

## 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 a carefully designed formula, a draft of which is attached hereto (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) based on precedent, is being interpreted and applied in accordance with its terms and intent.
- The formula includes additional features which realistically relate to compliance, including a *hard-precedent 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 contracting state.
- 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](mailto:jeffrey.wool@awg.aero).

## CTC compliance index

[formula and definitions]

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

WITH A **HARD PRECEDENT ADJUSTMENT (HPA)**, WHERE APPLICABLE, INCREASING THE VALUE OF B, AND DECREASING THE VALUE OF [E and] F, BY [0.5] be adjusted

AN HPA MAY APPLY WHERE THERE ARE 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**). Primacy carries relatively more weight than 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. Precedent carries relatively and often substantially more weight than advised experience

**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, with a score of (i) 5 if it is eligible, (ii) 3 if it is not eligible but has made the qualifying declarations, and (iii) 1 if it is not eligible and has not made the qualifying declarations

**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 an analysis of the law relating to aircraft repossession and the enforcement of contractually agreed remedies and dispute resolution provisions, taking into account (i) the results of its questionnaire to local counsel, (ii) the World Aircraft Repossession Index, produced by the Pillsbury law firm, and (iii) additional and current information from parties exercising remedies in that country. The foregoing will be adjusted to avoid duplication with other variables in the formula. This is included as a proxy for, and indication of, likely 'gap filling' when CTC is silent and its general interpretation in the enforcement content

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

**Methodological note and disclaimer:** Please read the linked\* / ['methodological note'](#) and ['disclaimer'](#). The former elaborates on the elements of, sources of information related to, and, where applicable, weighting within, each variable in the formula as described in their respective definitions. It also notes that the AWG secretariat (i) reserves the right to, and, as necessary, does, modify mechanical applicable when in its view the facts and circumstances so warrant, such being summarized in the 'explanatory comments' section of the detailed version of the country specific form, and (ii) makes the final decision on scoring based on objective compliance risk assessment. The final score for each country will be rounded to the nearest half number. The latter states that no party, including, without restriction, AWG, its members and secretariat, or law firms or lawyers in its legal advisory panel, its national contact groups, or others who provide it with information, shall have any legal responsibility, liability, or duty whatsoever in connection with the Index or any part of it, including for errors and omissions. Without restriction, 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.

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