

100 - 88: **very high** probability level that the terms of CTC (with applicable declarations) will be substantially complied with

87 - 75: **high** probability level that the terms of CTC (with applicable declarations) will be substantially complied with

74 - 63: **medium** probability level that the terms of CTC (with applicable declarations) will be substantially complied with

62 and lower: **low** probability level that the terms of CTC (with applicable declarations) will be substantially complied with

Definitions-

A is legal implementation, meaning (i) steps to ensure that CTC, with declarations, prevails over conflicting national law (**primacy**), and (ii) that no regulatory gaps or inaccuracy exists which may adversely impact application (**completeness**)

B is (i) reported precedent, meaning (a) judicial decisions, and (b) RANJA, in each case with analysis by AWG's legal advisory panel, as or to be posted on the CTC academic project website, and (ii) experience, advised by experts, in applying and enforcing CTC

C is whether a country is eligible, or, if not, has made the 'qualifying declarations' which is one of the conditions to eligibility, for a 'CTC discount' under the OECD Aircraft Sector Understanding

D is whether a country has designated a 'communication channel' with AWG to consult on compliance issues, as and when they arise, and the extent to which the results of such consultations are timely and effective

E is the result of a jurisdictional analysis of legal rules and practices, other than those covered by variables A, B, and F, which indicate anticipated compliance with CTC, including those relating to aircraft repossession, enforcement of contractually agreed remedies and dispute resolution provisions, and strict application of commercial laws newly introduced into that jurisdiction

F is a weighing of select rule of law and political risk indices measuring, or materially relevant to, regulatory enforcement of existing law

Precedent-Based Adjustment (PBA)

Level I increase the weight of B by 0.6 and decreases the weights of each of E and F by 0.3 (lower predictive value)

Level II increases the weight of B by 1 and decreases the weights of each of E and F by 0.5 (medium predictive value)

Level III increases the weight of B by 1.4 and decreases the weights of each of E and F by 0.7 (higher predictive value)

Methodological note and disclaimer: Please read the linked*/ [methodological note](#) and [disclaimer](#). This index is a high level assessment with speculative and predictive features (including what courts or other authorities may or may not do, acting on correct or incorrect legal analysis or impacted by other factors) which are inherently uncertain, and, thus, should not be relied upon by any party.

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*/ These documents are under development, and will be linked to, and released concurrently with, the Index.

Public version of the CTC Compliance Index

Very High		
Country	CTC compliance score	Qualifying declarations NOT* made
Country A (highest score in this category)		✓
Country B		
Country C (lowest score in this category)		
High		
Country	CTC compliance score	Qualifying declarations NOT* made
Country D (highest score in this category)		
Country E		
Country F (lowest score in this category)		
Medium		
Country	CTC compliance score	Qualifying declarations NOT* made
Country G (highest score in this category)		
Country H		
Country I (lowest score in this category)		
Low		
Country	CTC compliance score	Qualifying declarations NOT* made
Country J (highest score in this category)		
Country K		
Country L (lowest score in this category)		

Key:
Scoring: 100 (highest) to 20 (lowest). **Variable range:** 5 (highest) to 1 (lowest)

- 100 - 88:** **very high** probability level that the terms of CTC (with applicable declarations) will be substantially complied with
- 87 - 75:** **high** probability level that the terms of CTC (with applicable declarations) will be substantially complied with
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- 62 and lower:** **low** probability level that the terms of CTC (with applicable declarations) will be substantially complied with

* /Unless otherwise noted, where the 'qualifying declarations' under the OECD's Aircraft Sector Understanding have NOT been made (as indicated by a check mark (✓)), the application of CTC in a country is unlikely to substantially reduce transactional risk or provide substantially enhanced predictability when assessed against pre-CTC law in that country. Accordingly, for such countries, the relevance of a very high or high CTC compliance scoring would not be an accurate indicator of a substantially improved legal framework effected by ratification and implementation of, and compliance with, CTC by that country.